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CU

FILE:



Office: TEXAS SERVICE CENTER

Date: **JUL 12 2004**

IN RE:

Petitioner:

Beneficiary:



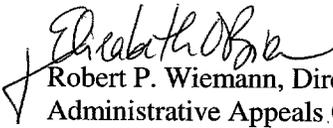
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be rejected and the matter will be remanded to the director for further action.

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 an associate pastor and conference administrator for Morningstar Fellowship Church. The director determined that the petitioner had not established that the alien had the requisite two years of continuous work experience immediately preceding the filing date of the petition, or that the position offered by the employer qualifies as a religious occupation or vocation.

8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part:

(B) *Meaning of affected party.* For purposes of this section and sections 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

8 C.F.R. § 103.3(a)(2)(v) states:

Improperly filed appeal -- (A) Appeal filed by person or entity not entitled to file it -- (1) Rejection without refund of filing fee. 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 refunded.

In this instance, the alien beneficiary is the petitioner. He is so identified in Part 1 of the Form I-360 petition, and he, rather than any Morningstar official, signed Part 9 of the petition form. 8 C.F.R. § 204.5(m)(1) permits an alien to self-petition for classification as a special immigrant religious worker, and thus there is no procedural difficulty in the beneficiary's having filed on his own behalf.

The director, however, erroneously concluded that [REDACTED] is the petitioner. When the director issued the denial, the director identified the church as the petitioner, and mailed the denial notice not to the alien (the true petitioner), but to the church. The clear implication was that the church, not the alien, should file the appeal, and there is no evidence that the director properly served the denial on the alien petitioner.

The appeal has not been filed by the petitioner, nor by any entity with legal standing in the proceeding, but rather by [REDACTED]. Thus, the appeal has not been properly filed, and must be rejected. At the same time, we cannot ignore the procedural errors that led to the denial being served on the church rather than on the alien petitioner. Therefore, we hereby remand the matter to the director, in order that the director may issue the notice to the actual petitioner, and afford him the opportunity to file an appeal.

We note that [REDACTED] as provided very substantial documentation in its appeal. The church submitted these documents in good faith, at the director's invitation. Therefore, before issuing any new decision, the director should review these documents, and determine whether they contain grounds for modifying the decision.

ORDER: The appeal is rejected. The petition is remanded to the director for further action in accordance with the foregoing.