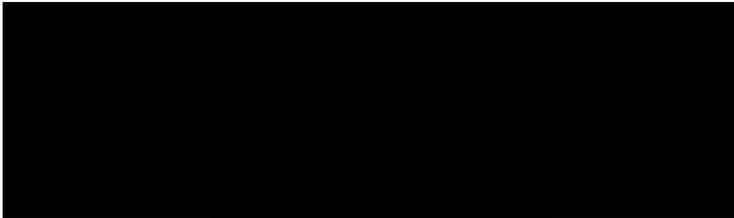




U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy



01

FILE: [REDACTED]
LIN 06 175 51092

Office: NEBRASKA SERVICE CENTER

Date: JUL 11 2007

IN RE: Petitioner:
 Beneficiary:



PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Maum Dladnick
f Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be rejected. The AAO will return the matter for further action by the director.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a pastor. The director determined that the petitioner had not established its qualifying tax-exempt status or ability to compensate the beneficiary.

Part 1 of the Form I-360 petition identifies both the alien beneficiary and “Victor [sic] Christian Fellowship” as the petitioner. Review of the petition form, however, indicates that church 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 9 of the Form I-360, “Signature,” has been signed not by the alien beneficiary, but by [REDACTED] Pastor of Victory Christian Fellowship. Thus, the church, and not the alien beneficiary, has taken responsibility for the content of the petition. While the beneficiary signed Part 10 of the Form I-360, by doing so he only certified that he had prepared the petition form; he did not take responsibility for the petition.

8 C.F.R. § 103.3(a)(1)(iii)(B) states that, for purposes of appeals, certifications, and reopening or reconsideration, “affected party” (in addition to Citizenship and Immigration Services (CIS)) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition (unless the beneficiary had filed the petition on his or her own behalf). 8 C.F.R. § 103.3(a)(2)(v) 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 CIS has accepted will not be refunded.

The appeal was also untimely filed, because the beneficiary originally attempted to file the petition directly with the AAO, even though the denial notice specifically stated “Do NOT send the appeal directly to the AAO.” The director did not receive the appeal until 35 days after the date of the denial notice, making the appeal untimely pursuant to 8 C.F.R. § 103.3(a)(2)(i).

Here, the party that filed the appeal was filed not the petitioner, nor any attorney or accredited representative of the petitioner, but rather the alien beneficiary, who has no standing to file an appeal on the petitioner’s behalf. We must, therefore, reject the appeal as improperly filed.

We note, at the same time, that the director sent the notice of decision not to the organization that filed the petition, but to the beneficiary himself, presumably because the Form I-360 erroneously identified him as the petitioner. Thus, the director has never issued any relevant notices to the petitioner itself.

8 C.F.R. § 103.5a(a)(1) defines “routine service” as mailing a copy by ordinary mail addressed to a person at his last known address. 8 C.F.R. § 103.5a(b) states that service by mail is complete upon mailing. Here, because the director addressed the notices to the attention of the alien beneficiary, rather than to [REDACTED] or some church official other than the alien beneficiary, the director has arguably never served the notice of denial. Thus, the true petitioner has never had the opportunity to file a timely appeal. The director must reissue the denial notice in order to give the actual petitioner that opportunity.

Because there is, as yet, no valid appeal in the record, we examine, here, neither the basis of the denial nor the merits of the appeal submitted by the beneficiary. We will duly consider those factors if and when the petitioning entity files a proper and timely appeal.

The appeal has not been filed by the petitioner, or by any entity with legal standing in the proceeding, but rather by the beneficiary. Therefore, the appeal has not been properly filed, and must be rejected. The director must serve a newly dated copy of the decision, properly addressed to the petitioner. Prior to doing so, the director may also review the materials submitted with the rejected appeal in order to determine what effect, if any, those materials may have on that decision.

ORDER: The appeal is rejected. The matter is returned to the director for the limited purpose of the reissuance of the decision.