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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**



[Redacted]

C₁

Date: **AUG 16 2012** Office: CALIFORNIA SERVICE CENTER

FILE: [Redacted]

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:

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
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the immigrant visa petition. The self-petitioner's employer timely filed a subsequent appeal. The Administrative Appeals Office (AAO) rejected the appeal without rendering a decision. The matter is now before the AAO on a motion to reopen and a motion to reconsider. The AAO will reject the motions and return the petition for further action by the director.

The self-petitioner is an individual who seeks classification 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 work as an associate minister. The director determined that the self-petitioner's employer had failed to establish that the self-petitioner had two years of continuous employment immediately prior to the filing of the petition, as it had failed to establish the self-petitioner's lawful immigration status.

The director denied the petition on February 18, 2010. On March 22, 2010, counsel for the self-petitioner's employer, the Emmanuel Church of Jesus Christ, filed an appeal seeking review of the director's decision. After reviewing the record, the AAO rejected the appeal on December 27, 2011, as counsel for the self-petitioner's employer had filed the appeal. The AAO determined that the Emmanuel Church of Jesus Christ was not the affected party.

Part 1 of the Form I-360 petition identifies Emmanuel Church of Jesus Christ as the petitioner. Review of the petition form, however, indicates that the alien is the petitioner. An applicant or petitioner must sign his or her own application or petition. 8 C.F.R. § 103.2(a)(2). In this instance, Part 10 of the Form I-360, "Signature," shows the signature not of any official from the church, but of the alien himself. Thus, the alien, and not the church, has taken responsibility for the content of the petition.

8 C.F.R. § 103.3(a)(1)(iii)(B) states that, for purposes of appeals, certifications, and reopening or reconsideration, "affected party" (in addition to U.S. Citizenship and Immigration Services (USCIS)) means the person or entity with legal standing in a proceeding. The USCIS regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(1) 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, USCIS will not refund any filing fee it has accepted.

Here, the party that filed the appeal was not the petitioner, but rather [REDACTED] counsel for the Emmanuel Church of Jesus Christ. Because Emmanuel Church of Jesus Christ did not file the petition, it was not an affected party, and therefore it had no standing to file an appeal. The AAO therefore rejected the appeal as improperly filed.

On January 27, 2012, counsel for the self-petitioner filed a motion to reopen and a motion to reconsider regarding the appeal that the AAO rejected on December 27, 2011. As the appeal was rejected by the AAO, there is no decision on the part of the AAO that may be reopened in this proceeding. According to 8 C.F.R. § 103.5(a)(1)(ii), jurisdiction over a motion resides in the official who made the latest decision in the proceeding. The AAO did not enter a decision on this matter. Because the

disputed decision was rendered by the director, the AAO has no jurisdiction over these motions, and these motions must be rejected.

However, as argued by counsel, the director sent the notice of decision not to the self-petitioning alien, but to the church, presumably because Part 1 of the Form I-360 identified it as the petitioner. Thus, the director has never issued any relevant notices to the petitioner himself.

8 C.F.R. § 103.8(a)(1) defines “routine service” as mailing a copy by ordinary mail addressed to a person at his last known address and states that service by mail is complete upon mailing. Here, because the director never sent any denial notice to the self-petitioning alien, the director has arguably never served the notice of denial. Thus, the self-petitioning alien has never had the opportunity to file a timely appeal. The director must reissue the denial notice in order to give the actual petitioner that opportunity.

If the self-petitioning alien chooses to appeal the director’s decision, the AAO will duly consider statements from church officials, but as witness statements rather than as the petitioner’s own arguments. Because there is, as yet, no valid appeal in the record, the AAO will not examine, here, the basis of the denial. The AAO will duly consider those factors if and when the self-petitioning alien files a proper and timely appeal.

The director must serve a newly dated copy of the decision, properly addressed to the true petitioner.

ORDER: The motion to reopen and the motion to reconsider are rejected. The matter is returned to the director for the limited purpose of the reissuance of the decision.