

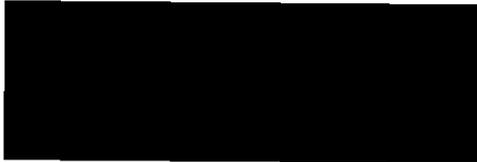
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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



C1

DATE: **JUN 20 2012** OFFICE: CALIFORNIA SERVICE CENTER 

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)

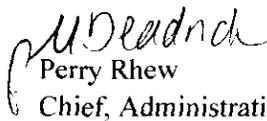
ON BEHALF OF PETITIONER:

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, initially approved the employment-based immigrant visa petition on August 12, 2004. On further review, the director determined that the petitioner was not eligible for the visa preference classification. Accordingly, the director properly sent counsel for the petitioner a Notice of Intent to Revoke (NOIR) approval of the petition on February 7, 2008 and her reasons for doing so. The director then sent a copy of the NOIR to counsel's new address on March 13, 2008. The director subsequently exercised her discretion to revoke approval of the petition on April 15, 2008. The director treated the appeal as a motion and dismissed it on February 12, 2009. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner is a Buddhist organization. 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 monk. The director determined that the petitioner had failed to establish that the beneficiary had completed two years of qualifying religious work prior to the petition's filing date, that a bona fide job offer existed, and that it had the ability to compensate the beneficiary.

The regulation at 8 C.F.R. § 103.2(a)(1) provides:

General. Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions (including where an application or petition should be filed) being hereby incorporated into the particular section of the regulations in this chapter requiring its submission

The regulation at 8 C.F.R. § 103.3(a)(2) provides, in pertinent part:

(v) *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.

(2) *Appeal by attorney or representative without 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. . . .*
- (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 instructions for the Form I-290B, Notice of Appeal or Motion, advise the appellant that:

If you wish, you may be represented at no expense to the U.S. Government by an attorney or other duly authorized representative. Your attorney or representative must submit a Form G-28 with the appeal or motion. If the appeal or motion is filed without a properly executed Form G-28, it will be dismissed or rejected.

Additionally, the regulation at 8 C.F.R. § 292.4(a), as well as the instructions to the Form G-28, provides that:

An appearance must be filed on the appropriate form as prescribed by DHS [Department of Homeland Security] by the attorney or accredited representative appearing in each case. The form must be properly completed and signed by the petitioner, applicant, or respondent to authorize representation in order for the appearance to be recognized by DHS. The appearance will be recognized by the specific immigration component of DHS in which it was filed until the conclusion of the matter for which it was entered. *This does not change the requirement that a new form must be filed with an appeal filed with the Administrative Appeals Office of USCIS [Emphasis added].*

Finally, 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 §§ 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.

Only an affected party, a person or entity with legal standing, may file an appeal of an unfavorable decision. [REDACTED] signed the Form I-290B. However, [REDACTED] did not submit a Form G-28 with the appeal authorizing him or her to act on behalf of the petitioner. By fax of May 8, 2012, the AAO requested that [REDACTED] submit a Form G-28 in accordance with the instructions for the Form I-290B and G-28 as well as the regulation at 8 C.F.R. § 292.4(a). The AAO transmitted the request to the fax number listed on the Form I-290B and advised [REDACTED] to submit the properly executed Form G-28 to the AAO. [REDACTED] failed to respond to the AAO's request.

As [REDACTED] has failed to provide a properly executed Form G-28 authorizing him or her to act on behalf of the petitioner in the appellate stage of this proceeding, he or she cannot be considered as the petitioner's legal representative. Accordingly, the appeal has not been filed by the petitioner or by any entity with legal standing in the proceeding. Therefore, the appeal has not been properly filed and must be rejected.

ORDER: The appeal is rejected.