

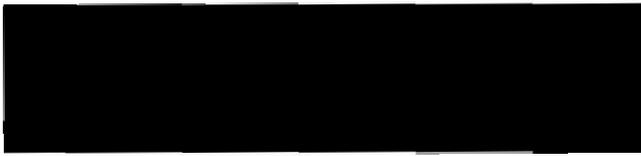
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U.S. Department of Homeland Security
20 Mass. Ave. N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 079 53250 Office: CALIFORNIA SERVICE CENTER Date: MAY 18 2006

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

PETITION: 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:
[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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) rejected a subsequent appeal as not filed by an affected party in the proceedings. The matter is now before the AAO on a motion to reconsider/reopen. The motion will be rejected.

In each stage of this proceeding prior to the current motion, the only Forms G-28, Notices of Entry of Appearance as Attorney or Representative, appearing in the record were signed by the beneficiary.¹ The director denied the petition on June 21, 2004. On July 21, 2004, counsel for the beneficiary, filed an appeal seeking review of the director's decision. After reviewing the record, the AAO rejected the appeal because it was not filed by an affected party. Any appeal that is not filed by an affected party must be rejected as improperly filed. 8 C.F.R. § 103.3(a)(2)(v).

The petitioner has now filed a motion seeking reconsideration of the rejected appeal. Counsel asserts on motion that a Form G-28 signed by a representative of the petitioner was submitted with the Form I-360, Petition for Amerasian, Widow or Special Immigrant. As evidence, counsel submits a July 22, 2005 affidavit from his firm's paralegal declaring that the paralegal prepared the Form I-360 and mailed it on September 18, 2003 with Forms G-28 signed by the beneficiary and a representative of the petitioner. Counsel submits a copy of the September 23, 2003 letter purporting to forward the Form I-360 with supporting documentation, including a "Form G-28 for 3 applicants." Counsel also submits a copy of a Form G-28 signed by a representative of the petitioner on September 18, 2003.

We note that nothing in the documentation submitted by counsel confirms that a Form G-28 properly executed by the petitioner's representative was submitted with its letter of September 18, 2003. Further, the record reflects that counsel's September 18, 2003 letter and its supporting documentation were returned to counsel. Counsel resubmitted the "complete I-360 package" under cover of a letter dated January 21, 2004. The January 21, 2004 letter does not indicate that a Form G-28 signed by the petitioner's representative was submitted.

As the appeal was rejected by the AAO, there is no decision on the part of the AAO that may be reconsidered in this proceeding. According to 8 C.F.R. § 103.5(a)(1)(ii), jurisdiction over a motion resides in the official who made the latest decision in the proceeding. The AAO did not enter a decision on this matter. Because the director rendered the disputed decision, the AAO has no jurisdiction over this motion and the motion must be rejected.

ORDER: The motion is rejected.

¹ The record contains two Forms G-28 signed by the beneficiary on September 18, 2003, and both appear to contain the original signatures of counsel and the beneficiary.