



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unarranted  
invasion of personal privacy

**PUBLIC COPY**

[REDACTED]

CI

FILE: [REDACTED]  
EAC 03 191 50530

Office: VERMONT SERVICE CENTER

Date: MAR 14 2007

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 THE CATHEDRAL OF THE INCARNATION:

[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.

3 Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the employment-based immigrant visa petition for abandonment. The director subsequently reopened the proceeding on a motion by the Cathedral of the Incarnation (hereinafter "the Cathedral"), and denied the petition a second time. The matter is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

The petitioner is an Episcopal church. It sought to classify the beneficiary 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 minister. The director found the petitioner's initial submission to be deficient, and issued a request for evidence (RFE) pursuant to 8 C.F.R. § 103.2(b)(8). The petitioner did not respond to the RFE, and therefore the director declared the petition to be abandoned, and denied it, as required by 8 C.F.R. § 103.2(b)(13).

A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under Sec. 103.5. 8 C.F.R. § 103.2(b)(15). 8 C.F.R. § 103.5(a)(1)(i) indicates that a motion must be filed by an affected party. 8 C.F.R. § 103.3(a)(1)(iii)(B) states that, for purposes of appeals, certifications, and reopening or reconsideration, "affected party" (in addition to Citizenship and Immigration Services (CIS)) means the person or entity with legal standing in a proceeding.

Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner. 8 C.F.R. § 103.5(a)(1)(i).

8 C.F.R. § 103.5(a)(2) states, in pertinent part:

A motion to reopen an application or petition denied due to abandonment must be filed with evidence that the decision was in error because:

- (i) The requested evidence was not material to the issue of eligibility;
- (ii) The required initial evidence was submitted with the application or petition, or the request for initial evidence or additional information or appearance was complied with during the allotted period; or
- (iii) The request for additional information or appearance was sent to an address other than that on the application, petition, or notice of representation, or that the applicant or petitioner advised the Service, in writing, of a change of address or change of representation subsequent to filing and before the Service's request was sent, and the request did not go to the new address.

The director denied the petition due to abandonment on December 22, 2003. Over a year later, in a letter dated March 31, 2005, attorney [REDACTED] (hereinafter "the attorney") stated:

On or about June 1, 2003, the Episcopal Church of Christ the King, a church under the Cathedral and Diocese of Maryland, filed a Form I-360 seeking to classify [the beneficiary] as a Special Immigrant Religious Worker. The petition which was filed by the then Rector of the church, Rev. [REDACTED] was with the full consent and knowledge of Rev. [REDACTED] Dean of Cathedral of Diocese of Maryland. . . .

In the meantime . . . Rev. [REDACTED] was fired by the Diocese and upon her departure, she removed every document from the church rectory. Consequently, there is no available information regarding [the beneficiary's] petition in the church's possession: . . .

It is still the desire and intention of the Cathedral and Diocese of Maryland to continue the processing of the Form I-360 on behalf of [the beneficiary]. . . .

Until March 15, 2005 our client was not aware that there was a request for evidence.

On May 2, 2005, the director notified the attorney that the petition had been denied on December 22, 2003. On May 12, 2005, the director received a motion to reopen, submitted by the Cathedral through the attorney. The attorney acknowledged the untimeliness of the motion, but explained "the petitioner/applicant just became aware of this denial after receiving your correspondence dated May 2, 2005." The attorney asserts: "From facts now available to the petitioner, Rev. [REDACTED] was receiving information and requests from the Service. However, the said Rev. [REDACTED] never forwarded any such information and requests from the INS to the Cathedral for appropriate action."

When Rev. [REDACTED] signed the Form I-360 petition on June 10, 2003, she did so on behalf of the Episcopal Church of Christ the King, as an official of that church. Therefore, the Episcopal Church of Christ the King is the only entity that can properly be called "the petitioner." The director sent the RFE to the address shown for that church. The attorney faults Rev. [REDACTED] for failing to "forward . . . information and requests from the INS to the Cathedral," but the Cathedral did not file the petition and it is not an affected party.

Because the Cathedral is not an affected party in the present proceeding, neither the Cathedral nor its attorney had any standing to file the motion to reopen in May 2005. Therefore, the motion was not properly filed. Furthermore, the (uncorroborated) claim that Rev. [REDACTED] simply left the petitioning church, and took the documents with her, does not indicate that the delay in filing the motion was beyond the control of the petitioner. Rather, Rev. [REDACTED] actions appear to be entirely consistent with the director's conclusion that the petitioning church had abandoned the petition.

For the reasons listed above, the motion was improperly filed, over a year late by an unaffected party. Nevertheless, the director granted the motion and reopened the proceeding. On September 13, 2005, the director issued a new RFE and sent it to the Episcopal Church of Christ the King (*i.e.*, the petitioning church).

In response, in a letter dated September 22, 2005; Father [REDACTED], the priest at the Episcopal Church of Christ the King, stated: "we wish to inform you that we can [answer] none of the requests made as the [beneficiary] has never worked for us. We invite you to contact the Dean of the Cathedral of the Incarnation, the [REDACTED]"

██████████” We note that, in a letter dated June 1, 2003, submitted with the initial filing, Rev. ██████████ stated: “In February, 2003, [the beneficiary] came to Christ the King Anglican/Episcopal Church to assist us in a new program of multi-cultural ministry.” Rev. ██████████’s assertion that the beneficiary “has never worked for us” directly contradicts Rev. ██████████’s statement.

Also dated September 22, 2005 is a “Line to Substitute Petitioner” signed by the attorney. The letter reads, in part:

As earlier indicated in the Motion to Re-open, the old Petitioner is a church under the supervision and control of The Cathedral of the Incarnation, the new petitioner. Due to new liturgical and internal reorganization, The Cathedral wishes to be substituted as the Petitioning employer in this matter.

In that regard, kindly re-send to my attention, the request for more evidence [Form I-797] dated September 13, 2005 which was sent to the Episcopal Church of Christ the King. Also, kindly disregard any response you may receive from the old petitioner.

In November 2005, the Cathedral submitted its own response to the RFE. This response, along with the September 22 letters from the attorney and from the petitioning church, amount to three separate responses to the RFE. The regulations do not permit multiple responses to an RFE, and in the RFE itself, the director specified that the entire response must be submitted at one time.

On December 20, 2005, the director denied the petition, noting Rev. ██████████’s assertion that the beneficiary “has never worked for us.” The director did not acknowledge or discuss the response submitted by the Cathedral. The director sent the notice to the attorney, mistakenly referring to the attorney as counsel for the petitioner.

On appeal, the attorney argues:

The Center Director erred in failing to accept the substitution of the Episcopal Church of Christ the King by the parent body of the Church organization, the Cathedral of the Incarnation.

The Center Director therefore failed to consider the submissions of the Cathedral of the Incarnation in her decision to deny the instant petition. The Cathedral of the Incarnation, the parent body of the Episcopal Church of Christ the King was substituted as the petitioner.

The attorney has not cited any statute, regulation, case law, or other authority that would permit the substitution of a petitioner in a special immigrant religious worker petition. Compounding this is the fact that the attorney for the Cathedral simply declared the Cathedral to be the new petitioner, without any notice from the original petitioner that specifically and expressly ceded its status as the petitioner. We do not construe Rev. ██████████’s general request that CIS “contact” the Cathedral to be sufficient in this regard (and, in any case, the attorney’s request that we “disregard any response . . . from the old petitioner” would necessarily apply to Rev. ██████████’s letter).

We find, therefore, that the Episcopal Church of Christ the King is and always has been the petitioner in this proceeding, and that such status as petitioner is not transferable to a separate (albeit hierarchically connected) entity. Therefore, the Cathedral is not and has never been an affected party with standing to file an appeal. We must reject the appeal for this reason.

It could be argued that the director erred by failing to send the December 2005 denial notice to the true petitioner (sending it, instead, to the Cathedral's attorney). This is harmless error, however, because the director should never have issued the December 2005 decision in the first place. That decision was based on an invalid motion to reopen, filed by an unaffected party (the Cathedral) with no standing to file such a motion. Because there was never a properly filed motion to reopen, the director had no valid basis to reopen and re-deny the petition at all. Issuing the denial notice to the true petitioner would not have retroactively validated the Cathedral's motion to reopen.

The Cathedral is free to file its own petition on the beneficiary's behalf if it so chooses, but it did not file the 2003 petition that gave rise to the present proceeding. Therefore, the Cathedral is not an affected party in the present proceeding and has no standing to file motions or appeals relating thereto. The director denied the petition for abandonment in 2003. The petitioner has never filed a motion to reopen the proceeding. Therefore, any and all action taken on this petition since the 2003 denial has been without any legal or procedural basis. The AAO has no choice but to reject the present appeal.

Beyond the above finding, the AAO is gravely concerned with the sequence of events documented in the record. First, a petition was filed with a letter placing the beneficiary at the petitioning church in 2003. After that time, the church never answered the original RFE or contested the subsequent denial for abandonment. The church official named on all the initial documents is alleged to have left the church under suspicious circumstances. Much later, an official of that church stated that the beneficiary never worked there, while on the very same day, the attorney requested that CIS "disregard any response" from the petitioning church. These irregularities raise legitimate questions about the credibility and authenticity of a significant portion of the record. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 592. Because the AAO is rejecting the appeal, it would serve no purpose here to explore these issues in greater depth, but we will note that, had the appeal been properly filed by an affected party, these credibility issues would likely have adversely affected the outcome of the appellate decision.

**ORDER:** The appeal is rejected.