

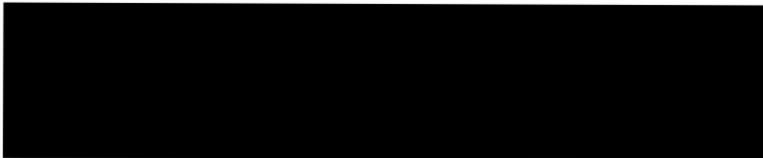
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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: JAN 09 2007
SRC 03 242 53055

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 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.

Robert P. Wieman, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) rejected an improperly filed appeal. A motion to reopen and reconsider is now before the AAO. The AAO will dismiss the motion, and return the matter for further action by the director.

The alien beneficiary seeks classification 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 religious instructor at [REDACTED] a facility associated with the Seventh-Day Adventist Church. The director determined that the petitioner had not established: (1) that the beneficiary had the requisite two years of continuous work experience in the position immediately preceding the filing date of the petition; (2) that the beneficiary's position qualifies as a religious occupation; or (3) that the intending employer qualifies as a tax-exempt religious organization.

Part 1 of the Form I-360 petition identifies [REDACTED] as the petitioner. Review of the petition form, however, indicates that the alien beneficiary is the petitioner. An applicant or petitioner must sign his or her application or petition. 8 C.F.R. § 103.2(a)(2). In this instance, Part 9 of the Form I-360, "Signature," has been signed not by any official of [REDACTED] but by the alien beneficiary himself. Thus, the alien, and not [REDACTED] has taken responsibility for the content of the petition. While a [REDACTED] official, [REDACTED] prepared the petition form, the alien himself is the only party we can justifiably consider to be the petitioner.

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 (CIS)) means the person or entity with legal standing in a proceeding. 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 CIS has accepted will not be refunded.

Here, the party that filed the original appeal was filed not the petitioner, nor by any attorney or accredited representative of the petitioner, but rather [REDACTED] which has no standing to file an appeal on the petitioner's behalf. [REDACTED] signed the Form I-290B Notice of Appeal. Accordingly, the AAO rejected [REDACTED]'s appeal on August 9, 2005. The AAO explained that [REDACTED] not the petitioner, and therefore had no standing to appeal the director's decision.

On September 12, 2005, [REDACTED] filed a new motion on Form I-290B, again signed by Mr. [REDACTED] attempting to appeal the AAO's rejection of the previous appeal. Mr. [REDACTED] requests 30 days "to overcome the AAO reason for rejecting the appeal." The reason for the rejection, however, is a basic regulatory requirement. Because [REDACTED] did not take legal responsibility for the initial petition, it cannot be considered the petitioner, it cannot file an appeal or motion on behalf of the alien beneficiary, and no future action by [REDACTED] can "overcome" these facts. There exists no regulatory provision for a motion to reopen a rejected appeal.

Furthermore, 8 C.F.R. § 103.5(a)(1)(iii)(A) stated that a motion must be signed by the affected party or the attorney of record. 8 C.F.R. § 103.5(a)(1)(i) permits the reopening of a proceeding only "when the affected party files a motion." Here, the motion was not filed by an affected party, but rather by [REDACTED] Because [REDACTED] is not an affected party, the motion has not been properly filed, and there is no provision to allow the acceptance of the motion. A motion that does not meet applicable requirements shall be dismissed.

8 C.F.R. § 103.5(a)(4). We must, therefore, dismiss the motion as improperly filed. Pursuant to 8 C.F.R. § 103.5(a)(1)(iii)(B), the filing fee is nonrefundable.

We note that the director sent the denial notice not to the alien self-petitioner, but to [REDACTED] to Mr. [REDACTED]'s attention, presumably because the Form I-360 identified [REDACTED] as the petitioner. Thus, the director has never issued any relevant notices to the petitioner himself.

8 C.F.R. § 103.5a(a)(1) defines "routine service" as mailing a copy by ordinary mail addressed to a person at his last known address. 8 C.F.R. § 103.5a(b) states that service by mail is complete upon mailing. Here, because the director addressed the notices to the attention of Mr. [REDACTED], rather than to the alien self-petitioner himself, the director has arguably never served the notice of denial. Thus, the self-petitioning alien has never had the opportunity to file a timely appeal. By addressing the denial notice to a [REDACTED] official, the director implied, wrongly, that [REDACTED] was an affected party, in a position to file an appeal or motion from the director's decision. The director must reissue a newly dated denial notice in order to give the actual petitioner that opportunity.

We note that, if the alien petitioner chooses to appeal the director's decision, statements from [REDACTED] officials will be duly considered, albeit as witness statements rather than as the petitioner's own arguments. Because there is, as yet, no valid appeal in the record, we examine, here, neither the basis of the denial nor the merits of the appeal submitted by [REDACTED]. We will duly consider those factors if and when the self-petitioning alien files a proper and timely appeal, signed by himself or by an attorney or accredited representative who represents him at the time of that filing.

Because the AAO's prior action was a rejection of the appeal, there is no AAO "decision" *per se* to reopen. Nevertheless, we acknowledge that the AAO's prior rejection notice failed to point out the director's failure to address the denial notice to the true petitioner. At this point, there is little remedy other than for the AAO to instruct the director to reissue the decision, making it clear that the alien beneficiary himself, or his attorney, must sign the appeal form should he choose to appeal.

The motion has not been filed by the petitioner, or by any entity with legal standing in the proceeding, but rather by Wildwood. Therefore, the motion has not been properly filed, and must be dismissed. The director must serve a newly dated copy of the decision, properly addressed to the petitioner.

ORDER: The motion is dismissed. The matter is returned to the director for the limited purpose of the reissuance of the decision.