

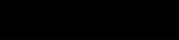
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

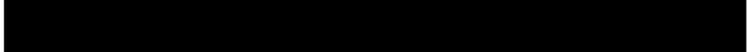


U.S. Citizenship
and Immigration
Services

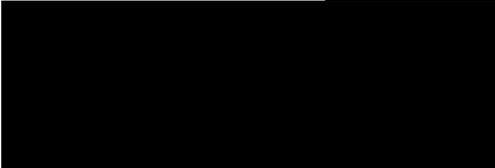


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DATE: **DEC 08 2012** OFFICE: CALIFORNIA SERVICE CENTER FILE: 


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:


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,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) summarily dismissed the petitioner's appeal. The matter is now before the AAO on a motion to reopen and reconsider, which the AAO will dismiss.

The petitioner is an Islamic society. 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 an imam. The director determined that the petitioner had not established that the beneficiary was continuously in lawful immigration status for two years immediately preceding the filing date of the petition. The AAO summarily dismissed the petitioner's appeal under the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.3(a)(1)(v). The matter is now, once again, before the AAO on motion.

The USCIS regulation at 8 C.F.R. § 103.5(a)(1)(iii)(A) requires that Form I-290B, Notice of Appeal or Motion, must be signed by the affected party or the attorney or representative of record, if any. Neither counsel nor any authorized official of the petitioning organization signed the Form I-290B. Instead, the beneficiary signed the form. The beneficiary is not an affected party with legal standing in this proceeding. 8 C.F.R. § 103.3(a)(1)(iii)(B). Therefore, the petitioner did not properly file the motion.

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The AAO must dismiss the motion based on its improper filing by the beneficiary.

There is no evidence that counsel participated in the preparation of the motion. The motion, in fact, indicates that the beneficiary intends to file a formal complaint against counsel [REDACTED] for allegedly mishandling the petition and appeal. Nevertheless, the beneficiary is not the affected party with authority to retain or dismiss legal representation, and the beneficiary's complaints are not, on their face, evidence that counsel no longer represents the petitioner. Therefore, the AAO continues to consider [REDACTED] to be the petitioner's attorney of record.

Further review of the record shows that the Form I-360 petition itself, like the subsequent motion, was not properly filed. The USCIS regulation at 8 C.F.R. § 103.2(a)(2) reads, in pertinent part: "An applicant or petitioner must sign his or her benefit request. . . . By signing the benefit request, the applicant or petitioner . . . certifies under penalty of perjury that the benefit request, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct."

USCIS received the Form I-360 petition on August 17, 2009. Part 1 of the petition identifies the Muslim Society of Jersey Shore as the petitioner. On Part 10 of the Form I-360, under "Signature," counsel signed the petition. Thus, the signature on Form I-140 is not that of the petitioner, as required by regulation, but instead that of the petitioner's attorney. In this instance, no employee or officer of the Muslim Society of Jersey Shore signed the Form I-360 or certified that the petition and its accompanying evidence are true and correct. (An official of the organization did sign an employer attestation and religious denomination certification, but these documents are limited in scope and the signatures thereon do not attest to the petition as a whole.) USCIS regulations do not permit an individual other than the petitioner to sign Form I-360.

If counsel himself acted as the petitioner, rather than on the petitioner's behalf, then counsel could permissibly sign the petition form. Looking at the petition from this perspective, however, would not cure the defect in the petition. A special immigrant religious worker petition must be filed as provided in the petition form instructions either by the alien or by his or her prospective United States employer. 8 C.F.R. § 204.5(m)(6). Counsel is neither of these, and cannot permissibly act as the petitioner. The AAO acknowledges that the director accepted the petition, and that the AAO itself did not mention this serious deficiency in its prior decision, but neither of these errors requires the AAO to overlook the deficiency now that it has been discovered. It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

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 an entirely separate line exists on the Form I-360 for the signature of the preparer (Part 11) declaring that the form is "based on all information of which [the preparer has] any knowledge." Thus, the Form I-360 petition 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.

Because the underlying petition lacks the petitioner's signature as required by the regulation at 8 C.F.R. § 103.2(a)(2), the petition was not properly filed and USCIS can pursue no further action on the petition. For this additional reason, the AAO must dismiss the motion.

The AAO will dismiss the motion for the above stated reasons, with each considered as an independent and alternative basis for dismissal.

ORDER: The motion is dismissed.