U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

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U.S. Citizenship and Immigration Services

prevent clearly unwarranted invasion of personal privacy

[redacted]

JAN 26 2005

FILE: [redacted] Office: TEXAS SERVICE CENTER Date:
SRC 98 114 50016

IN RE: Petitioner:
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 BENEFICIARY:

[redacted]

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.

Marie Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner is a church. It seeks to classify the beneficiary 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 an associate pastor. The director determined that the petitioner had not established: (1) that the beneficiary had the requisite two years of continuous work experience as an associate pastor immediately preceding the filing date of the petition; (2) that the position qualifies as a religious occupation; or (3) the petitioner's ability to pay the beneficiary's proffered wage.

8 C.F.R. § 103.3(a)(1)(iii)(B) states that, for purposes of this section and sections 103.4 and 103.5 of this part, *affected party* (in addition to the Service) 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) 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 the beneficiary's attorney. Therefore, the appeal has not been properly filed, and must be rejected.

When the director issued the notice of intent to revoke, the director sent a courtesy copy to the beneficiary. The mailing of this courtesy copy did not cause the beneficiary to be an affected party in the proceeding. The only response to this notice was from the beneficiary's attorney, who has consistently been identified as counsel for the beneficiary, and not as counsel for the petitioner. The director mailed the notice of revocation to the attorney, but this error did not make the beneficiary an affected party, nor did it authorize the attorney to file a valid appeal on the petitioner's behalf.

Because the director did not send the revocation notice to the petitioner, it is not clear that the petitioner has ever had the opportunity to file its own appeal. While it is too late for the petitioner to file a timely appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(*2*) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the Service Center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). Pursuant to these regulations, if the petitioner chooses to file an appeal at this late date, the AAO cannot accept that appeal, but the director must review the petitioner's submission and determine whether it qualifies as a motion to reopen or to reconsider.

ORDER: The appeal is rejected.