

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

C1

**PUBLIC COPY**

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

JUL 24 2006

EAC 04 127 50641

IN RE:

Petitioner:

[REDACTED]

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)

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont 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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.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 Buddhist temple. 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 a nun. The director determined that the petitioner had not established that the position qualifies as that of a religious worker or that the petitioner has the ability to pay the beneficiary the proffered wage.

On appeal, counsel submits a brief.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

On appeal, counsel states that on April 27, 2005, it sent a request to the service center asking for an extension of time to reply to the director's request for additional information (RFE) dated February 25, 2005, which notified the petitioner that it must respond to the request no later than May 23, 2005. Counsel asserts that the service center did not respond to the petitioner's request; nonetheless, the petitioner received the information from Viet Nam that had prompted its request for an extension of time, and on May 19, 2005, sent a response to the service center by overnight mail.

In his decision, the director noted that the petitioner had requested additional time in which to submit a response to the RFE. The director stated that the petitioner was notified that, in accordance with the regulation, no

additional time could be granted for responding to the RFE, and that the petition would be adjudicated based on the evidence submitted with the petition. *See* 8 C.F.R. § 103.2(b)(8).

The record contains a copy of the petitioner's response to the RFE indicating that it was received in the service center on May 20, 2005, three days before the deadline for submitting a response and 35 days before the director issued his decision. However, the director's decision does not address the information submitted in response to the RFE.

The record is therefore remanded to the service center for the director to consider and evaluate all evidence of record, including the evidence presented by the petitioner in response to the RFE.

This matter will be remanded. 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.