

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: DEC 24 2012 OFFICE: CALIFORNIA SERVICE CENTER FILE [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

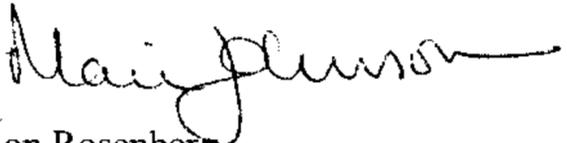
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:
[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.

Thank you,


Ron Rosenberg
Acting 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 or, in the alternative, summarily dismiss the appeal.

The petitioner is a member church of the Missionary Church International. 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 senior pastor. The director determined that the petitioner had not established that the beneficiary had the required two years of continuous, lawful work experience immediately preceding the filing date of the petition.

The director issued the denial notice on June 7, 2012. The beneficiary signed Form I-290B, Notice of Appeal. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.3(a)(2)(i) allows only the affected party to file an appeal. The USCIS regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) states that, for purposes of appeals, the beneficiary of a visa petition is not an affected party.

Under the regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(1), 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.

The appeal has not been filed by the petitioner, nor by any entity with legal standing in the proceeding, but rather by the beneficiary. Therefore, the appeal has not been properly filed, and must be rejected.

Even if the petitioner, rather than the beneficiary, had signed the appeal form, the AAO would have summarily dismissed the appeal. On the Form I-290B Notice of Appeal, filed on July 5, 2012, the party filing the appeal indicated that a brief would be forthcoming within thirty days. To date, five months later, careful review of the record reveals no subsequent submission; all other documentation in the record predates the issuance of the notice of decision.

The USCIS regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the beneficiary has been working as a minister or in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States, continuously for at least the two-year period immediately preceding the filing of the petition. The USCIS regulation at 8 C.F.R. § 204.5(m)(11) requires that qualifying prior experience, if acquired in the United States, must have been authorized under United States immigration law.

The petition's filing date is December 6, 2011, and therefore the beneficiary must have continuously engaged in continuous, lawful employment from December 6, 2009 onward. The director, in the denial decision, found that the beneficiary lacked lawful status after his R-1 nonimmigrant religious worker status expired in 2007. The director explained, in detail, why the beneficiary lacked lawful status during the 2009-2011 qualifying period.

The statement on the appeal form reads simply “the beneficiary has been lawfully employed as a religious worker for at least two years immediately preceding the filing of the . . . petition.” This is a general statement that makes no specific allegation of error. The appeal statement does not address any of the specific information that the director spelled out in the denial notice, and the appeal does not include any new evidence showing that the beneficiary held lawful status in 2009-2012. The bare assertion that the beneficiary qualifies for the benefit sought, or that the director somehow erred in rendering the decision, is not sufficient basis for a substantive appeal.

Inasmuch as the appellant has failed to identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal, the AAO would summarily dismiss the appeal if it had been properly filed (which is not the case).

ORDER: The appeal is rejected or, in the alternative, summarily dismissed.