

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]

C,

DATE: **OCT 24 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 or, in the alternative, summarily dismiss the appeal.

The petitioner 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 pastor of a church in Philadelphia, Pennsylvania. The director discussed evidence that the petitioning church is no longer affiliated with the church in Philadelphia, and therefore found the evidence insufficient to establish that the beneficiary will be employed by the petitioning organization.

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)(I) 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 an attorney, [REDACTED]. Accompanying the I-290B, Notice of Appeal was a G-28, Notice of Entry of Appearance as Attorney or Representative, authorizing Ms. [REDACTED] to represent the beneficiary, [REDACTED], on appeal. Because [REDACTED] did not file the petition, he is not an affected party, and therefore his attorney has no standing to file an appeal on the petitioner’s behalf.¹

Even if properly filed, the AAO would summarily dismiss the appeal. On appeal, Ms. [REDACTED] acknowledges that the beneficiary will not be employed by the petitioner as the petitioning church is no longer affiliated with God’s Embassy Church in Philadelphia where the beneficiary will be working. Ms. [REDACTED] asserts that God’s Embassy Church in Philadelphia should be considered a “substitute” for the original petitioner. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1),(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm’r 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm’r 1998).

The regulation at 8 C.F.R. § 103.3(a)(1)(v) provides that “[a]n officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.”

¹ A previously submitted G-28 authorized Ms. [REDACTED] to represent the petitioner for the filing of the Form I-360 petition. However, the regulation at 8 C.F.R. § 292.4(a) requires that a new G-28 must be submitted on appeal to the AAO “to authorize representation in order for the appearance to be recognized by DHS.” Accordingly, the AAO cannot recognize Ms. [REDACTED] as authorized to represent the petitioner on appeal.

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The petitioner has not specifically addressed any erroneous conclusion of law or statement of fact. Therefore, if the appeal were not being rejected, it would have been summarily dismissed.

ORDER: The appeal is rejected or in the alternative summarily dismissed.