

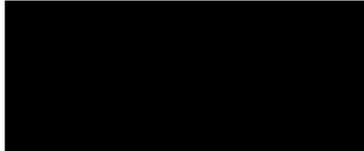
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

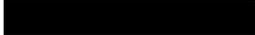


U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



D13

DATE: JUL 29 2011 OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner:   
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)

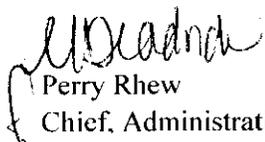
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

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 nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will reject the appeal as improperly filed.

The alien seeks to extend his status, with a change of employer, as a nonimmigrant religious worker under section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1), to perform services as a minister at Legacy Church (now called Waypoint Church). The director determined that the petitioner had not established the church's ability to compensate the alien, and noted that the alien, on his income tax returns, identified his occupation as "ware house worker."

The AAO notes that the record contains correspondence from attorney [REDACTED]. The record, however, does not contain a duly executed Form G-28 Notice of Entry of Appearance of Attorney or Accredited Representative. Therefore, the AAO considers the petitioner to be self-represented.

Part 1 of the Form I-129 petition identifies the beneficiary as the petitioning individual, and the Legacy Church (now known as Waypoint Church) as the petitioning organization. Review of the petition form, however, indicates that the alien is the petitioner. An applicant or petitioner must sign his or her application or petition. 8 C.F.R. § 103.2(a)(2). In this instance, Part 6 of the Form I-129, "Signature," has been signed not by any official of the church, but by the alien himself. Thus, the alien, and not the church, has taken responsibility for the content of the petition.

When the alien self-petitioner filed the Form I-129 petition on May 9, 2008, the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(6) required the intending employer to file a petition on behalf of an alien seeking to change employers while in R-1 nonimmigrant status. USCIS published substantial revisions to the regulations on November 26, 2008. The new regulation at 8 C.F.R. § 214.2(r)(7) likewise indicates that only the employer may file the petition.

The AAO notes that, in correspondence dated October 13, 2009, the director indicated that the alien had signed the petition form. In response, a church official signed and submitted a new Form I-129, without the required fee. The AAO finds that the submission of a new petition, signed by a church official, cannot retain the receipt date of an improperly filed petition submitted previously, and there exists no provision to permit the substitution of petitioners in a previously filed R-1 nonimmigrant petition.

There is no statute or regulation that permits the substitution of a petitioner on a nonimmigrant religious worker petition. A petitioner must establish eligibility at the time of filing. A visa petition may not be approved based on speculation of future eligibility or after the petitioner becomes eligible under a new set of facts. *See 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).

Moreover, pursuant to section 286(m) of the Act, 8 U.S.C. § 1356, USCIS is required to recover the full cost of adjudication. In addition to the statutory requirement, Office of Management and Budget

(OMB) Circular A-25 requires that USCIS recover all direct and indirect costs of providing a good, resource, or service.<sup>1</sup> The proceeding at issue in this case is the Form I-129 filed by the self-petitioning alien. If another organization or individual wishes to file on the alien's behalf seeking to classify him as a nonimmigrant religious worker pursuant to section 101(a)(15)(R)(i) of the Act, a new form, *with fee*, must be submitted.

Because the alien signed the Form I-129 petition, the AAO cannot consider the petition to have been properly filed in accordance with either the old or the new regulations. Under the regulation at 8 C.F.R. § 103.2(a)(7)(i), a petition is not properly filed until USCIS receives the properly filed petition form. A petition that does not meet filing requirements shall be rejected as improperly filed. *Id.*

As it relates to the filing of the instant appeal, a church official signed the Form I-290B Notice of Appeal. Because the church is not the petitioner in this proceeding, the church has no standing to appeal the denial of the petition. *See* 8 C.F.R. § 103.3(a)(2)(i). Therefore, neither the petition nor the appeal has been filed by a party with standing to make such a filing. The 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, any filing fee USCIS has accepted will not be refunded.

Because the appeal has not been filed by the petitioner, or by any entity with legal standing in the proceeding, the AAO must reject the appeal as improperly filed.

**ORDER:** The appeal is rejected.