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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



Public Copy

File: [Redacted]

Office: Vermont Service Center

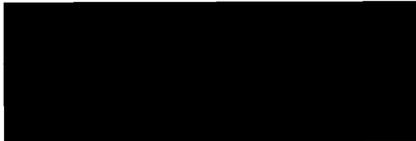
Date: AUG 1 2001

IN RE: Petitioner:
Beneficiary:



Petition: 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)

IN BEHALF OF PETITIONER:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

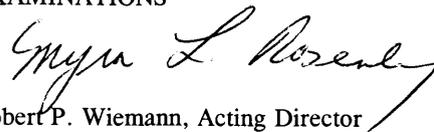
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


for Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The approval of the immigrant visa petition was revoked by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The record will be remanded.

The petitioner is a church. It seeks classification of 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), in order to employ him as an assistant to the minister for music.

The Form I-360 petition was approved on August 15, 1994. Upon further review, the center director properly issued a Notice of Intent to Revoke approval of the petition on September 10, 1999. The notice specified that the beneficiary's part-time volunteer work with the church, while engaged in a full-time secular occupation, did not satisfy the two-year prior experience requirement of 8 C.F.R. 204.5(m)(1). The director revoked approval in a decision dated May 26, 2000, determining that the petitioner failed to respond to the Notice of Intent to Revoke.

On appeal, counsel argues that the petitioner did timely respond to the Notice of Intent. Counsel further argued that there was an error in the Notice of Intent in that it named, in one paragraph, an individual unrelated to the petition. The petitioner submitted notarized statements from its staff relating to the preparation and mailing of the response. There was no return mail receipt with the alleged submission.

On review, counsel has not clearly established that the response to the Notice of Intent to Revoke was timely filed. Nevertheless, in recognition of the petitioner's testimony and the typographical error in the Notice of Intent to Revoke, it is appropriate to review the petitioner's response. Therefore, the record of proceeding will be remanded so that the center director can address the petitioner's response to the Notice of Intent to Revoke.

ORDER: The record is remanded for review and the issuance of a new decision.