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U.S. Department of Homeland Security
Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536

[Redacted]

File: [Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: SEP 30 2003

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:

[Redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

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 that 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 Citizenship and Immigration Services (CIS) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was initially approved by the Director, California Service Center. On the basis of new information received and on further review of the record, the director determined that the beneficiary was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the immigrant visa petition, and the reasons therefore, and ultimately revoked the approval of the petition on September 23, 2002. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is a church. At the time of filing, the petitioner sought to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as an associate pastor. The director determined that the petitioner evidently no longer employed the beneficiary, and the petitioner had not persuasively established its ability to pay the beneficiary or that the beneficiary had continuously worked as an associate pastor throughout the two-year period immediately prior to the filing of the petition.

On June 4, 2002, the director issued a notice of intent to revoke, which detailed the director's concerns about the petition (specifically, the petitioner's ability to pay the beneficiary's proffered wage, and the beneficiary's frequent changes of employer). On September 23, 2002, the director revoked the approval of the petition, stating only that the petitioner failed to respond to the notice of intent.

On appeal, the beneficiary's attorney submits evidence of the timely delivery of a response to the notice of intent, as well as a copy of the contents of that response. This response evidently did not reach the record of proceeding, resulting in the director's erroneous conclusion that the petitioner failed to respond. The documentation submitted on appeal overcomes the only stated ground for revocation, i.e. the purported failure to respond to the notice of intent. The director must therefore render a new decision, taking into consideration the timely response to the notice of intent.

We note that counsel is not only the petitioner's attorney of record, but the beneficiary's attorney as well, having represented the beneficiary in his efforts to adjust status prior to the revocation. Neither the appeal nor the response to the notice of intent to revoke contains any material directly from the petitioner itself. The director may wish to request new evidence to establish that the petitioner, and not only the beneficiary, continues to be interested in pursuing this matter. This issue is especially relevant given that one of the grounds underlying the revocation relates to the beneficiary's frequent changes of employment. The petitioner's Form G-28, Notice of Entry of Appearance as Attorney or Representative, is dated January 12, 1998 and cannot serve as *prima facie* evidence that the petitioner remains interested, five years later, in pursuing an appeal.

We further note questions regarding the documentation pertaining to the beneficiary's employment. [REDACTED] senior pastor of the petitioning church, states in a letter dated February 22, 2001, that the beneficiary "is presently working at this church as an associate pastor. [The beneficiary] had begun his employment in 1998." A subsequent letter from [REDACTED] dated March 20, 2001, states that the beneficiary "was employed at this church as an associate pastor who worked in 2000 for our church from January, to March 15." In this second letter [REDACTED] consistently describes the beneficiary's duties and compensation in the past tense and gives no indication that the beneficiary later returned.

The above two letters appear to contain contradictory assertions, the first claiming continuous employment from 1998 to February 2001, the other indicating that the beneficiary left the church on March 15, 2000. This discrepancy could perhaps be resolved if the ambiguous wording of the second letter is interpreted to mean that the beneficiary worked from January 2000 to March 15, 2001, thus placing him at the petitioning church on February 22, but not March 20, of that year. This explanation, however, fails to take into account two other employment letters in the record.

In a letter dated March 16, 2001, Rev. [REDACTED] senior pastor of [REDACTED] states that his church employed the beneficiary "as an Associate Pastor . . . from May 2000 to July 2000." On March 24, 2001, Rev. [REDACTED] senior pastor of [REDACTED] states that the beneficiary "was employed at this church as an Associate Pastor . . . from Aug 2000 to Dec 2000." Both of these letters are consistent with the beneficiary's departure from the petitioning church in March 2000.

These letters highlight the necessity of determining whether or not the petitioning church has any desire to pursue the petition or appeal. The most recent communication directly from the petitioner refers to the beneficiary only in the past tense. Furthermore, the petitioner has not shown that all three of these churches belong to the same religious denomination. The statute and regulations require that the beneficiary enter the United States in order to work for the petitioner's religious denomination, the same denomination of which the beneficiary had been a member for at least two years prior to the filing of the petition. If the various churches where the beneficiary worked in 2000 are not affiliated with the same denomination, then the beneficiary has not consistently been a member of, or working for, one denomination.

The director's notice of intent to revoke discusses the above letters. Counsel, in response to the notice, claims that the beneficiary left the petitioning church but then resumed his position there in 2001. Counsel mentions "cancelled checks for 2001" but we cannot find such documents in the record. The only cancelled checks evident in the record are dated between December 1999 and March 2000, submitted in the form of photocopies, two checks to a page. We note that each page shows two consecutively numbered checks dated several weeks apart. The checks are consistent with the finding that the beneficiary permanently left the petitioning church in March 2000.

Pursuant to the above, this matter will be remanded. The director must consider the timely response to the notice of intent to revoke. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.