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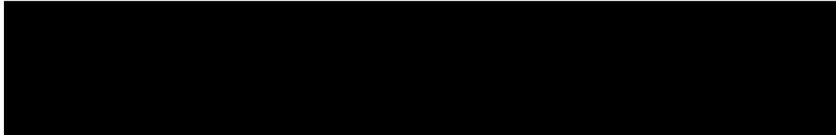
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

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FILE: WAC 09 006 51571 Office: CALIFORNIA SERVICE CENTER Date: FEB 25 2010

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


Perry Rhew
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 reject the appeal.

The petitioner is a church of the Seventh-day Adventist (SDA) denomination. It seeks 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 youth pastor. The director determined that the petitioner had not established that the beneficiary's position qualifies as a religious occupation relating to a traditional religious function.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.2(a)(2) requires an applicant or petitioner to sign his or her application or petition. In this instance, Part 1 of the Form I-360 petition identifies the petitioner as the local SDA church in Sylmar. [REDACTED] pastor of that local church, signed Part 9 of the Form I-360, "Signature." At the time, [REDACTED] did not claim to sign on behalf of any entity other than the local church.

The record contains a March 10, 2009 letter from [REDACTED] of the Southern California Conference of the SDA Church, who stated:

Although the petition for special immigrant was filed by the Southern California Conference of Seventh Day Adventist Church, the I-797 [filing receipt] lists the petitioner as [REDACTED]. This may result in the confusion since [REDACTED] is not petitioning for the beneficiary in his own right but as a representative of the Southern California Conference of Seventh Day Adventist.

We do not accept this attempt to substitute a new petitioner after the filing of the petition. [REDACTED] is an official of an individual SDA church, and the initial filing contained no indication that he filed the petition on behalf of the conference, or that he was authorized to do so. Thus, the local church, and not the regional conference, has taken responsibility for the content of the petition.

When the director denied the petition on March 26, 2009, the director properly issued the decision to the petitioning church in Sylmar, not to the regional conference. The Form I-290B Notice of Appeal correctly identified the petitioner as the church in Sylmar. No local church official signed the appeal notice. Instead, [REDACTED] signed the Form I-290B. The petitioner submitted Form G-28, Notice of Entry of Appearance as Attorney or Representative, naming [REDACTED] as the petitioner's attorney of record.

A notice of appearance entered in application or petition proceedings must be signed by the applicant or petitioner to authorize representation in order for the appearance to be recognized by the Service. 8 C.F.R. § 292.4(a). No official of the Sylmar church, however, signed the Form G-28. Instead, [REDACTED] of the regional conference signed the form. The conference has hierarchical jurisdiction over local churches, but the conference is not the petitioner. [REDACTED] is not an authorized official of

the local church in Sylmar, and therefore the Form G-28 in the record does not authorize [REDACTED] to file the appeal or otherwise act on the petitioner's behalf.

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.

The appeal has not been filed by the petitioner, or by any entity with legal standing in the proceeding, but rather by an attorney who represents an SDA regional conference. Therefore, the appeal has not been properly filed, and we must reject the appeal.

Furthermore, review of the record reveals a ground of ineligibility that would mandate denial of the petition even if the appeal had been properly filed. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The USCIS regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the beneficiary has been working as a minister or in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States, continuously for at least the two-year period immediately preceding the filing of the petition. The USCIS regulation at 8 C.F.R. § 204.5(m)(11) requires that qualifying prior experience during the two years immediately preceding the petition, if acquired in the United States, must have been authorized under United States immigration law.

The petition was filed on October 2, 2008. The petitioner asserts that the beneficiary has worked in the United States since 1997. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work, in lawful immigration status, from October 2006 to October 2008.

On Part 3 of Form I-360, asked to specify the beneficiary's "Current Nonimmigrant Status" and the expiration date of that status, the petitioner left both lines blank, despite the warning at Part 9 of the form that failure to "completely fill out this petition" may result in denial of the petition.

Although the classification sought does not require it, the petitioner submitted Form ETA 750 Part B, Statement of Qualifications of Alien. On line 3 of that form, "Type of Visa (if in U.S.)," the petitioner indicated that the beneficiary held a B-2 nonimmigrant visitor visa. (It is not clear whether the petitioner meant that the beneficiary was still in B-2 status as of the 2008 filing date, or merely that the beneficiary initially entered the United States as a B-2 visitor in 1997.) The USCIS regulations at 8 C.F.R. § 274a(12), which govern employment authorization, include no provision to allow B-2 nonimmigrants to accept employment in the United States.

The petitioner submitted no documentation to show that the beneficiary was in lawful immigration status and authorized to work in the United States during the 2006-2008 qualifying period. The limited information in the record facially indicates that the beneficiary was not authorized to work for the petitioner in 2006-2008. Therefore, USCIS cannot properly approve any special immigrant religious worker petition filed on the beneficiary's behalf in 2008.

Based on the above circumstances, any attempt to remedy the improper filing of the appeal could not properly result in approval of the petition.

ORDER: The appeal is rejected.