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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

WAC 02 050 53260

Office: CALIFORNIA SERVICE CENTER

Date:

DEC 30 2008

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.


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, approved the employment-based immigrant visa petition. The director subsequently revoked the approval after properly serving the petitioner with a Notice of Intent to Revoke. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The petitioner filed suit in the U.S. District Court for the Central District of California seeking declaratory relief requiring United States Citizenship and Immigration Services (USCIS) to approve the petition. The District Court granted summary judgment in favor of USCIS and the petitioner appealed to the 9th Circuit Court of Appeals. In a decision dated December 5, 2008, the 9th Circuit vacated the decision of the lower court and remanded the case for further review before USCIS. *Love Korean Church v. Chertoff*, __F.3d__, 2008 WL S101962 (9th Cir. Dec. 5, 2008).

In the interim, while the matter was pending in federal court, 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), 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).

As the matter remained pending before the federal court on appeal, the prior decision of the AAO was not considered a final agency action. Section 557(b) of the Administrative Procedure Act (APA), 5 U.S.C. § 557(b). As the matter is still pending, it is 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).