

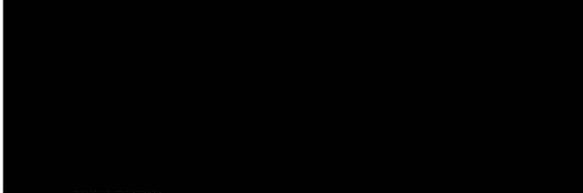
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

C1

PUBLIC COPY



FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUL 18 2006
WAC 05 097 54223

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:

SELF-REPRESENTED

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 Director, California Service Center, denied the special immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be rejected. The AAO will 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 the vocation of a monk at Wat Lao Khantidhammaram, a Buddhist temple in Nevada. The director determined that the petitioner had not established that the temple is a qualifying tax-exempt religious organization, or that the temple is able to remunerate the beneficiary.

Part 1 of the Form I-360 Petition is labeled "Information about person or organization filing this petition." Part 1 lists the alien beneficiary's name in care of [REDACTED] thus identifying the beneficiary as the petitioner. The beneficiary's name has been crossed out in red ink, apparently by an officer of Citizenship and Immigration Services. The director considered the petitioner to be Wat Lao Khantidhammaram, and sent the denial notice to the temple, without specifying an individual addressee there. Temple president Andrew Adams signed the Form I-290B Notice of Appeal and prepared the subsequent appellate brief. The temple, however, is not the petitioner.

Pursuant to 8 C.F.R. § 103.2(a)(1), every petition must be executed and filed in accordance with the instructions on the form. 8 C.F.R. § 103.2(a)(2) requires the petitioner to sign the petition. Part 9 of Form I-360, "Signature," is the portion of the form dedicated to the signature of the petitioner; instructions in Part 9 include the attestation that the contents of the petition are true and correct. Here, no temple official signed Part 9 of the Form I-360. Instead, the alien beneficiary signed this part of the form. Thus, the alien himself took responsibility for the petition, and he, himself, must be considered to be the petitioner. The Form I-360 contains no internal evidence to suggest that the beneficiary or the temple intended for anyone other than the beneficiary 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 the Citizenship and Immigration Services) means the person or entity with legal standing in a proceeding. Here, the petitioner (i.e., the alien beneficiary) is the affected party. Wat Lao Khantidhammaram is not an affected party in this 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 the Service has accepted will not be refunded. As we have already observed, the petitioner did not file the appeal in this instance. [REDACTED] which is not an affected party, filed the appeal. Therefore, we must reject the appeal submitted by the temple in the present proceeding.

Because the director failed to recognize that the alien beneficiary is the true petitioner in this case, the director mailed the notice of decision to [REDACTED]. We acknowledge that, in this instance, the beneficiary's mailing address is in care of the temple; but the general principle stands that the director must serve notice of the decision on the petitioner himself. 8 C.F.R. § 103.5a(a)(1) states that routine service consists of mailing a copy by ordinary mail addressed to a person at his last known address. The denial notice was not addressed to the petitioner. We cannot arbitrarily consider service to a particular address, with no

specified individual addressee, to be proper service. Therefore, the director has not properly served the petitioner with notice of the decision, and Andrew Adams was not acting as an authorized representative of the petitioner when he signed the Form I-290B Notice of Appeal.

In the event that the petitioner chooses to file a proper appeal from the director's decision, we note that the petitioner is at liberty to include statements or arguments from temple officials if the petitioner so desires. The rejection of the present improperly filed appeal should not be construed to mean that we would disregard statements from temple officials; only that the temple is neither the petitioner nor an accredited representative authorized to file appeals on the petitioner's behalf pursuant to 8 C.F.R. § 292.2(a). Any appeal filed by the petitioner must include a Form I-290B Notice of Appeal signed either by the petitioner himself, or by an attorney or accredited representative, in which case the appeal submission should include Form G-28 Notice of Entry of Appearance as Attorney or Representative signed by both the petitioner and the attorney or accredited representative.

Unless and until the affected party properly submits a timely appeal, we shall not discuss the merits of the director's decision or the rebuttal arguments offered by [REDACTED]. The AAO can make no formal finding at this point, because there has been no valid appeal filed that would give the AAO jurisdiction to review the record and make an official finding. We note that the director retains the option, at this stage, of reopening the matter to take the most recent submissions into account, rather than simply reissuing a copy of the same decision with a new date. We also encourage the director to review the memorandum from William R. Yates, Associate Director of Operations, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003), and to ensure that the petitioner has the opportunity to meet the specific evidentiary requirements set forth therein.

The appeal has not been filed by the petitioner, or by any entity with legal standing in the proceeding, but rather by the petitioner's employer. Therefore, the appeal has not been properly filed, and must be rejected. This matter will be returned to the director for the purpose of reissuing the decision to the actual petitioner of record, in order to afford the petitioner a fair opportunity to file a timely appeal.

ORDER: The appeal submitted by Wat Lao Khantidhammaram is rejected. The director is instructed to review the record and, if the director determines that a denial is still warranted, issue the notice of decision to the petitioner of record.