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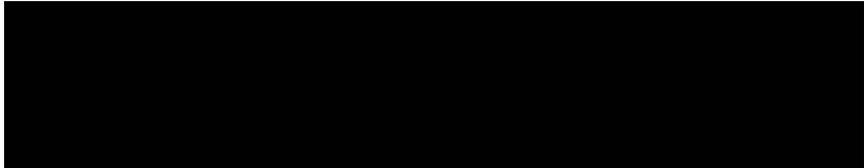
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: OCT 11 2006
WAC 03 258 53232

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) 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 services as a member of the Sea Organization (Sea Org), a religious order of the Church of Scientology. The director determined that the petitioner had not established that the beneficiary's position qualifies as either a religious occupation or a religious vocation, or that the beneficiary had the requisite two years of continuous work experience immediately preceding the filing date of the petition.

Part 1 of the Form I-360 petition identifies the Church of Scientology Western United States (CSWUS) as the petitioner. Review of the petition form, however, indicates that the alien beneficiary is the petitioner. An applicant or petitioner must sign his or her application or petition. 8 C.F.R. § 103.2(a)(2). In this instance, Part 9 of the Form I-360, "Signature," has been signed not by any official of CSWUS, but by the alien beneficiary himself. Thus, the alien, and not CSWUS, has taken responsibility for the content of the petition.

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 Citizenship and Immigration Services (CIS)) 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 CIS has accepted will not be refunded.

Here, the appeal was filed not by the petitioner, but by CSWUS, which has no standing to file an appeal on the petitioner's behalf. The signature on the Form I-290B Notice of Appeal is that of Rev. Ellen Farny. We must, therefore, reject the appeal as improperly filed.

We note, at the same time, that the director sent the notice of decision not to the alien self-petitioner, but to CSWUS, presumably because the Form I-360 identified CSWUS as the petitioner. Thus, the director has never issued any relevant notices to the petitioner himself.

8 C.F.R. § 103.5a(a)(1) defines "routine service" as mailing a copy by ordinary mail addressed to a person at his last known address. 8 C.F.R. § 103.5a(b) states that service by mail is complete upon mailing. Here, because the director addressed the notices to the attention of CSWUS, rather than to the alien self-petitioner himself, the director has arguably never served the notice of denial. Thus, the self-petitioning alien has never had the opportunity to file a timely appeal. The director must reissue the denial notice in order to give the actual petitioner that opportunity.

We note that, if the alien petitioner chooses to appeal the director's decision, statements from CSWUS officials will be duly considered, albeit as witness statements rather than as the petitioner's own arguments. Evidence already submitted by CSWUS or by counsel shall remain part of the record and the director may give these materials due consideration. Because there is, as yet, no valid appeal in the record, we examine, here, neither the

basis of the denial nor the merits of the appeal submitted by CSWUS. We will duly consider those factors if and when the self-petitioning alien files a proper and timely appeal.

The party that filed the appeal was not the petitioner, nor the petitioner's attorney of record, but rather the petitioner's employer, CSWUS. Therefore, the appeal has not been properly filed, and must be rejected. The director must serve a newly dated copy of the decision, properly addressed to the petitioner.

We note that, in a separate proceeding, the self-petitioning alien has applied for and received conditional resident status pursuant to a Form I-485 adjustment application (receipt number MSC 06 014 22905) and an underlying Form I-130 immediate relative petition (receipt number WAC 05 205 51438), both approved August 1, 2006. Because the self-petitioning alien holds conditional resident status, rather than permanent resident status, the AAO will not consider the present proceeding to be moot, but the AAO does note that this is a factor that the self-petitioning alien may wish to take into account when determining the extent to which a new appeal in this matter is worth pursuing. The denial of the present petition is without prejudice to the self-petitioning alien's status as a conditional resident, or to his eligibility to apply for removal of conditions in 2008.

ORDER: The appeal is rejected. The matter is returned to the director for the limited purpose of the reissuance of the decision.