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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



DATE: **MAY 29 2013** Office: CALIFORNIA SERVICE CENTER



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,


f 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) rejected a subsequent appeal for lack of standing and returned the petition for reissuance of the decision by the director. The matter is again before the AAO on appeal. The AAO will reject the appeal as improperly filed or, in the alternative, dismiss the appeal.

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 a Granthi (priest) minister for [REDACTED], California. The director determined that the evidence failed to establish that the alien had the requisite two years of continuous, qualifying work experience immediately preceding the filing of the petition.

The self-petitioner filed the Form I-360 petition on July 13, 2011. The director denied the petition on November 3, 2011, and mailed the denial notice to [REDACTED]. On December 6, 2011, attorney [REDACTED] filed an appeal on behalf of the temple. The AAO rejected the appeal on August 9, 2012, because the alien self-petitioner, not the temple, is the petitioner in this matter because he signed the Form I-360 petition. The AAO stated:

Part 1 of the Form I-360 . . . indicates that [REDACTED] is the petitioner. Review of the petition, however, indicates that [REDACTED] signed the petition. An applicant or petitioner must sign his or her own application or petition. 8 C.F.R. § 103.2(a)(2). In this instance, in Part 10 of the Form I-360, "Signature," no official of [REDACTED] has signed the petition, but rather the alien himself. Therefore, [REDACTED] cannot be considered as having filed the petition on behalf of [REDACTED] and [REDACTED] shall be considered as the self-petitioner.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) 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.

The USCIS regulation at 8 C.F.R. § 103.3(a)(2)(v) states:

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.

The AAO found that, as [REDACTED] did not file the petition, it was not an affected party and it had no standing to file an appeal. The AAO instructed the director to reissue the

decision to the self-petitioning alien in order to provide him an opportunity to file a timely appeal. The record indicates that the director served a newly dated decision, properly addressed to the self-petitioning alien, on September 1, 2012.

On October 4, 2012, attorney [REDACTED] filed a second appeal, again acting on behalf of [REDACTED] rather than the self-petitioning alien. Because, for reasons already established, the temple lacks standing to appeal the decision, on April 9, 2013 the AAO contacted [REDACTED] with instructions to submit a properly completed Form G-28, Notice of Entry of Appearance as Attorney or Representative, to establish representation of the self-petitioning alien. The AAO allowed the attorney 15 calendar days to respond, as required by the USCIS regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(2). The record contains no response from the attorney. Therefore, the AAO must once again reject the appeal for lack of standing.

Review of the record of proceeding shows that, even if the AAO had been able to accept the appeal, the AAO would have dismissed the appeal. Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
- (ii) seeks to enter the United States—
 - (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
 - (II) before September 30, 2015, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
 - (III) before September 30, 2015, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and
- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The USCIS regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the beneficiary has been working as a minister or in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States, continuously for at least the two-year period immediately preceding the filing of the petition. The USCIS regulation at

8 C.F.R. § 204.5(m)(11) requires that qualifying prior experience, if acquired in the United States, must have been authorized under United States immigration law. Therefore, the petitioner must demonstrate continuous, lawful, qualifying employment throughout the two-year period immediately preceding July 13, 2011.

Part 4, line 2f of the Form I-360 petition asked whether the petitioner “ever worked in the U.S. without permission.” The petitioner answered “no.” The petitioner stated that he held R-1 nonimmigrant religious worker status valid through July 14, 2012. USCIS documentation in the record shows that the temple filed a Form I-129 nonimmigrant petition on the petitioner’s behalf on July 29, 2009, seeking to classify him as an R-1 nonimmigrant religious worker. That petition indicated that, at the time of filing, the petitioner was a B-2 nonimmigrant visitor for pleasure. A B-2 nonimmigrant may not engage in any employment, and any unauthorized employment by a nonimmigrant constitutes a failure to maintain status. *See* 8 C.F.R. § 214.1(e).

USCIS approved the nonimmigrant visa petition on September 7, 2010, permitting him to work for the temple from August 30, 2010 through July 14, 2012. The approval was not retroactive to the July 29, 2009 filing date. The petitioner submitted no evidence that he was allowed to accept employment in the United States before August 30, 2010. His B-2 nonimmigrant status would not have authorized him to work for the temple, even if a nonimmigrant petition was pending on his behalf at the time.

In a statement that accompanied the initial filing of the petition, attorney [REDACTED] (who prepared the Form I-360 petition) stated that the petitioner had worked at the temple “since his arrival in February 2009. He has continuously been on the payroll.” Copies of processed paychecks show that the temple paid the beneficiary as early as September 2009.

In the denial notice, the director stated that the petitioner had not established two years of continuous, authorized employment in lawful immigration status. On appeal, [REDACTED] contends that the temple, in its nonimmigrant petition, had indicated that the employment would begin on July 15, 2009. The attorney stated: “rather than using the start date requested (July 15, 2009), the Service used the date August 30, 2010 as the start date for [the petitioner’s] R-1 status. This was in error, as the August 30, 2010 date was never requested by the [temple], and the Service seems to have picked that date arbitrarily.”

[REDACTED] did not cite any statute, regulation or case law that permits an alien to begin working as a religious worker as soon as the employer files a nonimmigrant petition. It is the approval, not merely the filing, of a petition that permits the beneficiary of that petition to work for the petitioning employer. The unsupported assertion that the director should have approved the petition retroactively to July 2009 does not mean that the self-petitioning alien was justified in immediately commencing employment with the temple, on the expectation of the petition’s imminent approval. Furthermore, [REDACTED] had previously claimed that the petitioner “has continuously been on the payroll” “since his arrival in February 2009,” predating the filing of the petition by several months. The record consistently indicates that the petitioner began working for the temple before receiving any authorization to do so.

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The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, for the above reasons, the AAO would have dismissed the appeal, had the appeal been properly filed.

ORDER: The appeal is rejected.