



U.S. Citizenship
and Immigration
Services

MI

[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date: JUL 19 2005

EAC 97 032 53906

IN RE:

Petitioner:

[Redacted]

Beneficiary:

PETITION: Immigrant petition for Outstanding Professor and Researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(B)

ON BEHALF OF PETITIONER:

[Redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, initially approved the employment-based preference visa petition. The director subsequently served the petitioner with a Notice of Intent to Revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The petitioner appealed the director's decision to the Administrative Appeals Office (AAO). The AAO dismissed the appeal. The beneficiary's counsel filed a motion to reopen and reconsider, which was dismissed. The beneficiary's counsel filed a second motion to reopen and reconsider, which is now before the AAO. The motion will be dismissed. The prior decisions of the AAO and the director shall be affirmed.

The petitioner is a university. It seeks to employ the beneficiary permanently in the United States as an assistant professor of art. The petition was filed for classification of the beneficiary under section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B), as an outstanding professor or researcher.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) states that, for purposes of this section and sections 103.4 and 103.5 of this part, *affected party* (in addition to Citizenship and Immigration Services (CIS)) means the person or entity with legal standing in a proceeding. In the case of a visa petition, the affected party is the petitioner. The petitioner, in turn, is the person (or the entity on whose behalf the person acts) who signed Part 8 of the I-140 petition form. See 8 C.F.R. §§ 103.2(a)(2) and (a)(7)(i). In this instance, Part 1 of the Form I-140 identifies Norfolk State University as the petitioner. The Form I-140 was signed by Jesse Lewis, Vice President for Academic Affairs, Norfolk State University. The Form I-140 was accompanied by a Form G-28 dated October 28, 1996 and signed by Thelma Thompson in her capacity as Dean of the School of Arts and Letters, the department within the petitioning entity that extended the initial offer of employment to the beneficiary. The October 1996 Form G-28 indicated that the petitioner authorized attorney Diane Uchimiya of the Braverman & Linarelli law firm to represent it in this proceeding¹.

██████████ counsel for the beneficiary, filed the instant motion. The record shows that on July 30, 2004, M ██████████ filed a motion to reopen or reconsider in response to the AAO's dismissal of the appeal on April 23, 2004. This motion was not accompanied by a Form G-28 showing that ██████████ is authorized to represent the petitioner in this proceeding. Accordingly, the AAO dismissed the motion on September 3, 2004 and mailed a copy of the decision to the petitioner and to the petitioner's attorneys of record at Braverman & Linarelli. On October 5, 2004, ██████████ filed a second motion to reopen or reconsider and provided a copy of a Form G-28 dated May 24, 2004. The May 2004 Form G-28 lists Norfolk State University as the petitioner, but was signed by the beneficiary. ██████████ also submitted a Form G-28 dated September 7, 2004, which lists Norfolk State University as the petitioner; however, it was signed by an untitled and otherwise unidentified individual named ██████████ as the person consenting to have Mr. ██████████ represent the petitioner in this proceeding. Neither Form G-28 was signed by ██████████ or another clearly identified agent of the petitioning organization with the authority to extend an offer of employment to the beneficiary, to pursue the visa petition on motion, or to hire new counsel on behalf of the petitioner.

¹ A Form G-28 submitted to CIS on appeal shows that Stanton Braverman works for the same law firm and is also representing the petitioner in this proceeding at the request of Ms. ██████████

Accordingly, on March 24, 2005, the AAO issued a letter of inquiry directly to the office of the General Counsel of the petitioning entity and requested evidence [REDACTED] authority to represent the petitioner in this matter in accordance with the regulation at 8 C.F.R. § 292.4(a). In a letter dated April 22, 2005, [REDACTED] Assistant Attorney General for the Commonwealth of Virginia, responded on behalf of the petitioner that, under certain conditions, the Office of the Attorney General (OAG) of the Commonwealth of Virginia has the sole authority to appoint special counsel for state agencies such as the petitioner, confirmed that [REDACTED] not authorized to represent Norfolk State University in this matter, and further advised that "no employee of Norfolk State University was authorized to retain [REDACTED] as counsel" on behalf of the petitioner. Accordingly, the record clearly establishes that [REDACTED] is the beneficiary's attorney.

The regulation at 8 C.F.R. § 292.4(a) provides, in pertinent part:

A notice of appearance entered in application or petition proceedings must be signed by the applicant or petitioner to authorize representation in order for the appearance to be recognized by the Service.

The beneficiary's attorney is not authorized to represent the petitioner, Norfolk State University. He is only authorized to represent the beneficiary. He has not submitted a G-28 signed by the petitioner authorizing his representation on behalf of Norfolk State University.

The regulation at 8 C.F.R. § 103.5(a)(1)(iii) states that a motion must be signed by the affected party or the attorney or representative of record. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The motion has not been filed by the petitioner, or by any entity with legal standing in the proceeding, but rather by the beneficiary's counsel. Therefore, the motion has not been properly filed, and must be dismissed.

The previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed. The previous decisions of the director revoking the approval of the petition and of the AAO will not be disturbed. Approval of the petition is revoked.