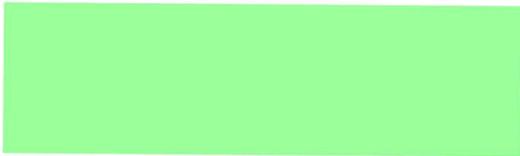
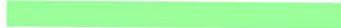


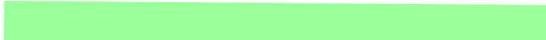


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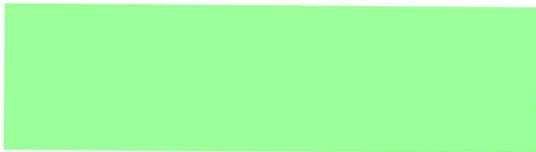


Date: **APR 01 2014** Office: CALIFORNIA SERVICE CENTER 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The California Service Center Director denied the petition for a nonimmigrant visa and the matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner, identified on Form I-129, Petition for a Nonimmigrant Worker, as Community Soccer Outreach, seeks to classify the beneficiary, [REDACTED], as an O-1 nonimmigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), as an alien of extraordinary ability in athletics. The petitioner seeks to employ the beneficiary as a soccer coach, advisor, and player for a period of three years.

The director denied the petition on the sole ground that the petition was not properly filed because it was signed by the beneficiary. In the denial, the director noted that the petitioner was previously afforded an opportunity to cure the defective filing and submit a properly signed Form I-129, but the petitioner did not include a properly signed Form I-129 as instructed.

On appeal, counsel submits a new Form I-129, dated November 1, 2013, signed by [REDACTED], on behalf of the petitioner. Counsel also submits, for the first time, a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, signed by [REDACTED] on behalf of the petitioner, authorizing counsel to represent the petitioner. Counsel submits a brief which states, in pertinent part:

As you are well aware, this office represents [REDACTED] in the above mentioned petition. In response to your letter dated on October 7, 2013, please know that the outcome for this case comes from an inadvertent mistake made by one of my paralegals. During the course of our representation, my paralegal had the wrong person execute the form I-129. By reviewing the file, I caught the mistake and had the form re executed by the correct person, the Manager of Community Soccer Outreach. It was my intention to replace the incorrect form with the correct form before sending out the case. I was very surprising when I received your letter stating your arguments for denial of this case which was based on the fact that the petitioner had not sign[ed the] form I-129. Just for clarification the supplement page that was originally submitted was executed by the Manager of Community Soccer Outreach.

...

We respectfully request that [REDACTED] application be approved pursuant to CFR 214.1(4)...

Notwithstanding the foregoing, I am enclosing now the correct form that was to be replaced in the initial package. I understand your reasoning for denial; however, I respectfully request that you reconsider this case, by reviewing the correct form and allowing my client to re-submit his application [*sic*].

The record reflects that the beneficiary signed the original Form I-129, which was filed on February 11, 2013. The beneficiary's name and signature, dated December 12, 2012, appears in Part 7 of the original Form I-129, thereby certifying "under penalty of perjury that this petition and the evidence submitted with it are true and correct to the best of [his or her] knowledge." The beneficiary's attorney signed Part 8 of the Form I-129,

thereby certifying that he “prepared this petition at the request of the above person.” The original Form I-129 was accompanied by one Form G-28, signed by the beneficiary, authorizing counsel to represent the beneficiary for purposes of the Form I-129. However, the regulations do not permit any individual who is not the petitioner to sign the Form I-129 petition.

The regulation at 8 C.F.R. § 103.2(a)(2) provides:

Signature. An applicant or petitioner must sign his or her benefit request. However, a parent or legal guardian may sign for a person who is less than 14 years old. A legal guardian may sign for a mentally incompetent person. *By signing the benefit request, the applicant or petitioner, or parent or guardian certifies under penalty of perjury that the benefit request, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct.* Unless otherwise specified in this chapter, an acceptable signature on a benefit request that is being filed with the USCIS is one that is either handwritten or, for benefit requests filed electronically as permitted by the instructions to the form, in electronic format.

(Emphasis added.)

The AAO acknowledges that the petitioner properly signed the O and P Classifications Supplement to Form I-129, which was submitted at the time of filing. However, a properly signed supplement form cannot negate the signature requirement at 8 C.F.R. § 103.2(a)(2), which is required on the actual benefit request, Form I-129. The petitioner’s signature on the supplement form certifies only that the petitioner “will be jointly and severally liable for the reasonable costs of return transportation of the beneficiary abroad if the beneficiary is dismissed from employment by the employer before the end of the period of authorized stay.”

The AAO cannot overlook the fact that the director previously afforded the petitioner two opportunities to cure the defective filing by submitting a properly signed Form I-129.¹ The director issued the petitioner a notice in January 2013 instructing the petitioner to resubmit a completed petition with original signature on the I-129. In response to this request, counsel stated, “please be advised that [redacted] [the beneficiary’s] signature is on page 6 of the form I-129,” and submitted no other documentation. The director then issued a request for evidence (RFE) on March 27, 2013, specifically advising the petitioner of the following: “**Signature:** The petitioner must sign the copy of the attached copy of Form I-129, Part 7. The beneficiary, [redacted] signed this section of the submitted Form I-129. The I-129 contained in the record has not been properly signed by a U.S. employer or U.S. agent.” In response to the RFE, the petitioner did not include a properly signed Form I-129. Instead, the response to the RFE consisted of, *inter alia*, a letter from the beneficiary’s attorney in which he repeatedly refers to the beneficiary as the “applicant” for an O-1 visa, and a copy of the previously submitted Form G-28 signed by the beneficiary.

On appeal, the petitioner submits a new Form I-129, dated November 1, 2013, which was signed by the petitioner. Counsel for the petitioner asserts that this newly submitted Form I-129 bearing the petitioner’s signature was already executed prior to sending the case out for filing, stating: “It was my intention to replace the incorrect form with the correct form before sending out the case.”

¹ Admittedly, the first notice was not sufficiently specific.

The AAO will not accept the newly submitted Form I-129, which was offered for the first time on appeal. As discussed above, the petitioner was put on notice of this particular deficiency and was given opportunities to respond to that deficiency, but it failed to do so. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Furthermore, the petitioner's explanation on appeal is not consistent with the submitted evidence. Specifically, the petitioner now claims that the new "correct" Form I-129 was executed before the case was filed. However, the newly submitted Form I-129 is dated November 1, 2013, whereas the original Form I-129 was filed on February 11, 2013. It is evident that the newly submitted Form I-129 was not prepared prior to the date of filing, as now claimed. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Finally, the lack of the petitioner's signature on Form I-129 is significant in other aspects. With respect to the O-1 classification, the regulation at 8 C.F.R. § 214.2(o)(2)(i) specifically prohibits an O alien from petitioning for himself or herself. In addition, 8 C.F.R. § 103.2(a)(3) specifically prohibits a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing a petition. More generally, the signature requirement reflects a genuine concern regarding the validity of the temporary job offer contained in the Form I-129 petition. To this end, the employer's signature serves as certification under penalty of perjury that the petition for the temporary worker, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct.²

In conclusion, the petitioner has failed to overcome the director's basis for denying the petition. The petitioner is not precluded from filing a new visa petition on the beneficiary's behalf that is supported by competent evidence that the beneficiary is entitled to the status sought under the immigration laws.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

² The petitioner signature line on Part 7 of the Form I-129 provides that the petitioner is certifying "under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it are all true and correct." To be valid, 28 U.S.C. § 1746 requires that declarations be "subscribed" by the declarant "as true under penalty of perjury." In pertinent part, 18 U.S.C. § 1621, which governs liability for perjury under federal law, mandates that: "Whoever in any declaration under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true is guilty of perjury." The probative force of a declaration subscribed under penalty of perjury derives from the signature of the declarant. Without the petitioner's actual signature as declarant, the declaration is completely robbed of any evidentiary force. See *In re Rivera*, 342 B.R. 435, 459 (D. N.J. 2006); *Blumberg v. Gates*, No. CV 00-05607, 2003 WL 22002739 (C.D.Cal.) (not selected for publication).

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NON-PRECEDENT DECISION

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ORDER: The appeal is dismissed.