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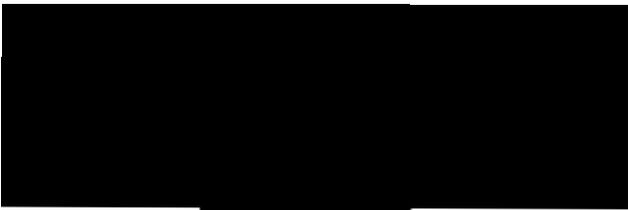
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
SRC 06 024 52988

Office: TEXAS SERVICE CENTER Date:

SEP 04 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.

Robert P. Wiemann
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) rejected the petitioner's appeal as untimely. The petitioner contested the AAO's finding, and the AAO reopened the proceeding on its own motion. The appeal will be dismissed.

The petitioner is a Christian mission organization. It sought 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 an outreach ministry coordinator. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience in the position sought immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that the proffered position qualified as a paid, full-time religious occupation.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days of after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

The director's decision was dated February 9, 2006. The director received the appeal on March 15, 2006, 34 days after the date of the director's decision. Subsequently, the petitioner demonstrated that the director did not actually mail the decision until February 10, 2006. 8 C.F.R. § 103.5a(b) states that service by mail is complete upon mailing. Therefore, the decision was not served, and the 33-day response period did not begin, until February 10, 2006. As a result, the petitioner's March 15, 2006 appeal was timely filed.

Pursuant to 8 C.F.R. § 103.5(a)(5)(ii), the AAO moved to reopen the proceeding via a letter sent to the petitioner on July 10, 2008. In that same letter, the AAO requested additional information pursuant to 8 C.F.R. § 103.2(b)(8).

On August 14, 2008, counsel responded to the AAO's notice. Counsel acknowledged the AAO's request for "specific information," but did not provide the information requested. Instead, citing unspecified "changes of circumstance," counsel stated: "Please be advised that [the petitioner] does not wish to pursue the I-360 [petition] on behalf of [the beneficiary]."

The AAO will not consider counsel's letter to be a formal request to withdraw the appeal, because counsel did not mention withdrawal in the letter. Nevertheless, the assertion that the petitioner "does not wish to pursue" the petition, can only be construed as an abandonment of the petitioner's previous request for a decision on the merits. Furthermore, the petitioner's failure to provide the information requested constitutes grounds for denying the petition, pursuant to 8 C.F.R. § 103.2(b)(14).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. When presented with an opportunity to meet that burden, the petitioner, through counsel, dropped its pursuit of the matter. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.