



**DISCUSSION:** The Director, Texas 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 Philadelphia Baptist Church as the petitioner, but the signature on Part 9 is that of the alien beneficiary. Whether or not the pastor 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 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 Form I-290B Notice of Appeal was signed by Rev. Jean C. Bernardin of the petitioning church. Rev. Bernardin claims to represent the alien petitioner, but the record contains no Form G-28 Notice of Entry of Appearance as Attorney or Representative naming the minister or the church as the petitioner's representative.

The Citizenship and Immigration Services (CIS) regulation at 8 C.F.R. § 103.2(a)(3) specifies that a petitioner may be represented "by an attorney in the United States, as defined in § 1.1(f) of this chapter, by an attorney outside the United States as defined in § 292.1(a)(6) of this chapter, or by an accredited representative as defined in § 292.1(a)(4) of this chapter." Pursuant to 8 C.F.R. §§ 292.1(a)(4) and 292.2(a), an accredited representative is a person that the Board of Immigration Appeals (BIA) has accredited to represent a particular "non-profit religious, charitable, social service, or similar organization established in the United States" that the BIA has recognized as an organization which may provide accredited representatives. Neither Rev. Bernardin nor Philadelphia Baptist Church is on the roster of recognized organizations and accredited representatives compiled by the Executive Office of Immigration Review.

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.