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U.S. Citizenship  
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FILE: [REDACTED]  
EAC 02 119 52825

Office: VERMONT SERVICE CENTER

Date: DEC 16 2008

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:



INSTRUCTIONS:

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

  
John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied this employment-based immigrant visa petition. In a subsequent appeal to the Administrative Appeals Office (AAO), the petition was remanded to the service center for issuance of a new decision. The director denied the immigrant visa petition and certified his decision to the AAO. The matter is now before the Administrative Appeals Office (AAO) for review of the director's decision of July 22, 2008. The AAO will withdraw the director's decision and remand the petition to the California Service Center for further consideration and action pursuant to new regulations.

As required under section 2(b)(1) of the Special Immigrant Nonminister Religious Worker Program Act, Pub. L. No. 110-391, 122 Stat. 4193 (2008), U.S. Citizenship and Immigration Services (USCIS) promulgated a rule setting forth new regulations for special immigrant religious worker petitions. Supplementary information published with the new rule specified: "All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule. If documentation is required under this rule that was not required before, the petition will not be denied. Instead the petitioner will be allowed a reasonable period of time to provide the required evidence or information." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008).

Section 557(b) of the Administrative Procedure Act (APA), 5 U.S.C. § 557(b), provides that an initial agency decision is not final if "there is an appeal to, or review on motion of, the agency within time provided by rule." Because there is a pending appeal, USCIS has not issued a final decision on the instant proceeding. Accordingly, the matter is still pending and therefore subject to the new rule.

**ORDER:** The matter is remanded to the director, California Service Center, for the issuance of a request for evidence (if necessary) and a new decision in accordance with the requirements of the new regulation published at 73 Fed. Reg. 72276 (Nov. 26, 2008). If the new decision is adverse to the petitioner, it shall be certified to the AAO for review.