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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: JUL 0 2 2012

OFFICE: CALIFORNIA SERVICE CENTER FILE: [redacted]

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.

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.

The self-petitioning 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 nun at [redacted] The director determined that the petitioner had not established that the intending employer qualifies as a tax-exempt religious organization; that the petitioner had the required two years of continuous, qualifying work experience immediately preceding the filing date of the petition; or how the intending employer would pay the petitioner.

Part 1 of the Form I-360 petition identifies the alien beneficiary as the petitioner. Review of the petition form, however, indicates that the alien beneficiary is the petitioner. Likewise, the alien beneficiary signed Part 10 of the Form I-360, thereby taking responsibility, as the petitioner, for the content of the petition. Thus, U.S. Citizenship and Immigration Services (USCIS) considers the alien beneficiary, and no one else, to be the petitioner in the matter under discussion.

In correspondence dated October 27, 2009, counsel affirmed that the beneficiary signed Form I-360 and is "the Petitioner."

When the director denied the petition on July 28, 2011, the director properly addressed the decision directly to the self-petitioning alien beneficiary.

The self-petitioning alien beneficiary did not file the appeal. Instead, [redacted] signed the Form I-290B Notice of Appeal or Motion.

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) defines the term "affected party" as "the person or entity with legal standing in a proceeding." [redacted] did not sign the petition form, and she did not claim to be acting as the self-petitioning alien beneficiary's attorney or representative. Because [redacted] as an organization, did not file the petition, [redacted] position as an official of that religious order does not give her standing to file an appeal. Therefore, [redacted] lacked standing to file the appeal.

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. Therefore, the AAO must reject the appeal.

The AAO notes that, even if the appeal had been properly filed, the AAO would have dismissed the appeal. The denial rested on three grounds, any one of which would, by itself, warrant denial of the

petition. The petitioner, therefore, would have to have overcome all three issues on appeal in order for the AAO to reverse the decision.

PROOF OF TAX-EXEMPT STATUS

The USCIS regulation at 8 C.F.R. § 204.5(m)(8) requires the petitioner to submit evidence, including but not necessarily limited to a currently valid determination letter from the Internal Revenue Service (IRS) establishing that the intending United States employer is a tax-exempt organization.

The petitioner submitted a copy of a January 19, 2001 determination letter, showing that [redacted] in New York, New York is a qualifying tax-exempt organization. In a request for evidence (RFE) dated May 2, 2011, the director instructed the petitioner to submit an IRS determination letter for the [redacted] or evidence that the [redacted] falls under a group exemption granted to a parent organization elsewhere. In response to the RFE, counsel stated that the petitioner's initial petition package included "all of the requested information." The petitioner submitted copies of previously submitted materials.

The director, in denying the petition, stated that the IRS letter mentions only [redacted], and does not state that all [redacted] entities fall under a group exemption. On appeal, [redacted] claims that the IRS determination letter covers all of [redacted] but submits no documentation to support this claim. Furthermore, attempts to clarify the issue on appeal cannot change the fact that the petitioner's response to the RFE, which was the proper time to address the director's concerns, included no new information or evidence. The appellate submission does not overcome this ground for denial.

QUALIFYING EXPERIENCE

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, and that the petitioner must submit IRS documentation of salaried or non-salaried compensation, such as an IRS Form W-2 Wage and Tax Statement or certified copies of income tax returns.

The petitioner entered the United States on October 10, 2007 as an R-1 nonimmigrant religious worker, authorized to work only for [redacted] Any other work would have constituted a failure to maintain status. *See* 8 C.F.R. §§ 274a.12(b)(16) and 214.1(e).

The petitioner's initial submission included no evidence of compensation. In the May 2011 RFE, the director asked for the required IRS documentation of the petitioner's authorized employment during the 2007-2009 qualifying period. As noted previously, the petitioner submitted no new evidence in response to that notice.

The director, in the denial notice, cited the petitioner's failure to submit the required evidence of past employment. On appeal, [redacted] claims that [redacted] does not issue IRS Form W-2 Wage and Tax Statements to its workers. The appeal includes copies of pay receipts from [redacted] dated February, April and May 2009, and Forms W-2 for 2007 through 2009 from [redacted] These materials show that the petitioner engaged in outside employment during the two-year qualifying period. The record contains no evidence that the petitioner had any authorization to work for these employers, that the employers are religious or religiously affiliated tax-exempt organizations, or that her work for those employers was religious in nature. The AAO notes that, in an interview on September 9, 2010, the petitioner acknowledged to a USCIS officer that she was aware that her health care work was unlawful.

The record supports the director's decision to deny the petition based on lack of evidence of lawful, qualifying employment. The evidence on appeal shows disqualifying outside employment.

COMPENSATION

The USCIS regulation at 8 C.F.R. § 204.5(m)(10) states:

> *Evidence relating to compensation.* Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

The petitioner's initial filing and RFE response contained no financial documentation as described in the above regulation. On appeal, [redacted] states that the petitioner "receives . . . room and board and a stipend of $450 monthly and medical insurance." The appeal includes a copy of a budget and various bank documents. The petitioner, however, did not submit these materials in response to the RFE, or explain her failure to do so. Failure to submit requested evidence is, itself, a ground for denial of the petition under the regulation at 8 C.F.R. § 103.2(b)(14).

From the above discussion, it is clear that the AAO would have dismissed the appeal even if it had been properly filed. As it stands, however, the appeal was not properly filed and must be rejected.

ORDER: The appeal is rejected.