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U.S. Citizenship
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FILE: LIN 02 102 50075 Office: NEBRASKA SERVICE CENTER Date: APR 26 2005

IN RE: Petitioner: [Redacted]
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 BENEFICIARY:

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.

Mari Johnson

S Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

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 the Service) 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 9 of the I-360 petition form. See 8 C.F.R. §§ 103.2(a)(2) and (a)(7)(i). In this instance, Part 1 of the Form I-360 identifies [REDACTED] as the petitioner, but the signature on Part 9 is that of the alien beneficiary. Whether or not the consultant who prepared the petition meant for the church to be the petitioner, the alien beneficiary, not any church official, has taken legal responsibility for the content of the petition and is, for our purposes, the petitioner. The intentions of the consultant, church, and/or alien, even if they could be proved, are irrelevant at this stage.

8 C.F.R. § 103.3(a)(2)(v) 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 refunded.

The appeal has not been filed by the petitioner, nor by any entity with legal standing in the proceeding, but rather by the petitioner's intending employer. Therefore, the appeal has not been properly filed, and must be rejected.

The director erroneously issued correspondence, including the denial notice, to the attention of the church rather than the alien. Because the director did not send the denial notice to the petitioner, it is not clear that the petitioner has ever had the opportunity to file his own appeal. While it is too late for the petitioner to file a timely appeal of the present decision, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the Service Center director. See 8 C.F.R. § 103.5(a)(1)(ii). Pursuant to these regulations, if the petitioner chooses to file an appeal at this late date, the AAO cannot accept that appeal, but the director must review the petitioner's submission and determine whether it qualifies as a motion to reopen or to reconsider.

In the alternative, the director may reissue the notice of decision, this time ensuring that it is addressed to the actual petitioner, and allowing the petitioner the usual period of time in which to file an appeal.

ORDER: The appeal is rejected.