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U.S. Citizenship
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FILE: SRC 05 171 52992 Office: TEXAS SERVICE CENTER Date: JUL 23 2007

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the matter will be remanded to her for further consideration.

The petitioner is a church that seeks to employ the beneficiary as its music director. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition based on her determination that the record failed to establish the proffered position as a specialty occupation.

The director rejected a subsequent appeal based on her determination that, as the beneficiary signed the Form G-28, Notice of Entry of Appearance as Attorney or Representative, he therefore improperly filed the appeal.

A review of the evidence of record finds another G-28, dated prior to the director's December 19, 2005 decision rejecting the appeal, that was signed by the petitioner, listing the same law firm as that reflected on the G-28 signed by the beneficiary. As such, the director rejected the appeal in error. Therefore, the matter will be remanded to her for consideration of the appeal as a motion.

ORDER: The decision of the director is withdrawn. The matter is remanded to her for further action and consistent with the above discussion and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.