

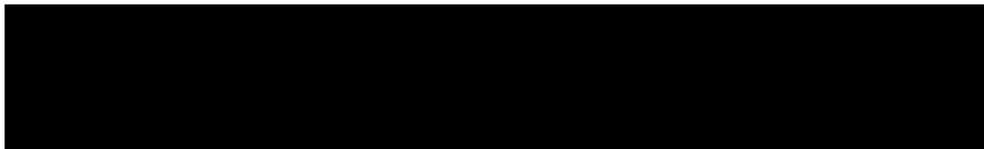
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



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DATE: **MAY 31 2012** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner:
Beneficiary:



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,



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. In the alternative, the AAO will summarily dismiss the appeal.

The petitioner is a church that originally sought 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 resident pastor. The petitioner filed the Form I-129 petition on June 1, 2010. The director denied the petition on August 3, 2010, having determined that the petitioner failed to submit sufficient evidence regarding the beneficiary's intended compensation.

The petitioner appealed the decision to the AAO on September 3, 2010, represented by attorney Barbara A. Susman. The AAO dismissed the appeal on December 28, 2010.

On January 31, 2011, the petitioner, through [REDACTED] filed a motion to reopen and reconsider the AAO's decision. The AAO dismissed the motion on January 3, 2012, advising the petitioner of its right to file a further motion.

Stating that she was acting on behalf of the petitioning church, [REDACTED] filed an appeal on February 6, 2012. It is this appeal that is now before the AAO.

U.S. Citizenship and Immigration Services (USCIS) regulations permit a petitioner to appeal a service center decision to the AAO, and to file a motion to reopen and/or reconsider an AAO decision. There exists no provision, however, for a petitioner to appeal an AAO decision. The AAO must reject the appeal for this reason.

Furthermore, the USCIS regulation at 8 C.F.R. § 292.4(a) requires the submission of a new Form G-28, Notice of Entry of Appearance as Attorney or Representative, with Form I-290B, Notice of Appeal or Motion. [REDACTED] latest filing does not include a new Form G-28 to show that she continues to represent the petitioning church or act on its behalf and according to its instructions. Without a new, valid Form G-28, [REDACTED] had no standing to file the latest appeal.

USCIS must reject any appeal filed by a party without standing to file it. 8 C.F.R. § 103.3(a)(2)(v)(A)(1). The USCIS regulations at 8 C.F.R. §§ 103.3(a)(2)(v)(A)(2)(ii) and (iii) require USCIS to attempt to obtain a new Form G-28, if the absence of such a form is the only obstacle to accepting an "otherwise properly filed" appeal. As already explained above, the appeal was not "otherwise properly filed."

Furthermore, the AAO has compelling reasons to believe that [REDACTED] was not acting on the petitioner's behalf, as she claimed, when she filed the appeal in February 2012. The record contains a February 2, 2012 letter to USCIS and to the AAO from [REDACTED] chairman of the petitioner's immigration committee. [REDACTED] stated:

On behalf of the [petitioning] Church . . . , I would like to inform you that [the beneficiary] is no more a Resident Pastor or a member of the Pastoral staff of the Church. [The beneficiary's] last day as Resident Pastor . . . was September 18, 2011. We therefore advise that any future Petition or Petitions filed in the name of the [petitioning] Church . . . for the beneficiary . . . would be false and does not represent the wish or wishes of the Church Executives, Elders, the Immigration Committee or the congregation.

The petitioner attached printouts of electronic mail correspondence, showing that, on February 1, 2012, [redacted] asked the petitioner for financial documents to support an intended appeal. One [redacted] (presumably [redacted]) responded to the message at 7:32 a.m. on February 3, 2012, stating:

Dear [redacted] . . . , I would like to inform you that the Church leadership has decided that we are NOT going to be party for any appeal or appeals PROCESS . . . because:

- [The beneficiary] is no longer the Resident Pastor, [or] a member of the Pastoral staff [of] the [petitioning] Church. . . .

We therefore advise that you should stop asking officers or members of the church for supportive documentation for the purpose of appealing the decision of the USCIS.

Contrary to the above instructions, [redacted] mailed the appeal to USCIS via UPS at 7:02 p.m. on February 3, 2012, claiming to be acting as the petitioner's attorney of record.

The AAO concludes, from the above information, that the petitioner does not wish to pursue any appeal, and that [redacted] had no authority to file the appeal on the petitioner's behalf. Thus, the AAO finds that [redacted] did not properly file the appeal. This finding would, by itself, be grounds for rejection of the appeal, even if the AAO's prior decision were appealable (which it is not).

In the alternative, the AAO will summarily dismiss the appeal. The USCIS regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part, "[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."

On the Form I-290B Notice of Appeal, filed on February 6, 2012, [redacted] indicated that a brief would be forthcoming within thirty days. On March 5, 2012, [redacted] requested a "continuance of the deadline" until May 6, 2012. The AAO notified [redacted] that "no extensions will be granted beyond 5/25/2012." Nevertheless, on May 24, 2012, [redacted] requested another extension, this time until July 24, 2012. [redacted] has offered various explanations for the delays, but given [redacted] statements, it is clear that no further evidence from the petitioner is forthcoming.

On Form I-290B, [REDACTED] stated: "The petitioner is capable of paying the beneficiary religious worker based on its resources and the salary offered." This statement is a conclusion with no supporting premises. [REDACTED] subsequent repeated requests for extensions have yielded nothing of substance to support the appeal.

Because [REDACTED] has failed to identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal, the AAO would have to summarily dismiss the appeal even if she were the petitioner's attorney of record, acting on the petitioner's behalf, in a matter that permitted the filing of an appeal. As none of those hypothetical conditions actually apply, the AAO must reject the appeal.

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