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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**



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DATE: **APR 21 2011** OFFICE: CALIFORNIA SERVICE CENTER FILE:   
WAC 09 199 51210

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

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, or in the alternative, dismiss the appeal.

The petitioner 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 pastor at Christian Community Ministry, Jesus Fountain of Life (CCM), Somerville, Massachusetts. The director determined that the petitioner had not established that had the required two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits arguments and copies of payroll documentation.

The record shows that the petition was not properly filed, and therefore there is no valid proceeding upon which to base an appeal. Part 1 of the Form I-360 petition identifies CCM as the petitioner. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.2(a)(2) states: "An applicant or petitioner must sign his or her application or petition." That same regulation generally requires a handwritten signature unless the petition is filed electronically. It makes no provision for proxy signatures.

In this instance, the signature on Part 10 of the Form I-360, belongs not to any CCM official, but to CCM's attorney (who wrote the word "attorney" after his signature). Thus, the attorney, and not the church, has taken responsibility for the content of the petition. This effectively makes the attorney the petitioner, rather than counsel to the petitioner.

The USCIS regulation at 8 C.F.R. § 204.5(m)(6) states, in part: "A petition must be filed as provided in the petition form instructions either by the alien or by his or her prospective United States employer." Here, the petitioner (*i.e.*, the party who signed the petition) is neither the alien nor her prospective United States employer, but the prospective employer's attorney. The attorney (based in Georgia) is not an official of CCM (based in Massachusetts), and his role as an attorney does not permit him to sign the Form I-360 on the church's behalf.

An earlier version of the regulation at 8 C.F.R. § 204.1(d), as in effect in 1991, required that "the petitioner *or authorized representative* shall sign the visa petition (under penalty of perjury) in the block provided on the form" (emphasis added). That regulation governed employment-based immigrant petitions at the time. The present regulations contain no provision allowing an attorney or other third party to sign a petition form on behalf of an intending employer. The regulation at 8 C.F.R. § 204.5(a)(1) requires that employment-based immigrant petitions must be accepted for processing under the provisions of 8 C.F.R. § 103. As stated above, the regulation at 8 C.F.R. § 103.2(a)(2) provides that the petitioner must sign the petition and does not include the "or authorized representative" language that previously applied to such petitions up through 1991. Had legacy Immigration and Naturalization Service, now USCIS, intended to continue to allow authorized

representatives to sign employment-based immigrant petitions, the agency would not have stricken the regulatory language expressly allowing them to do so.

We note that the signature block on the Form I-290B Notice of Appeal reads: "Signature of Person Filing the Appeal/Motion or His or Her Authorized Representative." The signature block on the Form I-360 petition makes no comparable provision for representatives.

There is no regulatory provision that waives the signature requirement for a petitioning U.S. employer or that permits a petitioning U.S. employer to designate an attorney or accredited representative to sign the petition on behalf of the U.S. employer. The petition has not been properly filed because neither the alien nor CCM signed the petition. Under the regulation at 8 C.F.R. § 103.2(a)(7)(i), an application or petition which is not properly signed shall be rejected as improperly filed, and no receipt date can be assigned to an improperly filed petition. While the Service Center did not reject the petition, the AAO is not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 at 3 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 534 U.S. 819 (2001).

The signature line on the Form I-360 provides that the petitioner is certifying, "under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it [are] all true and correct." To be valid, 28 U.S.C. § 1746 requires that declarations be "subscribed" by the declarant "as true under penalty of perjury." *Id.* In pertinent part, 18 U.S.C. § 1621, which governs liability for perjury under federal law, mandates that: "Whoever in any declaration under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true is guilty of perjury." 18 U.S.C. § 1621.

The probative force of a declaration subscribed under penalty of perjury derives from the signature of the declarant; one may not sign a declaration "for" another. Without the petitioner's actual signature as declarant, the declaration has no evidentiary force. *See In re Rivera*, 342 B.R. 435, 459 (D. N.J. 2006); *Blumberg v. Gates*, No. CV 00-05607, 2003 WL 22002739 (C.D.Cal.) (not selected for publication).

The AAO notes that an entirely separate line exists for the signature of the preparer declaring that the form is "based on all information of which [the preparer has] knowledge." Thus, the Form I-360 itself acknowledges that a preparer who is not the petitioner cannot attest to the contents of the petition and supporting evidence. Rather, the preparer may only declare that the information provided is all the information of which he or she has knowledge. Moreover, we note that the unsupported assertions of an attorney do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Thus, an attorney's unsupported assertions on the petition form have no evidentiary value. Here, the same attorney signed the signature blocks for the petitioner and for the preparer.

The integrity of the immigration process depends on the actual employer signing the official immigration forms under penalty of perjury. Allowing an attorney to sign the petition would leave the immigration system open to fraudulent filings. While we do not allege any malfeasance in this matter, we note prior examples where attorneys have been convicted of various charges, including money laundering and immigration fraud, after signing immigration forms of which the alien or claimed employer had no knowledge. *United States v. O'Connor*, 158 F.Supp.2d 697, 710 (E.D. Va. 2001); *United States v. Kooritzky*, Case No. [REDACTED] (E.D. Va. December 11, 2002).

We note that the signatures of a church official appear elsewhere on petition documents, such as on an employer attestation. These signatures, however, attest only to those specific parts of the petition form, not to the integrity of the entire petition, including supporting materials and information.

Only the alien or the intending employer may file Form I-360 for a special immigrant religious worker. Because the party that filed the petition is neither of these, the petition was not properly filed and there is no lawful proceeding upon which to base an appeal. We must therefore reject the appeal.

In the alternative, even if we were to ignore the improper filing and accept the appeal, the AAO would dismiss the appeal.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before September 30, 2012, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before September 30, 2012, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

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, if acquired in the United States, must have been authorized under United States immigration law.

The petitioner filed the Form I-360 petition on July 10, 2009. The record shows that the beneficiary entered the United States on December 9, 2007, as a B-2 nonimmigrant visitor for pleasure. That status expired on June 8, 2008; the record contains no evidence of renewal. USCIS granted the beneficiary R-1 nonimmigrant religious worker status on January 9, 2009. Under the USCIS regulation at 8 C.F.R. § 214.1(e), a B-2 nonimmigrant may not accept employment in the United States. Therefore, the beneficiary was not authorized to work in the United States for 13 months of the 24-month qualifying period.

The petitioner submitted copies of payroll documents dated 2007 through 2009. The materials from 2007 and 2008 are in the Portuguese language.

The director denied the petition on October 20, 2009, stating: “the evidence is insufficient to establish that the beneficiary has been performing full-time religious work for at least the two-year period immediately preceding the filing of the petition in lawful immigration status.”

On appeal, the petitioner argues that the beneficiary

traveled to the United States as a “visiting Pastor,” and continued to be paid in Brazil by the Brazilian church from the time of her entry on 12/09/07, through the time her R-1 petition was granted, thereafter being employed by the U.S. church. It is appropriate for a Brazilian Pastor to enter the U.S. on a B-1/B-2 visa and to act on behalf of the Brazilian parent church as a Pastor in that status.

The record shows that USCIS admitted the beneficiary into the United States not as a B-1 visitor for business, but as a B-2 visitor for pleasure. The previously cited regulation at 8 C.F.R. § 214.1(e) does not simply apply to employment with an employer based in the United States. The exact wording of the clause is: “A nonimmigrant in the United States . . . as a temporary visitor for pleasure . . . may not engage in any employment.” The phrase “any employment,” which ends the sentence with no further modification, prohibits the beneficiary not only from working for a United States employer, but also from actively conducting business on behalf of a foreign employer. Other nonimmigrant classifications (such as B-1) exist for aliens who visit the United States to conduct business on behalf of a foreign employer. The beneficiary entered as a B-2 nonimmigrant – essentially a tourist – and USCIS never authorized her to work in the United States for any

employer, foreign or domestic. The regulation at 8 C.F.R. § 214.1(e) also states: “Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status.”

Furthermore, an alien’s initial admission as a B-2 nonimmigrant is no more than six to twelve months. *See* 8 C.F.R. §§ 214.2(b)(1) and (2). The beneficiary’s B-2 nonimmigrant status, therefore, would have expired sometime between June 8 and December 8, 2008 (the record is not clear on the exact date).

We acknowledge that CCM filed Form I-129 on May 29, 2008, to change the beneficiary’s status to an R-1 nonimmigrant religious worker. The mere filing of that form, however, did not allow the beneficiary to work in the United States. The beneficiary’s R-1 nonimmigrant status did not take effect until January 9, 2009.

The director, in the denial notice, specifically stated that the beneficiary’s B-2 nonimmigrant status expired before her R-1 nonimmigrant status took effect, indicating a lapse in lawful status. The petitioner, on appeal, does not address this important aspect of the director’s finding.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, if the AAO did not reject the appeal, it would dismiss the appeal.

**ORDER:** The appeal is rejected or, in the alternative, dismissed.