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U.S. Citizenship
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Services

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FILE: WAC 03 165 53318 Office: CALIFORNIA SERVICE CENTER Date: **OCT 18 2005**

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: 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:

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

8 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 a subsequent appeal as not filed by an affected party. The matter is now before the AAO on a motion to reconsider. The motion will be rejected.

The petitioner is a church. It seeks to classify the beneficiary as a 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), to perform services as a music pastor. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition or that it had the ability to pay the proffered wage.

The appeal of the director's decision was filed by the attorney for the beneficiary. Therefore, the AAO rejected the petition as not filed by an affected party. 8 C.F.R. § 103.3(a)(1)(iii).

The petitioner has now filed a motion seeking reconsideration of the rejected appeal. Counsel asserts on motion that, although he indicated on the Form I-290B, Notice of Appeal to the Administrative Appeals Unit, that he stated he was representing the beneficiary, "the overwhelming bulk of the documentation and the attorney support letter all pointed to and still point [sic] to an application" by the petitioning organization. Nonetheless, at the time of the appeal, counsel did not submit a Form G-28, Notice of Entry of Appearance as Attorney or Representative, signed by the petitioner authorizing counsel to act on its behalf. Counsel now submits a Form G-28 signed by the petitioner to "rectify" the error. Counsel submitted no evidence that the AAO erred in rejecting the appeal.

As the appeal was rejected by the AAO, there is no decision on the part of the AAO that may be reconsidered in this proceeding. According to 8 C.F.R. § 103.5(a)(1)(ii), jurisdiction over a motion resides in the official who made the latest decision in the proceeding. The AAO did not enter a decision on this matter. Because the director rendered the disputed decision, the AAO has no jurisdiction over this motion and the motion must be rejected.

ORDER: The motion is rejected.