

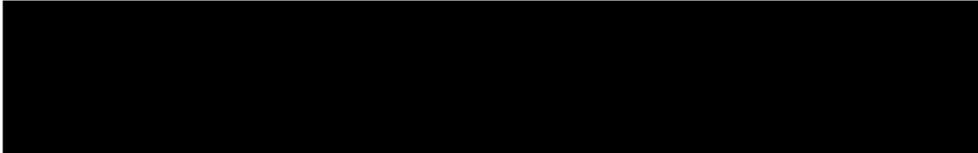
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

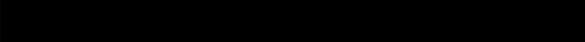


**U.S. Citizenship  
and Immigration  
Services**



C1

DATE: **JUN 28 2011** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE:           Petitioner:   
                  Beneficiary: 

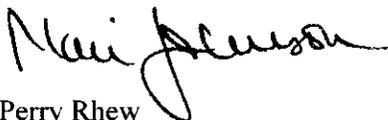
PETITION:    Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:  


**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.

The petitioner is a local conference of the Seventh-day Adventist (SDA) church. 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 the pastor of [REDACTED] California. The director determined that the petitioner had not established that the beneficiary had the required two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits a brief from counsel.

The director received the appeal on November 4, 2010. In a new decision dated January 3, 2011, the director referred to the November 2010 filing as a motion to reopen, and dismissed the motion because it did not meet the regulatory requirements of a motion to reopen. The November 2010 filing, however, is marked as an appeal, not as a motion. As such, the filing is under the jurisdiction of the AAO, not the director, and the director had no authority to treat the appeal as a motion and dismiss it. The director, by forwarding the matter to the AAO, appears to have acknowledged the AAO's jurisdiction. The AAO hereby withdraws the director's decision of January 3, 2011, and issues its own superseding notice.

Examination of the record shows that both the Form I-290B Notice of Appeal and the Form I-360 petition were improperly filed. The AAO must reject the improperly filed appeal. The U.S. Citizenship and Immigration Services (USCIS) 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 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. An affected party may be represented by an attorney or representative in accordance with part 292 of this chapter.

Every appeal must be filed with the location and executed in accordance with the instructions on the form. 8 C.F.R. § 103.2(a)(1). The instructions to Form I-290B include the instruction that "an authorized official of a petitioning employer, or the petitioner's attorney or representative must sign Form I-290B." Here, however, the petitioner's attorney of record, [REDACTED], did not sign the Form I-290B Notice of Appeal. Instead, the signature on Form I-290B reads: [REDACTED] by [REDACTED]." The

record does not show the full name of "████" but there is no Form G-28, Notice of Entry of Appearance as Attorney or Representative naming "████" as the petitioner's attorney of record, nor any evidence that "████" is an attorney or representative who is eligible to represent the petitioner.

Because there exists no provision to allow an attorney's assistant or staffer to sign Form I-290B on the attorney's behalf, the AAO must find that the petitioner has not properly filed the appeal. Therefore, the AAO must reject the appeal as required by the regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

The AAO acknowledges that the regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(2) provides the following with respect to appeals by attorneys without a proper Form G-28:

(i) *General.* If an appeal is filed by an attorney or representative without a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G-28) entitling that person to file the appeal, the appeal is considered improperly filed. In such a case, any filing fee the Service has accepted will not be refunded regardless of the action taken.

(ii) *When favorable action warranted.* If the reviewing official decides favorable action is warranted with respect to an otherwise properly filed appeal, that official shall ask the attorney or representative to submit Form G-28 to the official's office within 15 days of the request. If Form G-28 is not submitted within the time allowed, the official may, on his or her own motion, under Sec. 103.5(a)(5)(i) of this part, make a new decision favorable to the affected party without notifying the attorney or representative.

(iii) *When favorable action not warranted.* If the reviewing official decides favorable action is not warranted with respect to an otherwise properly filed appeal, that official shall ask the attorney or representative to submit Form G-28 directly to the AAU. The official shall also forward the appeal and the relating record of proceeding to the AAU. The appeal may be considered properly filed as of its original filing date if the attorney or representative submits a properly executed Form G-28 entitling that person to file the appeal.

The submission of a properly executed Form G-28 showing that "████" is an attorney would serve no practical purpose, because the underlying visa petition was not properly filed.

Under the regulation at 8 C.F.R. § 204.5(a)(1), a petition is properly filed if it is accepted for processing under the provisions of 8 C.F.R. § 103. The regulation at 8 C.F.R. § 103.2(a)(2) reads, in part:

An applicant or petitioner must sign his or her application or petition. . . . By signing the application or petition, the applicant or petitioner . . . certifies under penalty of perjury that the application or petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. Unless otherwise specified in this chapter, an acceptable signature on an application or petition that is being filed with [USCIS] is one

that is either handwritten or, for applications or petitions filed electronically as permitted by the instructions to the form, in electronic format.

Thus, USCIS regulations require that, in order to be considered properly filed, a petition filed by mail must include the petitioner's handwritten signature. The relevant part of Form I-360 (Part 10, "Signature") does not include the handwritten signature of any official of the petitioning entity. Instead, the signature block of the petition includes a rubber-stamped facsimile of the signature of [REDACTED] the petitioner's vice president of personnel. With no original signature on Form I-360, we cannot consider the petition to have been properly filed.

The AAO notes that the integrity of the immigration process depends on the actual petitioner signing the official immigration forms under penalty of perjury. Accepting facsimile signatures would leave the immigration system open to fraudulent filings. While the AAO does not allege any malfeasance in this matter, the AAO notes prior instances in which attorneys have been convicted of various charges, including money laundering and immigration fraud, after signing immigration forms of which the alien or 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).

The petitioner has not properly filed the Form I-360 petition or the Form I-290B appeal. Therefore, the AAO must reject the appeal.

**ORDER:** The appeal is rejected.