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U.S. Department of Homeland Security
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Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

B13

FILE: WAC 07 019 50715 Office: CALIFORNIA SERVICE CENTER Date: JAN 06 2009

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

When the director denied the petition on October 10, 2008, the director provided instructions on how to appeal the decision to the AAO. This language was included in error, because the regulations in effect at that time contained no provision to allow the petitioner to appeal the denial of an R-1 nonimmigrant visa petition. The director's erroneous inclusion of appeal instructions in the denial notice does not supersede the regulations or give the AAO the authority to accept R-1 appeals filed at that time. The regulation is binding on U.S. Citizenship and Immigration Services (USCIS) employees in their administration of the Act, and USCIS employees do not have the authority to allow for appeal rights where none exist. *See, e.g., Panhandle Eastern Pipe Line Co. v. Federal Energy Regulatory Commission,* 613 F.2d 1120 (C.A.D.C., 1979) (an agency is bound by its own regulations); *Reuters Ltd. v. F.C.C.*, 781 F.2d 946, (C.A.D.C.,1986) (an agency must adhere to its own rules and regulations; ad hoc departures from those rules, even to achieve laudable aims, cannot be sanctioned). An agency is not entitled to deference if it fails to follow its own regulations. *U.S. v. Heffner,* 420 F.2d 809, (C.A. Md. 1969) (government agency must scrupulously observe rules or procedures which it has established and when it fails to do so its action cannot stand and courts will strike it down); *Morton v. Ruiz*, 415 U.S. 199 (1974) (where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director incorrectly advised the petitioner that it had appeal rights, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Because the petitioner filed an appeal at a time when there existed no provision to allow such an appeal, the appeal cannot be accepted, and therefore must be rejected.

ORDER: The appeal is rejected.