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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUL 01 2009

WAC 05 209 53160

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom  
Acting 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 issued 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 AAO will reject the appeal and return the matter for further action by the director.

Part 1 of the Form I-360 petition identifies the alien beneficiary as the petitioner, with a mailing address in care of his intending employer, [REDACTED]. The director considered the church to be the petitioner, and issued all subsequent correspondence to the church. 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 official of the church, but by the alien beneficiary himself. Thus, the alien, and not the church, has taken responsibility for the content of the petition.

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 U.S. Citizenship and Immigration Services has accepted will not be refunded.

Here, the appeal was filed not by the self-petitioning alien, but by the church, which 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 intent to revoke, and the subsequent notice of decision, not to the alien self-petitioner, but to the church, even though the Form I-360 identified the alien as the petitioner. Thus, the director has never issued any relevant notices to the petitioner himself.

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 notices to the church, rather than to the alien self-petitioner himself, the director has arguably never properly served the notice of intent to revoke or the subsequent notice of revocation. Thus, the self-petitioning alien has never had the opportunity to respond to a proper notice of intent to revoke, or to file a timely appeal.

At the same time, reissuance of the decision as it now stands is not an option. The director must issue a new decision in accordance with current regulations.

On November 26, 2008, as required under section 2(b)(1) of the Special Immigrant Nonminister Religious Worker Program Act, Pub. L. No. 110-391, 122 Stat. 4193 (2008), U.S. Citizenship and Immigration Services (USCIS) promulgated a rule setting forth new regulations for special immigrant religious worker petitions. 73 Fed. Reg. 72276 (Nov. 26, 2008).

Despite the issuance of new regulations (which superseded and replaced the old regulations), the director revoked the approval of the present petition on December 16, 2008 under the old regulations, rather than under the new regulations. Therefore, the director erroneously based the decision on obsolete regulations that were no longer in effect at the time of the decision.

The director must issue a new decision based on the new regulations promulgated on November 26, 2008. Because the new regulations include substantial new evidentiary requirements, the director must also afford the petitioner an opportunity to submit all such evidence that the petitioner did not initially submit, or that the director has not previously requested. 8 C.F.R. § 103.2(b)(8). As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The matter is remanded to the director, California Service Center, for the issuance of a request for evidence (if necessary) and a new decision in accordance with the requirements of the new regulation published at 73 Fed. Reg. 72276 (Nov. 26, 2008). If the new decision is adverse to the petitioner, it shall be certified to the Administrative Appeals Office for review.