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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

D13

DATE: **AUG 25 2011** OFFICE: CALIFORNIA SERVICE CENTER FILE: WAC 10 119 50526

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition. The petitioner filed a motion to reopen the proceeding. The director dismissed the motion. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will reject the appeal.

The petitioner is a Sikh community center. It seeks to classify the beneficiary as a nonimmigrant religious worker under section 101(a)(15)(R)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(i), to perform services as a granthi and raggi. The director determined that the beneficiary had engaged in unauthorized employment.

The director denied the petition on January 12, 2011. The petitioner filed a motion to reopen on February 3, 2011. The director dismissed that motion on April 1, 2011. The beneficiary signed a Form I-290B Notice of Appeal on April 28, 2011, and filed it the next day.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.3(a)(2)(i) allows only the affected party to file an appeal. The beneficiary of a visa petition is not an affected party. 8 C.F.R. § 103.3(a)(1)(iii)(B).

Under the regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(1), 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 USCIS has accepted will not be refunded. In this instance, the beneficiary filed the appeal, despite lacking legal standing in the proceeding. Therefore, the AAO must reject the appeal as improperly filed.

In a letter dated July 15, 2011, with the heading "Withdrawal of Appeal/Motion," Paramjeet K. Singh, secretary general of the petitioning entity, wrote that the beneficiary "is no longer with [the petitioner] since April 19th, 2011. Therefore we [would] like to inform your office that we are withdrawing the motion of Re-appeal for [the beneficiary]."

It is not clear whether the petitioner, in the above letter, refers to the February 2011 motion or the April 2011 appeal. The USCIS regulation at 8 C.F.R. § 103.2(b)(6) states that a "petitioner may withdraw an application or petition at any time until a decision is issued by USCIS." When the petitioner wrote the above letter in July 2011, USCIS had already issued a decision on the February motion, and therefore the petitioner could no longer withdraw it. USCIS had not yet issued a decision on the April appeal, but as explained above, the petitioner is not the party that filed that appeal. Nevertheless, the AAO acknowledges that the petitioner has stated, in writing, that it no longer seeks to pursue the present proceeding on the beneficiary's behalf.

The AAO notes the petitioner's assertion that the beneficiary "is no longer with [the petitioner] since April 19th, 2011." The beneficiary signed Form I-290B nine days after that date, on April 28, 2011, but claimed to be filing the appeal on behalf of the petitioner. If the beneficiary no longer worked for the petitioner on April 28, then clearly he was not pursuing the matter in good faith.

ORDER: The appeal is rejected.