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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: **APR 27 2012**

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:

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.

The petitioner is the United States branch of a non-denominational Christian 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 a minister. The director determined that the petitioner had not established that the offer of employment is bona fide or that the beneficiary is qualified for the proffered position. Finally, the director determined that the petitioner had failed to satisfactorily complete a site inspection that USCIS conducted in accordance with the regulation at 8 C.F.R. § 204.5(m)(12).

As will be explained below, the AAO will reject the appeal because it was not signed by the petitioner.

I. Signatures on the Form I-290B Appeal

The appeal must be rejected because it was improperly filed. The regulation at 8 C.F.R. § 103.3(a)(2)(v) states:

(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:

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.

The signature at Part 4 of the I-290B indicates that it is that of [REDACTED] identified elsewhere in the record of proceeding as the petitioner's Administrator. The record of proceeding contains prior versions of [REDACTED] signature on the following documents: (1) the November 5, 2004 Employment Agreement for the beneficiary, (2) the petitioner's 2007 and 2008 Internal Revenue Service Forms 990, Return of Organization Exempt from Income Tax, and (3) the petitioner's August 25, 2009 Form G-28, Notice of Entry of Appearance as Attorney or Representative. [REDACTED] signature on the appeal Form I-290B is visibly different from the earlier signatures in the record. It is unclear who signed the Form I-290B. The appeal must be rejected because there is no evidence that it was properly filed by an affected party.

II. Signatures on the Form I-360 Petition

The Form I-360 petition identifies [REDACTED] as the employer and the petitioner. The signatures of [REDACTED] at pages 7, 8 and 9 of the Form I-360 appears to be a facsimile and therefore is not acceptable.

The regulation at 8 C.F.R. § 103.2(a)(2) provides:

Signature. An applicant or petitioner must sign his or her application or petition. However, a parent or legal guardian may sign for a person who is less than 14 years old. A legal guardian may sign for a mentally incompetent person. By signing the application or petition, the applicant or petitioner, or parent or guardian 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 the 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.

There is no regulatory provision that waives the signature requirement for a petitioning U.S. employer. The petition has not been properly filed because the petitioning U.S. employer did not sign the petition. Pursuant to 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).

Practically, the signature requirement reflects a genuine Form I-360 program concern regarding the validity of the permanent job offer contained in Form I-360 petitions. To this end, the employer's signature serves as certification under penalty of perjury that the petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct.

The signature line on the Form I-360 for the petitioner 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 is completely robbed of any 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 the integrity of the immigration process depends on the actual employer signing the official immigration forms under penalty of perjury. Allowing another individual, including an attorney, to sign all petitions, notices of appearance (for the same attorney), appeals, and all employment offers on behalf of the petitioner would leave the immigration system open to fraudulent filings. While the AAO does not allege any malfeasance in this matter, the AAO notes 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 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. 1:02CR00502 (E.D. Va. December 11, 2002).

Finally, the AAO notes that the attorney's signature on the Form I-360 and accompanying August 25, 2009 Form G-28 do not appear to be valid. The signatures of [REDACTED] on the Form G-28 and on the Form I 360 at part 11 are visibly different from her signature on the beneficiary's August 26, 2009 Form G-28. Specifically, the signatures on the I-360 and accompanying Form G-28 are followed by the initials "AR" and appear to be the initials of [REDACTED] senior legal assistant. Because the attorney's signature does not appear to be authentic, the G-28 from the petitioner does not establish that [REDACTED] is authorized to represent the petitioner in this proceeding.¹

III. Conclusion

The appeal has not been filed by the petitioner, or by any entity with legal standing in the proceeding, but instead appears to have been signed by an attorney who represents the beneficiary. Therefore, the appeal has not been properly filed, and must be rejected. Moreover, the underlying petition also was not properly filed. Thus, further action on the petition cannot be pursued. The appeal will be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A).

ORDER: The appeal is rejected.

¹ The Form I-290B appeal indicates that the petitioner has a new attorney; however, there is no Form G-28 for the new attorney.