



U.S. Citizenship
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Services

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[Redacted]

FILE: [Redacted]
WAC 03 062 52542

Office: CALIFORNIA SERVICE CENTER

Date: MAY 10 2006

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California 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 properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. 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.

The 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 priest for the [REDACTED] of California. The director determined that the petitioner had not established that she had the requisite two years of continuous (*i.e.*, paid, full-time) work experience as a priest immediately preceding the filing date of the petition.

Part 1 of the Form I-140 petition identifies [REDACTED] as the petitioner. Review of the petition form, however, indicates that the alien beneficiary is the petitioner. An applicant or petitioner must sign his or her application or petition. 8 C.F.R. § 103.2(a)(2). In this instance, Part 9 of the Form I-360, "Signature," has been signed not by any [REDACTED] official, but by the alien beneficiary herself. Thus, the alien, and not [REDACTED] has taken responsibility for the content of the petition. It may well be that [REDACTED] the alien beneficiary, and attorney [REDACTED] (who prepared Form I-360) all intended for [REDACTED] to be the petitioner, but this inferred intention cannot and does not supersede the controlling regulations pertaining to the proper filing of a petition.

Accompanying the initial filing of the Form I-360 was a Form G-28, Notice of Entry of Appearance as Attorney or Representative, dated September 13, 2002 and signed by attorney [REDACTED] and [REDACTED] official [REDACTED]. Because we cannot consider [REDACTED] to be the petitioner, this G-28 is without effect in this proceeding.

Subsequently, when the alien beneficiary filed Form I-485 to apply for adjustment of status, the application package included a Form G-28 signed by [REDACTED] and the beneficiary. This is the only G-28 in the record with the alien's signature, and therefore [REDACTED] is the only individual authorized to represent the alien. The record contains no written communication from the alien or the attorney to indicate that this representation is no longer in effect.

The notice of intent to revoke was mailed to [REDACTED]. The notice of revocation was mailed to [REDACTED] with a courtesy copy to [REDACTED].

The Form I-290B Notice of Appeal was prepared and signed by attorney [REDACTED], and submitted with a G-28 signed by [REDACTED] and [REDACTED] of [REDACTED]. [REDACTED] argues that the director should never have sent the notice of intent to revoke to [REDACTED], because that attorney's involvement with the petition supposedly ceased with the approval of that petition. This assertion fails to take into account that [REDACTED] actually responded to the notice of intent to revoke, and did not, at that time, object to being considered the attorney of record. The new G-28 signed by [REDACTED] and [REDACTED] supersedes representation of [REDACTED] but it does not supersede [REDACTED] representation of the alien beneficiary. The record contains no G-28 naming [REDACTED] as the alien's attorney, and [REDACTED]

Mechanic does not claim to represent the alien. Because the alien beneficiary is the *de facto* petitioner, and there has been no notice of withdrawal of representation, [REDACTED] remains the attorney of record.

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.

Here, the appeal was filed not by the petitioner, nor by the petitioner’s attorney, but by [REDACTED] attorney, who has no standing to file an appeal on the petitioner’s behalf. We must, therefore, reject the appeal as improperly filed.

We note, at the same time, that the director sent the notice of decision not to the alien self-petitioner, but to [REDACTED] presumably because the Form I-360 identified [REDACTED] as the petitioner. Thus, the director has never issued any relevant notices to the petitioner herself.

8 C.F.R. § 103.5a(a)(1) defines “routine service” as mailing a copy by ordinary mail addressed to a person at his last known address. 8 C.F.R. § 103.5a(b) states that service by mail is complete upon mailing. Here, because the director addressed the notice of revocation to [REDACTED] rather than to the alien self-petitioner herself, the director has arguably never served the notice of denial. Even then, we concur with [REDACTED] observation that the director sent the notice to an incorrect address, having transposed two numerals in [REDACTED] to yield the incorrect address [REDACTED]. Thus, the self-petitioning alien has never had the opportunity to file a timely appeal. The director must reissue the denial notice in order to give the actual petitioner that opportunity.

We note that, if the alien petitioner chooses to appeal the director’s decision, statements from church officials will be duly considered, albeit as witness statements rather than as the petitioner’s own arguments. Because there is, as yet, no valid appeal in the record, we examine here neither the basis of the denial nor the merits of the appeal submitted by [REDACTED] on behalf of [REDACTED]. We will duly consider those factors if and when the self-petitioning alien files a proper and timely appeal. We note, however, that the director has the discretion to review the evidence in the record in order to determine whether it may be more appropriate to reopen the matter, pursuant to 8 C.F.R. § 103.5(a)(5)(ii), and issue a new, modified decision rather than simply reissue the prior decision.

The appeal has not been filed by the petitioner, or 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. The director must serve a newly dated copy of the decision, properly addressed to the petitioner.

ORDER: The appeal is rejected. The matter is returned to the director for the limited purpose of the reissuance of the decision.