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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: JUN 04 2012 OFFICE: CALIFORNIA SERVICE CENTER

[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)

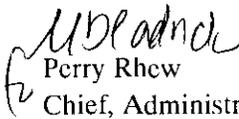
ON BEHALF OF PETITIONER:

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 and return the petition for further action by the director.

The alien 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 perform services as an assistant pastor [REDACTED]

The petition was filed on September 15, 2010. On February 22, 2011, the director denied the petition, determining that the petitioner¹ had not established that the beneficiary had been working continuously in lawful status for the two years immediately preceding the filing of the petition.

Part 1 of the Form I-360 petition identifies the employer as the petitioner, despite listing the beneficiary's name at the very top. Review of the petition form, however, indicates that the alien is the petitioner. An applicant or petitioner must sign his or her application or petition. 8 C.F.R. § 103.2(a)(2). In this instance, Part 10 of the Form I-360, "Signature," shows that the signature is not of any of the employer's officials, but of the alien herself. Thus, the alien, and not the employer, has taken responsibility for the content of the petition.

The regulation at 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, nor any attorney or accredited representative of the petitioner, but rather an attorney, [REDACTED] who represented the employer. Because the employer did not file the petition, it is not an affected party, and therefore its attorney has no standing to file an appeal on the petitioner's behalf. The AAO must, therefore, reject the appeal as improperly filed.

The AAO notes, at the same time, that the director sent the notice of decision not to the self-petitioning alien, but to the employer, presumably because the Form I-360 identified the employer as the petitioner. Thus, the director has never issued any relevant notices to the petitioner herself.

The regulation at 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.

¹ The AAO notes that in the denial decision, the director determined that the employer was the petitioner and the self-petitioner was the beneficiary.

The AAO notes that, if the self-petitioning alien chooses to appeal the director's decision, the AAO will duly consider statements from the employer's 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 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 party that filed the appeal is not an affected party with legal standing in the proceeding. Therefore, the AAO must reject the appeal as improperly filed. The director must serve a newly dated copy of the decision, properly addressed to the true petitioner.

ORDER: The appeal is rejected. The matter is returned to the director for the limited purpose of the reissuance of the decision.