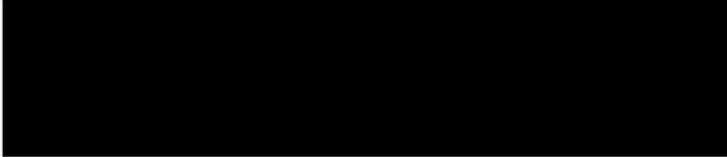


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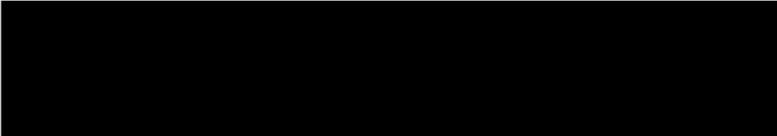
FILE: [REDACTED] SRC 05 219 52636

Office: TEXAS SERVICE CENTER Date:

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.

Mai Jensen

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO), which rejected the appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be dismissed.

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 the 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.

8 C.F.R. § 103.3(a)(2)(v)(A)(I) 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.

On November 28, 2005, the director received an appeal filed by attorney Ruben Montemayor, who stated that he represented the beneficiary. Mr. Montemayor's assertions on appeal clearly indicated that he represented the interests of the beneficiary, and was arguing on behalf of the beneficiary. The record, at the time, contained numerous Form G-28 Notices of Entry of Appearance as Attorney or Representative. Each of the Forms G-28 identified Mr. Montemayor as the beneficiary's attorney. Mr. Montemayor never identified himself as the petitioner's attorney, and the petitioner never submitted any Form G-28 showing that Mr. Montemayor represented the petitioner.

The AAO rejected the appeal on April 11, 2006, pursuant to the regulations cited above. On June 5, 2006, the director received the petitioner's motion to reopen. On motion, the petitioner submits two new Forms G-28, designating Mr. Montemayor as the petitioner's attorney of record. Both forms are dated after the date of the AAO's rejection notice.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

Here, the petitioner has not shown or claimed that the AAO acted improperly or incorrectly when it rejected an appeal that had not been filed by an affected party. Counsel admits "error" in failing to obtain and submit Forms G-28 signed by the petitioner.

Furthermore, any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. 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).

The petitioner did not file a motion within 30 days of the AAO's April 11, 2006 rejection notice. Therefore, the appeal is untimely. The regulations do not permit, under any circumstances, the acceptance of an untimely motion to reconsider filed as a motion,¹ and the petitioner has not shown that the delay in filing was reasonable or beyond the petitioner's control. Finally, the regulations permitting the filing of motions relate to instances in which a decision has been rendered. The rejection notice was not a decision *per se*, so much as an explanation as to why the AAO would not render a decision. An improper filing by an unaffected party does not vest the petitioner with any due process interest arising from that filing.

ORDER: The motion is dismissed.

¹ 8 C.F.R. § 103.3(a)(2)(v)(B)(2) allows for an untimely appeal to be treated as a motion under certain circumstances, but those circumstances do not apply in this proceeding.