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U.S. Citizenship  
and Immigration  
Services

01

[REDACTED]

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **NOV 28 2005**  
SRC 02 086 53551

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

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)

ON BEHALF OF PETITIONER:

[REDACTED]

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.

*Mari Johnson*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Acting Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

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 an associate pastor. The director determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization. The director further determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition, that the position qualified as that of a religious worker or that the petitioner had the ability to pay the beneficiary the proffered wage.

On appeal, counsel asserts that Citizenship and Immigration and Services (CIS) did not provide the petitioner or counsel with notice of additional information required to adjudicate the petition and that the service center used the missing information to deny the petition.

On September 9, 2003, at the request of the Texas Service Center, the Atlanta District Office conducted an interview of the beneficiary. According to the district adjudicating officer who conducted the interview, she gave the beneficiary a copy of a Form I-72, Form Letter for Returning Deficient Applications/Petitions, requesting a detailed description of the beneficiary's work and proof of the petitioner's tax-exemption. On appeal, counsel stated that counsel provided the district office with the information requested but that neither she nor the petitioner received a Form I-72 requesting the additional information noted in the director's decision.

In her decision, the acting director stated that, during the interview:

The interviewing officer handed a request for additional evidence. The request for additional evidence explained the pertinent requirements for this type of petition. The petitioner was requested to submit a detailed description of the beneficiary's prior work experience including duties, hours and compensation; a detailed description of the proffered job; petitioner's ability to pay the wages; copy of the IRS's 501(c)(3) certification for the petitioner; and an explanation on when, and how did the beneficiary entered the United States.

The record contains a copy of a Form I-72 that is not dated and contains no identifying information as to whom it was addressed or by whom. The document is checked in block 17 and contains the following notations: "See attached → 501(c)(3) (tax exempt.)" and "Detailed description." There are no documents attached to the Form I-72.

The regulation at 8 C.F.R. § 103.2(b)(8)states:

Except as otherwise provided in this chapter, in other instances where there is no evidence of ineligibility, and initial evidence or eligibility information is missing or the Service finds that the evidence submitted either does not fully establish eligibility for the requested beneficiary or raises underlying question regarding eligibility, the Service shall request the missing initial evidence, and may request additional evidence . . . In such cases, the applicant or petitioner shall be given 12 weeks to respond to a request for evidence.

According to the interviewing adjudicating officer, the only information requested of the "applicant" was detailed information regarding the beneficiary's work and proof of tax-exemption. This request was given to the beneficiary in the presence of his attorney, who is also counsel of record for the Form I-360 petitioner.

We note first that the beneficiary is not an affected party in these proceedings. 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.

The interview was conducted with the beneficiary and his attorney, who happens to be counsel of record for the petitioner. However, we note that the information in support of this petition was requested from the beneficiary and not counsel or the petitioner. The regulation at 8 C.F.R. § 103.5a(c) provides:

In any proceeding which is initiated by the Service, with proposed adverse effect, service of the initiating notice and of notice of any decision by a Service officer shall be accomplished by personal service.

Pursuant to 8 C.F.R. § 103.5a(a)(2), personal service may be effected by any of the following:

- (i) Delivery of a copy personally;
- (ii) Delivery of a copy at a person's dwelling house or usual place of abode by leaving it with some person of suitable age and discretion;
- (iii) Delivery of a copy at the office of an attorney or other person including a corporation, by leaving it with a person in charge;
- (iv) Mailing a copy by certified or registered mail, return receipt requested, addressed to a person at his last known address.

The record does not reflect that the director served the petitioner with a request for evidence in accordance with the regulations. Assuming, however, that service can be considered to have been properly made on counsel, the record does not establish that the request for evidence received by the beneficiary addressed all of the issues that the director relied on in denying the petition.

The record is remanded for the director to properly serve the petitioner with a request for evidence in accordance with the regulations.

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 AAO for review.