



U.S. Citizenship
and Immigration
Services

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FILE:

EAC 97 099 50505

Office: VERMONT SERVICE CENTER

Date: JUN 06 2006

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:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director attempted to serve the petitioner's then attorney of record with a notice of intent to revoke, and subsequently revoked the approval of the petition. Upon the petitioner's motion, the matter was reopened and the notice of revocation was reissued on more than one occasion. After three notices of revocation, the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected. The AAO will return the matter for further action by the director.

In order to properly file an appeal, the regulation at 8 C.F.R. § 205.2(d) provides that the affected party must file the complete appeal within 15 days of after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 18 days. *See* 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the director issued the decision on August 12, 2005. The director erroneously gave notice to the petitioner that it had 33 days to file the appeal. The director received the appeal on September 12, 2005, 31 days after the decision was issued. Accordingly, the appeal must be rejected as untimely filed.

Furthermore, 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. It does not include the beneficiary of a visa petition. 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 the Service has accepted will not be refunded.

The petitioner in this case is the New York headquarters of the [REDACTED] the Form I-360 petition was signed by the church's corporate secretary, [REDACTED]. The petitioner was originally represented by attorney Andrew P. Bacus, as shown by a Form G-28, Notice of Entry of Appearance as Attorney or Representative, signed by Mr. Bacus and [REDACTED] on February 13, 1997. Mr. Bacus remained the petitioner's attorney of record until February 3, 2004, the date of a new Form G-28 signed by [REDACTED] and attorney [REDACTED]. This 2004 document is the most recent Form G-28 on record from the New York headquarters.

The appeal was submitted by attorney Jakob Lipman of the Law Offices of James C. Wolf & Associates, along with a new Form G-28 signed by Mr. Lipman and by Mario Tateno, identified as "Director of [REDACTED] Branch." There is no evidence that Mr. Tateno signed this Form G-28 under the authority of the church's New York headquarters. While Mr. Lipman is now the Hayward Branch's legal representative, the affected party is the church's headquarters, not its Hayward Branch. We cannot construe the term "affected party" so broadly as to state that every Unification Church official, at any level, can be accorded equal recognition as the affected party (i.e., the petitioner) in this proceeding.

We note that James C. Wolf is the beneficiary's attorney of record, pursuant to a Form G-28 executed on November 10, 1998. As noted above, however, the beneficiary is not an affected party in this proceeding, and Mr. Wolf's representation of the beneficiary does not imply that Mr. Wolf, or any attorney from his office, also represents the petitioner.

Without a properly executed Form G-28 from the same church office that filed the petition, we cannot consider Mr. Lipman to be the attorney of record. [REDACTED] is still the petitioner's attorney of record at this time, and will remain the attorney of record until written notification of his withdrawal is provided, or until the petitioner furnishes a new Form G-28 designating a new attorney of record. Therefore, the appeal was not filed by the petitioner or by any authorized representative for the petitioner, thus providing another ground for rejecting the appeal.

Review of this matter's rather complicated procedural history indicates that the petitioner has not had a fair opportunity to answer the grounds for revocation prior to the issuance of the revocation notice. The regulation at 8 C.F.R. § 205.2(b) requires the issuance of a notice of intent to revoke. As noted above, the petition was filed in 1997 through the office of Andrew Bacus. Correspondence from Mr. Bacus dated March 28, 1998, shows a different mailing address for that attorney. Nevertheless, when the director issued the notice of intent to revoke on June 23, 2003, the notice went to Mr. Bacus' 1997 address. The notice was returned as undeliverable.

On February 5, 2004, the petitioner, under new attorney [REDACTED], filed a motion to reconsider. [REDACTED] protested that the petitioner had not received the notice of intent to revoke. On August 23, 2004, the director reissued the notice of intent to revoke, once again sending the notice to Mr. Bacus' 1997 address despite Mr. Bacus' replacement as attorney of record.

On May 3, 2005, the director issued a second revocation notice, which again went to Mr. Bacus' 1997 address. This notice, too, was returned as undeliverable. On May 31, 2005, the petitioner, through [REDACTED] filed another motion to reconsider, stating: "For the second time the Service has failed to notify the petitioner or me, the current attorney of record as to the reasons for revoking this petition."

On August 12, 2005, the director issued a third revocation notice, this time in care of [REDACTED]. The director did not first issue a notice of intent to revoke. The director merely stated that such a notice had already been provided in June 2003 (this being the notice sent to Mr. Bacus' invalid 1997 address). It is this third notice in which the director mistakenly afforded the petitioner 33 days, rather than 18 days, to file an appeal.

Because the AAO must reject this appeal on two separate grounds, this matter has never properly come under the AAO's jurisdiction. Therefore, the AAO will not yet address the merits of the petition or the grounds for revocation. Nevertheless, the AAO instructs the director to issue a notice of intent to revoke to the present attorney of record, *i.e.* [REDACTED] or any other attorney designated on any future Form G-28, newly executed by a competent official at the church's New York headquarters). After allowing the petitioner an opportunity to respond to a properly addressed notice of intent to revoke, the director should issue a new decision to both the petitioner (at its New York address) and the attorney of record. If the director again revokes the petition, any timely, properly filed appeal from that revocation would come under the jurisdiction of the AAO.

ORDER: The appeal is rejected. The matter is returned to the director for reissuance of the notice of intent to revoke, followed by an appropriate decision.