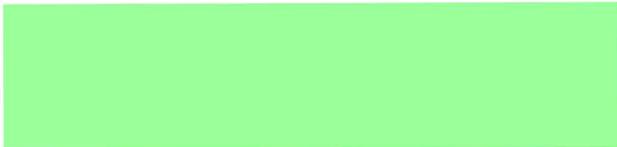


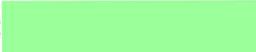
(b)(6)

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



Date: **MAR 15 2013** 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, 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
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.

The petitioner is a church. It seeks to classify the beneficiary 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 pastor. The director determined that the petitioner had not established that it is a bona fide nonprofit religious organization, how it will compensate the beneficiary, and that the beneficiary has been a member of its religious denomination for two full years immediately preceding the filing of the visa petition.

The instructions for the Form I-290B, Notice of Appeal or Motion, advise the appellant that:

If you wish, you may be represented at no expense to the U.S. Government by an attorney or other duly authorized representative. Your attorney or representative must submit a Form G-28 with the appeal or motion. If the appeal or motion is filed without a properly executed Form G-28, it will be dismissed or rejected.

Additionally, the regulation at 8 C.F.R. § 292.4(a), as well as the instructions to the Form G-28, provides that:

An appearance must be filed on the appropriate form as prescribed by DHS by the attorney or accredited representative appearing in each case. The form must be properly completed and signed by the petitioner, applicant, or respondent to authorize representation in order for the appearance to be recognized by DHS. The appearance will be recognized by the specific immigration component of DHS in which it was filed until the conclusion of the matter for which it was entered. *This does not change the requirement that a new form must be filed with an appeal filed with the Administrative Appeals Office of USCIS.* [Emphasis added.]

Finally, the regulation at 8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part:

(B) *Meaning of affected party.* For purposes of this section and §§ 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

Only an affected party, a person or entity with legal standing, may file an appeal of an unfavorable decision. The Form I-290B is signed by [REDACTED]. However, Mr. [REDACTED] did not submit a Form G-28 with the appeal authorizing him to act on behalf of the petitioner. By fax of January 28, 2013, the AAO requested Mr. [REDACTED] to submit a Form G-28 in accordance with the instructions for the Form I-290B and G-28, and the regulation at 8 C.F.R. § 292.4(a). In response, to the AAO's request, Mr. [REDACTED] submitted a Form G-28 signed by the beneficiary of the petition.

Mr. [REDACTED] has failed to provide a Form G-28 authorizing him to act on behalf of the petitioner in the appellate stage of this proceeding; he therefore cannot be considered as the petitioner's legal representative. Accordingly, the appeal has not been filed by the petitioner or by any entity with legal standing in the proceeding. Instead, the appeal has been filed by counsel for the beneficiary. Therefore, the appeal has not been properly filed and must be rejected.

In the event that Mr. [REDACTED] had standing to have filed this appeal, the appeal would have been dismissed.

On May 31, 2012, the director instructed the petitioner to submit documentation concerning the petitioning organization, evidence that it is a bona fide nonprofit religious organization, information regarding the petitioner's denomination, evidence of the beneficiary's membership in the denomination, documentation regarding the proffered position, and evidence of how the petitioner intended to compensate the beneficiary. In response, the petitioner requested additional time in which to submit the requested documentation. The petitioner submitted no additional documentation in response to the RFE. On appeal, the petitioner submitted, *inter alia*, a copy of a "corrected I-129 Petition" changing the federal employer identification number and other information and copies of its monthly bank statements.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's RFE. *Id.* Under the circumstances, the AAO need not and would not have considered the sufficiency of the evidence submitted on appeal, and consequently, the appeal would have been dismissed.

The appeal has not been filed by an affected party. Therefore, it must be rejected.

ORDER: The appeal is rejected.