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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

C1

DATE: APR 12 2011

Office: CALIFORNIA SERVICE CENTER

FILE: [redacted]
WAC 06 251 53684

IN RE: Petitioner: [redacted]
Beneficiary:

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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 a local pastor. Because the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, was signed by counsel, the director determined that the petitioner had failed to establish that it had extended a qualifying job offer to the beneficiary.

The petitioner asserts on appeal that it had executed a Form G-28, Notice of Entry of Appearance as Attorney or Representative, authorizing prior counsel to represent the organization in proceedings before USCIS.[1]

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States –
>
> > (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
> >
> > (II) before September 30, 2012, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
> >
> > (III) before September 30, 2012, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and
>
> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The issue presented is whether the Form I-360 petition was properly filed.

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[1] Different counsel represents the petitioner on appeal; however, both are from the same law firm. Previous counsel is identified as "prior counsel" in this decision.

The Form I-360, submitted to USCIS on August 17, 2006, identifies the [redacted] as the petitioner. The Form I-360, however, was signed by prior counsel. The letter submitted in support of the petition outlining the beneficiary's qualifications, the duties of the position, and the details of the job offer was also signed by counsel. In this instance, no employee or officer of the [redacted] signed the Form I-360 petition. However, the regulations do not permit any individual who is not the petitioner to sign Form I-360 on behalf of a U.S. employer.

The regulation in effect at the time the petition was filed provided that "[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker." 8 C.F.R. § 204.5(m)(1). The regulation also required specific attestations from "an authorized official" of the employing organization. These included a letter establishing that the alien had the required two years membership in the denomination, had the qualifying two-year work experience, and how the alien would be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work.

The regulation at 8 C.F.R. § 103.2(a)(3) provides, in pertinent part: "An applicant or petitioner may be represented by an attorney in the United States . . ., or by an accredited representative as defined in § 292.1(a)(4) of this chapter." The petitioner argues, in effect, that the representative authorized by 8 C.F.R. § 103.2(a)(3) has the authority to sign the petition on behalf of the organization. For the reasons discussed below, we reject this argument.

The regulation at 8 C.F.R. § 204.5(c) provides:

> *Filing petition.* Any United States employer desiring and intending to employ an alien may file a petition for classification of the alien under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act. An alien, or any person in the alien's behalf, may file a petition for classification under section 203(b)(1)(A) or 203(b)(4) of the Act (as it relates to special immigrants under section 101(a)(27)(C) of the Act).

We note that regulations promulgated on November 26, 2008 modified the filing requirements for the Form I-360 petition, providing at 8 C.F.R. § 204.5(m)(6) that "A petition must be filed . . . either by the alien or by his or her prospective employer." However, as the petition was filed prior to the effective date of the November 2008 regulation, the regulation at 8 C.F.R. § 204.5(c) is the appropriate reference for our discussion.

Additionally, the regulation at 8 C.F.R. § 204.5(a)(1) provides that a petition is properly filed if it is accepted for processing under the provisions of 8 C.F.R. § 103. The regulation at 8 C.F.R. § 103.2(a)(2) provides:

> *Signature.* An applicant or petitioner must sign his or her application or petition. However, a parent or legal guardian may sign for a person who is less than 14 years

> old. A legal guardian may sign for a mentally incompetent person. By signing the application or petition, the applicant or petitioner, or parent or guardian certifies under penalty of perjury that the application or petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. Unless otherwise specified in this chapter, an acceptable signature on an application or petition that is being filed with the USCIS is one that is either handwritten or, for applications or petitions filed electronically as permitted by the instructions to the form, in electronic format.

An earlier version of the regulation at 8 C.F.R. § 204.1(d), as in effect in 1991, provided, in pertinent part:

> Before the petition may be accepted and considered properly filed, the petitioner *or authorized representative* shall sign the visa petition (under penalty of perjury) in the block provided on the form. [Emphasis added.]

The regulation at 8 C.F.R. § 204.1(d) no longer includes language that would allow an authorized representative to sign a petition, although we acknowledge that this provision now relates only to immediate relative and family based petitions. In contrast, the filing requirements for employment-based immigrant petitions are now found at 8 C.F.R. § 204.5(a). The regulation at 8 C.F.R. § 204.5(a)(1) provides that such petitions must be accepted for processing under the provisions of 8 C.F.R. § 103. As stated above, the regulation at 8 C.F.R. § 103.2(a)(2) provides that the petitioner must sign the petition and does not include the "or authorized representative" language that previously existed until 1991. Had the legacy Immigration and Naturalization Service, now USCIS, intended to continue to allow authorized representatives to sign Form I-360 petitions, the language expressly allowing them to do so would not have been removed.

There is no regulatory provision that waives the signature requirement for a petitioning U.S. employer or that permits a petitioning U.S. employer to designate an attorney or accredited representative to sign the petition on behalf of the U.S. employer. The petition has not been properly filed because the petitioning U.S. employer, the Assembly of God – Bethlehem Ministry, Inc., did not sign the petition. Pursuant to the regulation at 8 C.F.R. § 103.2(a)(7)(i), an application or petition which is not properly signed shall be rejected as improperly filed, and no receipt date can be assigned to an improperly filed petition. While the service center did not reject the petition, the AAO is not bound to follow the contradictory decision of a service center. . *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 at *3 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

USCIS and legacy INS have required that an authorized employee of the U.S. petitioning employer must sign the Form I-360 petition on behalf of the petitioning employer since 1991 when legacy INS removed the "or authorized representative" language. Practically, the signature requirement reflects a genuine Form I-360 program concern regarding the validity of the permanent job offers contained in Form I-360 petitions. To this end, the employer's signature

serves as certification under penalty of perjury that the petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct.

The signature line on the Form I-360 for the petitioner provides that the petitioner is certifying, "under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it are all true and correct." To be valid, 28 U.S.C. § 1746 requires that declarations be "subscribed" by the declarant "as true under penalty of perjury." *Id.* In pertinent part, 18 U.S.C. § 1621, which governs liability for perjury under federal law, mandates that "Whoever in any declaration under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true is guilty of perjury." 18 U.S.C. § 1621.

The probative force of a declaration subscribed under penalty of perjury derives from the signature of the declarant; one may not sign a declaration "for" another. Without the petitioner's actual signature as declarant, the declaration is completely robbed of any evidentiary force. *See In re Rivera*, 342 B.R 435, 459 (D. N.J. 2006); *Blumberg v. Gates*, NO. CV 00-05607, 2003 WL 22002739 (C.D. Cal.) (not selected for publication).

The AAO notes that an entirely separate line exists for the signature of the preparer declaring that the form is "based on all information of which [the preparer] has knowledge." Thus, the Form I-360 itself acknowledges that a preparer who is not the petitioner cannot attest to the contents of the petition and supporting evidence. Rather, the preparer may only declare that the information provided is all the information of which he or she has knowledge. Moreover, we note that the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Thus, an attorney's unsupported assertions on the petition and the job offer have no evidentiary value.

The AAO notes that the integrity of the immigration process depends on the actual employer signing the official immigration forms under penalty of perjury. Allowing an attorney to sign all petitions, appeals, and all employment offers on behalf of the petitioner based on authorization granted by a Form G-28 would leave the immigration system open to fraudulent filings. While we do not allege any malfeasance in this matter, we note prior examples where attorneys have been convicted of various charges, including money laundering and immigration fraud, after signing forms of which the alien or employer had no knowledge. *United States v. O'Connor*, 158 F.Supp.2d 697, 710 (E.D. Va. 2001); *United States v. Kooritzky*, Case No. 1:02CR00502 (E.D. Va. December 11, 2002).

The director determined that the petitioner had failed to extend a qualifying job offer to the beneficiary. While the director did not specify that her determination was based on the fact that prior counsel signed the petition, the Notice of Intent to Deny, issued on October 28, 2008, gave the petitioner adequate notice of the basis for denial. Additionally, the petitioner based its appeal on the authority of counsel to sign the petition.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.