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



U.S. Citizenship  
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Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUL 23 2009

WAC 07 022 50257

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:

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 the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification of 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 pastor with Assembly of God Bethlehem Ministry, Inc. The petitioner filed the petition on October 31, 2006; the director denied the petition on December 8, 2008, finding that, because the church's attorney filed the petition, there was insufficient evidence that a *bona fide* job offer existed.

Prior to November 26, 2008, the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(1) stated: "An alien, or any person on behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker." This regulation, however, is no longer in effect for any petition pending on November 26, 2008, or filed on or after that date.

Section 2(b)(1) of the Special Immigrant Nonminister Religious Worker Program Act, Pub. L. No. 110-391, 122 Stat. 4193 (2008), required USCIS to issue a new rule, revising and replacing the previous regulations for special immigrant religious worker petitions. USCIS published the new rule on November 26, 2008, effective as of that date.

Supplementary information published with the new rule specified: "All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule. If documentation is required under this rule that was not required before, the petition will not be denied. Instead the petitioner will be allowed a reasonable period of time to provide the required evidence or information." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008).

According to the new rule, the petition must be filed either by the alien or by his or her prospective United States employer. 8 C.F.R. § 204.5(m)(6). Because the new regulations apply retroactively to petitions pending on November 26, 2008, 8 C.F.R. § 204.5(m)(6) applies to the proceeding at hand. Any petition not filed by the alien beneficiary or by the alien's prospective United States employer cannot be considered properly filed.

Part 1 of the Form I-360 petition identifies [REDACTED] as the petitioner. Review of the petition form, however, indicates that [REDACTED] the attorney of record for the church, is the petitioner. An applicant or petitioner must sign his or her application or petition. 8 C.F.R. § 103.2(a)(2). The attorney, and not any church official, signed Part 9, "Signature," of the Form I-360. There is no evidence that the attorney is an official of the church. Thus, the attorney, rather than the church, has taken responsibility for the content of the petition. The assertion that the attorney was acting on behalf of the church does not change the fact that no church official has taken responsibility for the petition by signing Form I-360. 8 C.F.R. § 292.1(a)(1) permits counsel to

represent a petitioner during a proceeding, but it does not permit counsel to act in the petitioner's place to initiate that proceeding.

Because neither the alien nor the alien's prospective United States employer filed the petition, we concur with the ultimate conclusion of the director that the petitioner was not properly filed under the applicable regulations now in effect. This determination has not been overcome on appeal. We must therefore dismiss the appeal.

**ORDER:** The appeal is dismissed.