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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE:



Office: TEXAS SERVICE CENTER

Date: FEB 09 2005

IN RE:

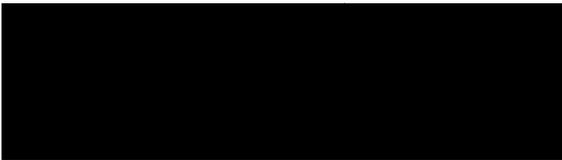
Petitioner:

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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) subsequently remanded the matter for further action and consideration. The director subsequently approved the petition, withdrew that approval, and certified the matter to AAO for review. The decision of the director will be withdrawn and the petition will again be remanded.

In its remand order, dated October 8, 2004, the AAO indicated that the petitioner would have to submit substantial further information and evidence in order to address key questions that persist in the record. The AAO instructed the director to issue a request for evidence in order to obtain this vital material from the petitioner. The AAO also indicated that, regardless of the outcome, the director was to certify the decision to the AAO for review. On November 24, 2004, the director approved the petition and did not certify the approval decision.

The director's notice of certification, dated December 28, 2004, appears to be neither a denial nor an approval of the petition. On page 6 of the notice, the director states "[t]he visa petition should be approved," but then the final paragraph of the notice indicates "this decision serves as notice of intent to revoke the November 24, 2004 approval of the I-360 petition, which was inadvertent." If the notice is, indeed, a notice of intent to revoke the approval, then jurisdiction over the proceeding still resides with the director. There is no provision in the regulations to permit the director to issue a notice of intent to revoke, and then certify the matter so that the AAO, not the director, issues the notice of revocation.

Furthermore, as noted above, the AAO's remand order contained specific instructions for the director to obtain critical documentation from the petitioner. There is nothing in the record to indicate that the director complied with this instruction. Given that less than three months separate the October 8 remand order and the December 28 notice of certification, it does not appear that sufficient time has elapsed to allow the director to issue such a notice and consider the contents of the petitioner's response. Certainly the notice of certification never indicates that such a request for evidence ever went out, let alone discusses any response to such a notice.

Therefore, we hereby remand the proceeding, in order that the director may request the materials discussed in the AAO's October 8 remand order, and then issue a definitive decision that clearly states whether or not the petition is approved or denied. The director must then certify the new decision to the AAO, regardless of the outcome of that decision, in order that the AAO may review the documents that formed the fundamental basis for the prior remand order.

In addition to issuing the request for evidence described above, prior to rendering a new decision, the director should also take into account the petitioner's latest submission, dated January 28, 2005, offered in response to the certified denial covered by this remand order.

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, regardless of the outcome, is to be certified to the Administrative Appeals Office for review.