

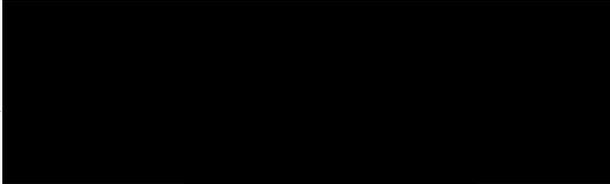
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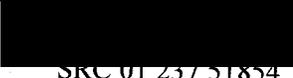
U.S. Citizenship  
and Immigration  
Services

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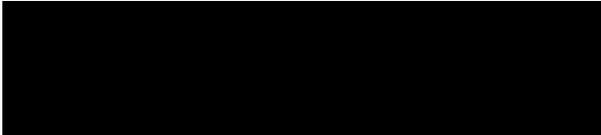


Office: TEXAS SERVICE CENTER Date:

SRC 01 237 51854

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 BENEFICIARY:



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*

*R* Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The petitioner has appealed the AAO's dismissal order. The appeal will be rejected.

On the Form I-290B Notice of Appeal, attorney Eugene Oak indicates that he represents the beneficiary. Mr. [REDACTED] does not claim, on this form, to represent any other party.

8 C.F.R. § 103.3(a)(1)(iii) states that, for purposes of appeals, certifications, and reopening or reconsideration, *affected party* (in addition to Citizenship and Immigration Services) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition or the beneficiary's attorney. 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 an attorney representing the beneficiary. Therefore, the appeal has not been properly filed, and must be rejected.

We note that Mr. [REDACTED] has submitted Form G-28, Notice of Entry of Appearance as Attorney or Representative. On this form, a check mark appears to indicate that Mr. [REDACTED] claims to represent the petitioner as well as the beneficiary. No official of the petitioning church, however, has signed the Form G-28 to acknowledge this representation. Only the beneficiary has signed the form, and thus Mr. [REDACTED] represents only the beneficiary. Absent a Form G-28 from the petitioner, Mr. [REDACTED] has no standing to file anything on the petitioner's behalf, and we must consider the appeal to have been improperly filed, pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(I)(i).

While 8 C.F.R. § 103.3(a)(2)(v)(A)(I)(iii) provides an opportunity for an attorney to remedy this deficiency, it applies only to an otherwise properly filed appeal. Such is not the case here. Even if Mr. [REDACTED] submitted a Form G-28 to establish himself as the petitioner's attorney of record, additional factors indicate improper filing and thereby prevent review of the matter on its merits. The new filing was submitted on Form I-290B, Notice of Appeal, but there is no provision for appeal of an AAO appellate decision. Thus, the beneficiary's attorney has filed for relief that does not exist, and the appeal cannot have been properly filed.

Arguably, the AAO could consider this filing to represent a *de facto* motion to reopen rather than an appeal, but such a motion would be dismissed for reasons to be explained below.

Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, 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 was beyond the control of the applicant or petitioner. 8 C.F.R. § 103.5(a)(1)(i). If the decision was mailed, the motion must be filed within 33 days. See 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. See 8 C.F.R. § 103.2(a)(7)(i).

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

In this instance, the AAO issued its dismissal order on June 3, 2004. Citizenship and Immigration Services (CIS) received a Form I-290B Notice of Appeal 35 days later, on Thursday, July 8, 2004. Thus, the filing was untimely. Even then, the filing itself included no evidence or substantive arguments. Instead, the beneficiary's attorney indicated that a supplemental brief would follow within 30 days. A week later, the

attorney submitted a brief and several supporting documents. The regulations governing motions to reopen do not allow for supplemental submissions after the motion has been filed.

Thus, numerous procedural issues preclude review of this matter on the merits: an AAO dismissal cannot be appealed; the beneficiary's attorney has no standing to file an appeal or motion; the appeal/motion was filed untimely with no showing that the late filing was beyond the petitioner's control; and the initial filing of the appeal/motion was devoid of substantive content and there is no regulatory provision to permit an affected party, let alone the beneficiary's attorney, to supplement a skeletal motion.

**ORDER:** The appeal is rejected.