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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: JUN 14 2006  
EAC 02 151 51515

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*Mari Johnson*

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) rejected an appeal filed by an unaffected party. The petitioner has filed a motion to reconsider. The motion will be rejected.

The Islamic Center of Jackson Heights (ICJH) seeks to employ the alien beneficiary as an imam at its *masjid* (mosque) and as principal of its religious school. Part 1 of the Form I-140 petition identified ICJH as the petitioner.

Pursuant to 8 C.F.R. § 103.2(a)(1), every petition must be executed and filed in accordance with the instructions on the form. 8 C.F.R. § 103.2(a)(2) requires the petitioner to sign the petition. Part 8 of Form I-140, "Signature," is the portion of the form dedicated to the signature of the petitioner; instructions in Part 8 include the attestation that the contents of the petition are true and correct. Here, no ICJH official signed Part 8 of the Form I-140. Instead, the alien beneficiary signed this part of the form. Thus, the alien himself took responsibility for the petition, and he, himself, must be considered to be the petitioner. Roland Gell of Gell & Gell, the law firm that represents ICJH and, now, the petitioner, prepared the petition form.

Counsel, on motion, asserts that other materials in the record make it clear that ICJH is the entity that is intended to be the petitioner, and that, prior to the AAO's rejection of the appeal, all of the director's correspondence was addressed to ICJH. It may well be that the alien beneficiary, ICJH, and counsel all intended for ICJH to be the petitioner, but no ICJH official signed Part 8 of the Form I-140 and therefore ICJH has not formally accepted responsibility for the petition. The only way that the petition can be considered to have been properly filed is if the alien beneficiary is acknowledged as the petitioner. The director's failure to recognize this requirement does not nullify the pertinent regulations. Citizenship and Immigration Services is not bound by acknowledged error. *See Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Neither the director nor the AAO has the option of simply disregarding the regulations and acting as if ICJH is the *de facto* petitioner. ICJH does, of course, have the right to file a new petition if it so chooses (this course of action would also nullify the alien's 2000-2002 employment, or lack thereof, as a ground for denial).

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 the Citizenship and Immigration Services) means the person or entity with legal standing in a proceeding. Here, the petitioner (i.e., the alien beneficiary) is the affected party. ICJH is not an affected party in this proceeding, nor is any legal representative of ICJH. 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. Therefore, the AAO acted properly in rejecting the appeal submitted by ICJH in the present proceeding.

Counsel, on motion, states: "It must be stressed that both parties [*i.e.*, ICJH and the alien beneficiary] were actually represented by the undersigned law office." Accompanying the motion is a newly executed Form G-28, Notice of Entry of Appearance as Attorney or Representative, designating Clarence M. Trocio as the beneficiary's attorney of record. If counsel had been acting on the alien beneficiary's behalf when counsel filed the appeal, then the subsequent submission of the Form G-28 would overcome the basis for rejection, pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(2) and its subsections.

In this instance, however, there is no support for counsel's claim that counsel "actually represented" the beneficiary at the time the appeal was filed. On the Form I-290B Notice of Appeal, attorney [REDACTED] indicated that he represented "Islamic Ctr. Of Jackson Heights." There was no indication that any attorney from Gell & Gell was acting on the alien beneficiary's behalf.

[REDACTED] April 1, 2002 cover letter submitted with the initial filing of the petition repeatedly refers to "my client, Islamic Center of Jackson Heights." While the letter contains references to the alien beneficiary, [REDACTED] never refers to the alien beneficiary as "my client." The first indication that anyone from Gell & Gell represents the beneficiary is the August 2005 Form G-28 formalizing that representation. Because the record, at the time the appeal was filed, contained no indication that counsel represented the alien beneficiary, we cannot accept counsel's new, after-the-fact claim to have represented the beneficiary all along.

The regulations contain no provision by which a petitioner can move to reopen or reconsider a rejection of an appeal. Therefore, we must reject the present motion.

8 C.F.R. § 103.3(a)(2)(i) (and 8 C.F.R. § 103.5a(b) by inference) require that an appeal must be filed within 33 days of service by mail of the denial notice. 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. Here, the denial was arguably never served on the petitioner; it was, instead, mistakenly served on ICJH. Because the attorney that now represents the petitioner is in possession of the denial notice, and has already prepared a full appeal, the reissuance of the decision would serve little functional purpose, but would give notice to the actual petitioner and thereby allow the petitioner to file a timely appeal. The petitioner could also simply file a new appeal, without issuance of a new decision, incorporating by reference the materials already submitted with the rejected prior appeal. The director could consider this new appeal as a motion, pursuant to the regulations specified above. The director would also have the option of forwarding the matter to the AAO on certification.

The AAO is acutely aware that this proceeding has become procedurally complicated, and will only become more so if the petitioner chooses to continue to pursue the matter. While matters could be greatly simplified if the AAO disregarded certain regulations, the AAO must reject this motion because there is no provision to allow it. Consideration on the merits is not possible at this time, as the matter has never properly been placed under AAO's jurisdiction.

**ORDER:** The motion is rejected.