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U.S. Citizenship
and Immigration
Services

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FILE:

WAC 00 161 50451

Office: CALIFORNIA SERVICE CENTER

Date: MAY 18 2005

IN RE:

Petitioner:

Beneficiary:

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The petitioner appealed the denial, and the Administrative Appeals Office (AAO) remanded the matter to the director for further action and consideration. The director has again denied the petition and forwarded the matter to the AAO. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

In its previous remand order, the AAO instructed the petitioner to certify the new decision to the AAO if that decision was adverse to the petitioner. The director has written the word "CERTIFICATION" on the outside of the file jacket, and has forwarded the record to the AAO without any further response from the petitioner. These actions are consistent with the certification of a decision. The decision itself, however, contains no indication that the decision was to be certified to the AAO. Instead, the director advised the petitioner of its appeal rights, implying that the petitioner would have to file another appeal for the matter to be considered further. Because the record is ambiguous as to whether the decision has been certified to the AAO, we shall review the matter on certification pursuant to 8 C.F.R. § 103.4(a)(1).

The AAO, in its remand order dated March 1, 2005, indicated that the record of proceeding contained several shortcomings that required further inquiry. (We need not repeat the contents of the March 1, 2005 remand order here.) The director's new decision, issued only three weeks later, does not address these issues. Instead, the new decision is based solely on new information, whose source is identified only as "public record." There is no evidence that the director complied with 8 C.F.R. § 103.2(b)(16)(i), which requires the director to advise the petitioner of derogatory evidence before rendering a decision. Of even greater concern, the "public record" materials are not contained in the record of proceeding, and we cannot determine what these "public record" materials are. Therefore, even if the director's new decision had been procedurally sound in every other way, the AAO is unable to examine the "public record" materials and thereby determine whether they support the director's findings. Because the director has not identified the materials, the petitioner has not had a fair opportunity to offer a rebuttal or explanation. We certainly do not dismiss the possibility that the "public record" information fully supports the director's findings, but we must be able to review this information, and the petitioner has the right to know the source and content of this information.¹ Identifying it only as "public record" cannot suffice in this regard.

Therefore, 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 Administrative Appeals Office for review.

¹ 8 C.F.R. § 103.2(b)(16)(iv) indicates that the director need not disclose classified information to the petitioner, but if the information is "public record" as the director indicates, then by definition such information is not classified and this regulatory exception does not apply.