U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 08303348

DATE: SEPT. 03, 2020

Appeal of California Service Center Decision

Form I-129, Nonimmigrant Petition for an Intracompany Transferee

The Petitioner, a biotechnology research and development company, seeks to extend the temporary employment of the Beneficiary in the new position of chief business officer under the L-1A nonimmigrant classification for intracompany transferees. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to the United States to work temporarily in a managerial or executive capacity.

The Director of the California Service Center denied the petition on August 23, 2019, on the grounds that the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity in the United States.

The Petitioner bears the burden of establishing eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. As set forth below, we will reject the appeal.

On September 12, 2019, U.S. Citizenship and Immigration Services (USCIS) received a Form I-290B (Notice of Appeal or Motion) signed by the attorney, [redacted] of Fisher & Phillips, LLP, who represented the Petitioner in the filing of the Form I-129 petition. The Form I-290B (designated as an appeal by the attorney) was accompanied by a new Form G-28 (Notice of Entry of Appearance as Attorney or Accredited Representative) signed by [redacted] Neither the Form I-290B nor the new Form G-28 was signed by an authorized representative of the Petitioner in the spaces designated for such signatures.[1] On September 16, 2019, USCIS sent a notice to the Petitioner rejecting the new Form G-28, and on October 1, 2019, the appeal was transferred to our office. On November 7, 2019, we sent a notice to the Petitioner and to [redacted] at Fisher & Phillips LLP informing them that we considered the Petitioner to be self-represented in the appeal. Neither the Petitioner nor the attorney responded to our notice of self-representation.[2]

The appeal itself must be rejected as improperly filed because it was not signed by an authorized representative of the Petitioner. Part 4, Section B, of the Form I-290B (Applicant's or Petitioner's

[1] In contrast to the appeal now before us, the Petitioner's initial filing, the Form I-129 petition, was accompanied by a Form G-28 that was properly signed by both the attorney, [redacted], and the Petitioner's authorized representative. That Form G-28, however, is not valid for the subsequent appeal of the Director's denial decision, which requires the filing of a new Form G-28. See 8 C.F.R. § 292.4(a).

[2] A proper Form G-28, signed by the Petitioner's authorized representative and the attorney [redacted], was submitted with

Statement, Contact Information, Certification, and Signature) instructs the filer of an appeal based on a petition filed by a business or organization to "complete this section." While subsections B.3 to B.7 identify [redacted] founder and CEO of the Petitioner, as its authorized representative, the signature that appears in the box at subsection B.8.a. (Petitioner's Signature) is not that of [redacted] but rather of the attorney [redacted] Thus, Part 4, Section B, of the Form I-290B was not completed correctly and lacks the requisite signature of the Petitioner's authorized representative. Moreover, the lack of a proper signature at subsection B.8.a. invalidates the contents of the "Petitioner's Certification" that appears above the signature, in particular the closing sentence which reads, in pertinent part, as follows: "I certify, under penalty of perjury, that I have reviewed this form . . . and all of this information is complete, true, and correct." In fact, there is no evidence that [redacted] reviewed the Form I-290B and he did not certify that the information therein is complete, true and correct. Therefore, the Petitioner did not complete section B of Part 4 in accordance with the instructions on the Form I-290B.[3]

Reflecting the instructions on the Form I-290B, USCIS "Instructions for Notice of Appeal or Motion" state as follows: "If you are completing Section B [of Part 4] as an authorized signatory of a business or organization, you must also provide your full legal name and title. Every form MUST contain the signature of the applicant or petitioner." See https://www.uscis.gov/i290b (last visited July 1, 2020).

The only signature on the Form I-290B is that of the attorney [redacted] who is not the "affected party" in this proceeding, notwithstanding his initial representation of the Petitioner, and therefore does not have legal standing to file the appeal. See 8 C.F.R. § 103.3(a)(1)(iii)(B). The regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(1) states that:

> An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be returned.[4]

Since the appeal was filed by [redacted] without the requisite signature of the Petitioner's authorized representative, who is the "affected party" in this proceeding, we will reject the appeal.

ORDER: The appeal is rejected as improperly filed.

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a second appeal (filed in November 2019, receipt number [redacted]) of the decision issued by the Director on August 23, 2019.

[3] We also note that in Part 6 of the Form I-290B, which requests contact information, a declaration, and the signature of the form's preparer, [redacted] of [redacted] is identified as the preparer but failed to provide his signature as required in the "Preparer's Signature" box at subsection 8.a. Thus, Part 6 of the Form I-290B was also not completed correctly. Moreover, the lack of a signature invalidates the contents of the "Preparer's Certification" that appears above the signature box, which contains the following pertinent language: "By my signature, I certify, under penalty of perjury, that I prepared this form at the request of . . . the petitioner [who] reviewed this completed form . . . and that all of this information is complete, true, and correct." In the absence of [redacted]'s signature, the foregoing certification language has no legal import.

[4] The regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(2)(i) further provides that "[i]f an appeal is filed by an attorney or representative without a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G-28) entitling that person to file the appeal, the appeal is considered improperly filed. In such case any filing fee the Service has accepted will not be refunded regardless of the action taken."