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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

File: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUL 21 2003

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PROSPECTIVE EMPLOYER:

[redacted]

INSTRUCTIONS:
This is the decision 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, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. The Administrative Appeals Office (AAO) rejected an appeal filed by the petitioner's prospective employer, the Arizona Baptist Convention (ABC). The prospective employer has now filed a motion to reopen, which will also be rejected. A copy of this notice shall be furnished to counsel for ABC as a courtesy, in order to explain the grounds for rejection.

The petitioner seeks classification as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as a lay minister for ABC's Iglesia Nueva Comunidad de Cave Creek. The director determined that the petitioner has not established two years of qualifying employment immediately preceding the filing of the petition, or that ABC has the financial ability to pay the proffered wage. On September 27, 2000, the AAO rejected the appeal filed by the church, on the grounds that the church is not the petitioner and thus has no standing to file an appeal. The present motion was filed on August 1, 2002.

On motion, counsel for ABC states:

> The Administrative Appeals Office rejected the appeal, alleging that the appeal was not filed by the petitioner. It further alleged that [the alien] is both the Petitioner and the Beneficiary.
>
> In fact, the petitioner is Arizona Baptist Convention. . . . The petitioner is also the one who filed the appeal, not [the alien]. The INS Receipt Notice correctly noted the petitioner as Arizona Baptist Convention. . . .
>
> It is unclear why the Administrative Appeals Office listed [the alien] as the petitioner and beneficiary in the instant appeal. By doing so, it erroneously rejected the appeal and never reached the merits of the case.

8 C.F.R. § 103.2(a)(2) requires that "[a]n applicant or petitioner must sign his or her application or petition," thereby attesting under penalty of perjury to the accuracy of the information accompanying that petition. Nevertheless, no ABC official signed the I-360 petition form. Only the alien signed that form. Thus, the alien, and not ABC, has taken legal responsibility for the petition and the alien alone is properly considered to be the petitioner. If it is counsel's position that the alien is not, in fact, the petitioner, then the petition form is effectively unsigned and therefore has never been properly filed.

The director apparently designated ABC as the petitioner because the name and address of that organization appear on the Form I-360, Part 1, "Information about person or organization filing this petition." The information in Part 1 of the Form I-360 does not supersede the identity of the person who signed the petition. The director's error in disregarding the alien's signature does not supersede controlling regulations at 8 C.F.R. § 103.2(a)(2).

Because ABC is not the petitioner, the AAO properly rejected the appeal that ABC had filed, pursuant to 8 C.F.R. § 103.3(a)(2)(v). For the same reason, we now reject the motion that ABC has filed. We note that, in the prior notice of rejection, the AAO failed to specify that the alien, and not ABC, had

signed the initial petition. While this information would have clarified matters, its omission does constitute grounds for reopening the AAO's rejection, if indeed rejections were subject to reopening or reconsideration.

We observe also that the motion was filed untimely, nearly two years after the rejection that the motion seeks to reopen. The regulation at 8 C.F.R. § 103.5(a)(1)(i) requires that a motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Counsel for ABC asserts that the delay was beyond the petitioner's control because the AAO sent the decision to an outdated address despite the alien's submission of a change of address notice over a year earlier, on August 25, 1999. The alien's original change of address notice is not in the record; the copy submitted on motion shows that the notice was submitted to the California Service Center rather than the AAO. In any event, the outdated address does not supersede the finding that ABC had no standing to file the initial appeal or the present motion.

Furthermore, while 8 C.F.R. § 103.5(a)(1)(i) allows a petitioner to file a motion to reopen or reconsider an adverse decision, in this case the AAO rejected the appeal and thus did not render any decision as such. Therefore, there is no decision to reopen or reconsider. The only actual decision that has been rendered in this matter is the original denial of the petition. Because a motion must be directed to the entity that rendered the disputed decision, any motion to reopen at this point would have to be addressed to the director of the California Service Center, along with a persuasive showing that the delay between April 25, 2000 (the original denial date) and the motion's filing date is reasonable and beyond the petitioner's control.

ORDER: The motion is rejected.