

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

[REDACTED]

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Date: **NOV 15 2012** Office: CALIFORNIA SERVICE CENTER FILE [REDACTED]

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

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:
[REDACTED]

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,

M Deardorff
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.

The petition seeks classification of the alien as a nonimmigrant religious worker under section 101(a)(15)(R)(1) of the Act, 8 U.S.C. § 1101(a)(15)(R)(1), to perform services as a pastor. The director determined that as the alien signed the Form I-129, Petition for a Nonimmigrant Worker, he had not established that he will be working in the United States at the request of the petitioner.

Counsel asserts on appeal that the director's notice of decision did not include the attachment explaining the basis of the denial and that the service failed to provide a copy of the notice when requested. Counsel submits a brief in support of the appeal that addresses the director's issues in an April 21, 2009 Notice of Intent to Deny the petition. For the reasons discussed below, counsel's arguments are moot.

When the alien filed the Form I-129 petition on August 29, 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 supplementary information published with the final rule specifically provided that "a nonimmigrant alien seeking R-1 status cannot self-petition, but must have an employer submit a petition (Form I-129) on his or her behalf." 73 Fed. Reg. 72276, 77 (Nov. 26, 2008). The new rule also specified that "[a]ll cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule." *Id.* at 72285.

The AAO must reject the appeal, because the underlying petition was not properly filed. The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(7) permits only "[a]n employer" to file a petition for an R-1 nonimmigrant religious worker.

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 by the alien. Thus, the alien, and not the church, has taken responsibility for the content of the petition. Because there is no provision for an alien to file an R-1 nonimmigrant petition on his or her behalf, the petition has not been properly filed and no valid proceeding can arise from that petition. While the Service Center did not reject the petition, the AAO is not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 at 3 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 534 U.S. 819 (2001).

As the petition was pending on November 26, 2008, it was subject to the new regulatory rules. Because the beneficiary signed the petition, the defects in the filing cannot have been overcome by remanding the case for additional evidence. The petition has been improperly filed; the appeal must be rejected.

The AAO may deny an application or petition that fails to comply with the technical requirements of the law even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

ORDER: The appeal is rejected.