U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

D13

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: OCT 14 2010

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(i)

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 nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will reject the appeal.

The petitioner is a Sunni Islamic mosque. It seeks to classify the beneficiary as a nonimmigrant religious worker under section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1), to perform services as an imam. The director determined that the petitioner had failed to document its tax-exempt status or its ability to compensate the beneficiary.

As we shall explain, the AAO will reject the appeal because the Form I-290B Notice of Appeal does not bear the signature of the petitioner or the attorney of record as established by a properly filed Form G-28 Notice of Entry of Appearance as Attorney or Representative. Regardless, even if we did not reject the appeal, the petition is not approvable because of evidentiary deficiencies raised by the director in the denial notice.

Upon review, both the Form I-290B Notice of Appeal and the Form I-129 visa petition were improperly filed. We must reject the appeal because it was improperly filed. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.3(a)(2)(v) states:

> *Improperly filed appeal -- (A) Appeal filed by person or entity not entitled to file it -- (1) Rejection without refund of filing fee.* 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 the Service has accepted will not be refunded.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part:

> (B) *Meaning of affected party.* For purposes of this section and sections 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition. An affected party may be represented by an attorney or representative in accordance with part 292 of this chapter.

An attorney for a petitioner may properly file an appeal on behalf of a petitioning entity in certain circumstances. However, the September 21, 2009 Form G-28 in this case does not establish that the attorney who filed the appeal represents the petitioner because the petitioner did not sign it. Rather, the signature of [redacted], president of the petitioning entity, has been photocopied from another document and inserted into the form.

The regulation at 8 C.F.R. § 292.4(a) (1994) provides:

> An appearance shall be filed on the appropriate form by the attorney or representative appearing in each case. During Immigration Judge or Board proceedings, withdrawal and/or substitution of counsel is permitted only in accordance with Sec. 3.16 and 3.36

> respectively. During proceedings before the Service, substitution may be permitted upon the written withdrawal of the attorney or representative of record, or upon notification of the new attorney or representative. When an appearance is made by a person acting in a representative capacity, his or her personal appearance or signature shall constitute a representation that under the provisions of this chapter he or she is authorized and qualified to represent. Further proof of authority to act in a representative capacity may be required. *A notice of appearance entered in application or petition proceedings must be signed by the applicant or petitioner to authorize representation in order for the appearance to be recognized by the Service.*

(Emphasis added.) The regulation at 8 C.F.R. § 103.2(a)(3) provides that where a notice of representation on Form G-28 is "not properly signed, the application or petition will be processed as if the notice had not been submitted."[1]

In this instance, the petitioner did not sign Form G-28. Rather, an unidentified party photocopied the petitioner's signature onto that form. Therefore, the record lacks a properly signed Form G-28, and we cannot recognize the attorney as representing the petitioner. [redacted], not the petitioner, signed the Form I-290B Notice of Appeal. Because the record does not contain a properly executed Form G-28 to designate [redacted] as the petitioner's attorney, we cannot recognize the appeal as having been properly filed.

We acknowledge that the regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(*2*) provides the following with respect to appeals by attorneys without a proper Form G-28:

> (i) *General.* If an appeal is filed by an attorney or representative without a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G-28) entitling that person to file the appeal, the appeal is considered improperly filed. In such a case, any filing fee the Service has accepted will not be refunded regardless of the action taken.
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> (ii) *When favorable action warranted.* If the reviewing official decides favorable action is warranted with respect to an otherwise properly filed appeal, that official shall ask the attorney or representative to submit Form G-28 to the official's office within 15 days of

[1] Not only does the petitioner's signature on the Form G-28 authorize representation by an attorney or accredited representative in matters before USCIS, it serves as a consent to disclosure of information covered under the Privacy Act of 1974. The Immigration and Naturalization Service (legacy INS) first implemented the requirement that a petitioner or applicant sign the Form G-28 in the final rule "Changes in Processing Procedures for Certain Applications and Petitions for Immigration Benefits" 59 Fed. Reg. 1455 (Jan. 11, 1994). In response to several commenters who suggested that the attorney need be the only signatory on the Form G-28, the agency explained that other commenters had properly noted that capture of the petitioner's signature on the Form G-28 "would address potential Privacy Act concerns." The agency emphasized that the "petitioner must sign the Form G-28 to definitively indicate to the Service that he or she has authorized the person to represent him or her in the proceeding." 59 Fed. Reg. 1455 (Jan. 11, 1994). A 2010 revision to the regulation at 8 C.F.R. § 292.4(a) retains the requirement that a petitioner or applicant sign the Form G-28. 75 Fed. Reg. 5225 (Feb. 2, 1010).

> the request. If Form G-28 is not submitted within the time allowed, the official may, on his or her own motion, under Sec. 103.5(a)(5)(i) of this part, make a new decision favorable to the affected party without notifying the attorney or representative.
>
> (iii) *When favorable action not warranted.* If the reviewing official decides favorable action is not warranted with respect to an otherwise properly filed appeal, that official shall ask the attorney or representative to submit Form G-28 directly to the AAU. The official shall also forward the appeal and the relating record of proceeding to the AAU. The appeal may be considered properly filed as of its original filing date if the attorney or representative submits a properly executed Form G-28 entitling that person to file the appeal.

Requesting a proper Form G-28 signed by the petitioner in this matter, however, would serve no purpose as the underlying visa petition was not properly filed.

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 BCIS is one that is either handwritten or, for applications or petitions filed electronically as permitted by the instructions to the form, in electronic format.

USCIS regulations require that, in order to be considered properly filed, a petition filed by mail must include the petitioner's handwritten signature. *See* 8 C.F.R. § 103.2(a)(2). The relevant part of Form I-129 (Part 6, "Signature") does not include the handwritten signature of any official of the petitioning entity. Instead, the same signature of [redacted] that was photocopied onto Form G-28 has also been inserted into Part 6 of Form I-129. With no original signature on Form I-129, we cannot consider the petition to have been properly filed.

The AAO notes that the integrity of the immigration process depends on the actual employer signing the official immigration forms under penalty of perjury. Accepting photocopied signatures 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 immigration 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. [redacted] (E.D. Va. December 11, 2002).

Even if the petition and appeal had been properly filed, the AAO would not have approved the petition on appeal, as we shall now explain.

Section 101(a)(15)(R) of the Act pertains to an alien who:

> (i) for the 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; and
>
> (ii) seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii).

Section 101(a)(27)(C)(ii) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii), pertains to a nonimmigrant who seeks to enter the United States:

> (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
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> (II) . . . 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) . . . 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.

The USCIS regulation at 8 C.F.R. § 214.2(r)(1) states that, to be approved for temporary admission to the United States, or extension and maintenance of status, for the purpose of conducting the activities of a religious worker for a period not to exceed five years, an alien must:

> (i) Be a member of a religious denomination having a bona fide non-profit religious organization in the United States for at least two years immediately preceding the time of application for admission;
>
> (ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week);
>
> (iii) Be coming solely as a minister or to perform a religious vocation or occupation as defined in paragraph (r)(3) of this section (in either a professional or nonprofessional capacity);
>
> (iv) Be coming to or remaining in the United States at the request of the petitioner to work for the petitioner; and

(v) Not work in the United States in any other capacity, except as provided in paragraph (r)(2) of this section.

The Form I-129 petition, filed on October 13, 2009, showed the petitioner's mailing address as a post office box in Ft. Smith, Arkansas. In an accompanying attestation, the petitioner repeatedly provided a street address on [redacted] also in Ft. Smith.

When the petitioner is a house of worship (as opposed to a different type of religious organization), the regulation at 8 C.F.R. § 214.2(r)(9) requires the petitioner to submit either: (i) a currently valid determination letter from the Internal Revenue Service (IRS) showing that the organization is a tax-exempt organization; or (ii) for a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt.

The petitioner's initial submission included a copy of an IRS determination letter dated August 31, 2009. The letter shows the name of the petitioning mosque, followed by a post office box address in Ft. Smith. The post office box number on the IRS letter is the same one shown on Form I-129. Later submissions confirm the petitioner's use of this post office box address.

The petitioner subsequently submitted a second copy of its IRS determination letter, addressed in care of accountant [redacted] of Paris, Arkansas. Correspondence in the record indicates that [redacted] is the petitioner's accountant. It appears that [redacted] had sent a facsimile of her copy of the petitioner's IRS letter to attorney [redacted] in response to an inquiry from the attorney.

The director denied the petition in part because the IRS determination letters did not show the petitioner's own street address, but the director did not explain why letters sent to the petitioner's post office box and in care of the petitioner's accountant are not persuasive evidence of tax-exempt status. On appeal, the petitioner submits a new IRS letter, sent to the petitioner's street address, confirming the petitioner's tax-exempt status.

We conclude that, from the evidence available to the director, the director should not have concluded that the petitioner failed to establish its qualifying tax-exempt status.

We now turn to the next issue. The director, in denying the petition, cited insufficient documentation of the petitioner's finances and the beneficiary's ability to support himself as two separate issues. Review of the decision, however, shows that both of these findings are simply two different perspectives on the single core issue of how the petitioner will compensate the beneficiary.

Information on Form I-129 indicated that the petitioner would pay the beneficiary $750 per week plus "[r]oom, board, transportation, healthcare, and other standard benefits." On an accompanying attestation, however, the petitioner stated that the beneficiary "will be paid a monthly salary of $3,000" ($36,000 per year), which is not the same thing as $750 per week (about $39,000 per year) The

petitioner claimed gross annual income of $103,060.03, but did not state its net annual income, stating that the information was "N/A" (not applicable). The petitioner did not explain why the request for net annual income was not applicable; any entity with gross income also has net income after expenses (which could be a net loss, expressed as a negative number). The petitioner also indicated that the petitioner had no employees at the time of filing.

The regulation at 8 C.F.R. § 214.2(r)(11)(i) requires the petitioner to submit verifiable evidence explaining how the petitioner will compensate the alien, which 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. Internal Revenue Service (IRS) documentation, such as IRS Form W-2 or certified tax returns, must be submitted, if available. If IRS documentation is unavailable, the petitioner must submit an explanation for the absence of IRS documentation, along with comparable, verifiable documentation.

The petitioner submitted a copy of a contract between the beneficiary and the petitioner, showing the following terms of compensation:

> [The petitioner] agrees to pay [the beneficiary] a monthly salary of $3,000.00 (Three thousand Dollars). Compensation is to be paid in two installments on the 1st and the 16th day of each month.
>
> In addition to the compensation cited above, [the beneficiary] is entitled to the following benefits:
>
> 1. Three weeks of paid vacation per year. . . .
>
> 2. Four personal days off every month.

The contract did not mention "[r]oom, board, transportation, healthcare, and other standard benefits" as claimed on Form I-129. The contract is unsigned, and stamped "DRAFT" in red ink on each page.

An itemized list of donations and other income shows that the petitioner took in $144,560.03 in 2008, consistent with the amount claimed on the petition form.

In the December 14, 2009 request for evidence, the director instructed the petitioner to submit financial evidence to conform with the regulatory requirements at 8 C.F.R. § 214.2(r)(11). In response, the petitioner submitted a photocopy of the petitioner's December 31, 2009 bank statement, showing a balance of about $28,000, and about $4,400 in checks and charges offset by over $4,700 in deposits. Accountant [redacted] observed that, according to a notation on the IRS determination letter, the petitioner is not required to file an IRS Form 990 Return of Organization Exempt From Income Tax. Therefore, we would not expect the petitioner to have executed and filed such a return.

In the denial notice, the director stated that the petitioner did not account for its expenditures, by which over $100,000 in donations was "whittled down to just over $28,130.77 in a year's time with zero (0) employees." The director also found that the petitioner failed to submit verifiable evidence sufficient to establish the petitioner's financial situation. On appeal, the petitioner submits a new copy of the employment contract, signed by the beneficiary and by a mosque official, as well as a new financial statement prepared by [redacted].

The director had previously instructed the petitioner to submit evidence to conform with the requirements in the regulation at 8 C.F.R. § 214.2(r)(11), and the petitioner, at that time, did not submit evidence that met those requirements. The petitioner's submission of a new financial report on appeal cannot change the fact that the petitioner did not provide such evidence when first asked. On that basis alone, the petition may not be approved. 8 C.F.R. § 103.2(b)(14). Also, because these materials did not surface until the appeal, the director had no opportunity to take those materials into account when rendering the decision. We cannot fault the director for failing to anticipate the petitioner's future submission of such materials. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988).

We agree with the director's findings regarding the petitioner's inadequate financial documentation. We further note that the petitioner has not submitted verifiable documentary evidence of its claimed arrangements for the beneficiary's room, board, and health care. Therefore, the AAO would have dismissed the appeal even if it had been properly filed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is rejected.