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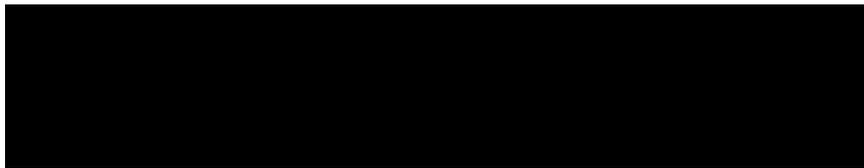
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
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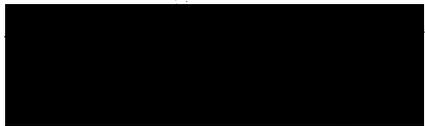


FILE: SRC 01 139 53252 Office: TEXAS SERVICE CENTER Date: **MAY 17 2005**

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:



**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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a district office of a Pentecostal denomination. 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 unspecified functions. The director determined that the petitioner had not submitted any of the required evidence.

On appeal, the petitioner submits the requested evidence and arguments from counsel.

An applicant or petitioner must establish eligibility for a requested immigration benefit. An application or petition form must be completed as applicable and filed with any initial evidence required by regulation or by the instructions on the form. 8 C.F.R. § 103.2(b)(1). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

If a petition is submitted without required initial evidence, 8 C.F.R. § 103.2(b)(8) requires the director to request this evidence from the petitioner, and to allow the petitioner 12 weeks to submit such evidence. All evidence submitted in response to a Service request must be submitted at one time. The submission of only some of the requested evidence will be considered a request for a decision based on the record. 8 C.F.R. § 103.2(b)(11). Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. 8 C.F.R. § 103.2(b)(14).

On March 30, 2001, the petitioner filed the petition without any supporting documents. The filing consisted of the Form I-360 petition, the filing fee, and a cover letter from an attorney whom we now recognize as counsel. The initial filing contained no Form G-28 Notice of Entry of Appearance as Attorney or Representative, and therefore, at the time of filing, the attorney who submitted the petition on the petitioner's behalf could not be recognized as counsel.

Because the initial filing contained no evidence, on July 22, 2002 the director sent a request for evidence to the petitioner, at the address shown on the Form I-360 petition. Because the initial filing of the petition contained no Form G-28, no copy was sent to the attorney now recognized as counsel. On August 2, 2002, [REDACTED] the petitioner's secretary-treasurer, stated: "We have no source of information concerning all the questions that are asked in the request for evidence. This office strictly is a denominational office overseeing approximately 240 Assembly of God churches." [REDACTED] stated that the director should contact [REDACTED] of "Comunidad Misionera Nathaniel", Baton Rouge, Louisiana. Although, as of August 2002, the petitioner still had several months to contact [REDACTED] and obtain the required documents, the record reflects no further action by the petitioner during the permitted response time.

The petitioner, having taken responsibility for the petition, must actually submit the required evidence. The petitioner cannot meet its burden of proof simply by identifying a third party said to be in possession of that evidence. Therefore, [REDACTED] letter did not in any way oblige the director to contact [REDACTED]

The director denied the petition on December 5, 2002, stating that, following the issuance of the request for evidence, "[t]he petitioner responded that they have no evidence concerning the beneficiary." The director denied the petition because "[t]he petitioner did not submit any evidence to prove that this beneficiary qualifies for the requested immigrant benefit."

On appeal, counsel protests: "Notice was not sent to the attorney of record in this case. The only notice that was sent was to the petitioner's office, and was received by personnel who was unaware of the proceedings." Counsel concludes "appropriate notice of the request for evidence had not been received." Because the record does not show that any Form G-28 accompanied the initial filing, counsel was not yet the attorney of record at the time the director issued the request for evidence. The director was in no way negligent in sending the request to the exact address specified on the Form I-360. The assertion that [REDACTED] was unaware of the proceedings" fails to explain why [REDACTED] referred the matter to [REDACTED] at his church. [REDACTED] indicated that the district office oversees over 200 churches, yet he clearly knew which of those many churches was involved.

The petitioner's submission on appeal includes copies of the initial evidence which should have been submitted with the initial filing or in response to the request for evidence. Counsel (who prepared the Form I-360 and mailed it in an envelope bearing her printed address) does not explain why this petition was filed without any supporting evidence whatsoever. Had the evidence accompanied the initial filing, as required, this issue would never have arisen. The submission of a skeletal filing does not entitle a petitioner to special deference or an additional opportunity to submit required initial evidence.

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. The director was correct in finding that the record, at the time, contained no supporting evidence at all. Consequently, the appeal will be dismissed.

We note that, on the Form I-360, the petitioner indicates that the beneficiary has never worked in the United States without permission. Information in the beneficiary's alien file indicates that this is not the case. The petitioner in the present matter had previously filed a Form I-129 petition on the beneficiary's behalf, and the beneficiary entered the United States on May 7, 1996 as an R-1 nonimmigrant religious worker. The beneficiary was subsequently discovered performing secular construction work for [REDACTED] which was not permitted under the terms of his R-1 visa. On December 19, 1996, an immigration judge granted the beneficiary voluntary departure in lieu of deportation for having engaged in this unauthorized secular employment. When considering whether the petitioner knew, or had reason to know, of these prior events, we cannot ignore that the 1996 R-1 petitioner and the present petitioner are one and the same.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.