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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



C1

DATE: OCT 17 2011 OFFICE: CALIFORNIA SERVICE CENTER



IN RE: Petitioner:
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:

SELF-REPRESENTED

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.

Thank you,

Perry Rhew
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 AAO will reject the appeal and return the matter for further action by the director.

The petitioner 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 pastor at [REDACTED]. The director determined that the petitioner had not established that the beneficiary continuously held lawful nonimmigrant status during the two years immediately preceding the filing date of the petition.

Part 1 of the Form I-360 petition identifies the church as the petitioner. The director considered the church to be the petitioner, and issued all subsequent correspondence to the church. 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 10 of the Form I-360, "Signature," shows the signature not of any official of the church, but of the alien beneficiary himself. Thus, the alien, and not the church, has taken responsibility for the content of the petition.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 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 USCIS) means the person or entity with legal standing in a proceeding. The regulation at 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 USCIS has accepted will not be refunded.

Here, the party that filed the appeal was not the self-petitioning alien, but the church, which has no standing to file an appeal on the petitioner's behalf. The AAO must, therefore, reject the appeal as improperly filed. The AAO notes, at the same time, that the director sent the denial notice not to the self-petitioning alien, but to the church. 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 church, rather than to the self-petitioning alien, the director has arguably never properly served the notice of decision. Thus, the self-petitioning alien has never had the opportunity to file a timely appeal.

The director must reissue the decision and send it to the last known address of the party that signed the Form I-360 petition – in this instance, the alien beneficiary. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The matter is remanded to the director, California Service Center, for reissuance of the denial decision to the affected party. The director shall certify the reissued decision to the Administrative Appeals Office for review.