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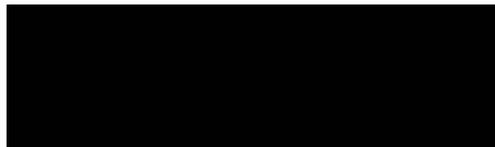
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
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FILE: [REDACTED]
EAC 05 014 53303

Office: VERMONT SERVICE CENTER

Date: JAN 29 2009

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:

SELF-REPRESENTED

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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied an Application to Register Permanent Residence or Adjust Status based on the applicant/appellant's¹ failure to respond to a request for the approval notice for an underlying immigrant petition filed in behalf of the applicant/appellant. The petitioner filed an appeal on Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO), listing the receipt number for a Form I-360 special immigrant petition. The petitioner, however, listed the denial date of the adjustment application. The petitioner submitted no evidence that the underlying special immigrant petition has been denied. The appeal will be rejected for multiple reasons.

The regulation at 8 C.F.R. § 103.3 provides the appellate rights for unfavorable decisions. The appeal lists no legal authority, and we know of none, that would allow for the filing of an appeal where no unfavorable decision has been issued. The petitioner provides no evidence that any decision, favorable or unfavorable, has been issued on the receipt number listed on the appeal. Thus, the appeal must be rejected.

The appeal was supported by an affidavit jointly signed by the applicant/appellant and [REDACTED] relating to the procedural history of the adjustment application. No mention is made of an unfavorable decision on the special immigrant petition. The Form I-290B Notice of Appeal to the Administrative Appeals Office indicates that a brief would be submitted within 30 days. As of this date, more than one year later, we have received nothing further. The regulation at 8 C.F.R. § 103.3(a)(1)(v) provides that an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. As the appeal fails to identify any erroneous conclusion of law or statement of fact in an unfavorable decision on the underlying special immigrant petition, any consideration of the appeal as an appeal of the special immigrant petition would have to be summarily dismissed.

Even if we were to consider the Form I-290B as an appeal of the denial of the adjustment application, the appeal would still have to be rejected. The regulation at 8 C.F.R. § 245.2(a)(5)(ii) provides: "No appeal lies from the denial of an application by the director, but the applicant, if not an arriving alien, retains the right to renew his or her application in proceedings under 8 CFR part 240." 8 C.F.R. § 103.1(f)(3)(iii)(JJ) (as in effect on February 28, 2003) provides that the AAO has jurisdiction over adjustment applications "when denied solely because the applicant failed to establish eligibility for the bona fide marriage exemption contained in section 245(e) of the Act."

The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L 107-296. See DHS Delegation Number 0150.1 (effective March 1, 2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). Thus, the AAO has no jurisdiction to adjudicate appeals of adjustment applications. We note that the applicant/appellant also filed a motion to reopen the adjustment application that falls under the jurisdiction of the Director, California Service Center.

¹ The applicant who filed the adjustment application is the appellant for the instant appeal.

Finally, 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.

The 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 appeal has not been filed by the petitioner, nor by any entity with legal standing in the proceeding, but rather by [REDACTED]. On the Form I-290B, [REDACTED] indicates that he represents himself. The record does contain a Form G-28 Notice of Appearance as Attorney or Representative signed by [REDACTED] indicating that he represents the beneficiary of the special immigrant petition and the adjustment applicant/appellant. [REDACTED] indicates that he is a member in good standing of the New York Supreme Court bar. We have attempted to confirm that status on the court's website, <https://iapps.courts.state.ny.us/attorney/AttorneySearch>, which produced no results. The website was accessed January 8, 2009 and the results have been incorporated in the record of proceedings. Regardless, the record does not contain a Form G-28 signed by the petitioner of the special immigrant petition. As stated above, the beneficiary is not an affected party according to 8 C.F.R. § 103.3(a)(1)(iii)(B). Therefore, the appeal has not been properly filed by the petitioner or a representative of the petitioner meeting the requirements set forth at 8 C.F.R. § 292.1 and must be rejected.

For all of the reasons stated above, the appeal must be rejected.

ORDER: The appeal is rejected.