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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date APR 30 2009

EAC 05 028 52021

IN RE:

Petitioner:

[Redacted]

Beneficiary:

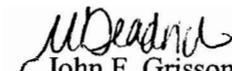
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[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.


John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) remanded the matter to the director for further consideration and action. The director denied the petition for abandonment and, pursuant to the AAO's instructions, certified the decision to the AAO for review. The AAO will affirm the director's denial of the petition for abandonment.

The petitioner is a Presbyterian church. 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 its religious education minister. The director determined that the petitioner had not established that the petitioner had extended a *bona fide* offer of full-time employment to the beneficiary.

In its March 20, 2007 remand order, the AAO found that the director had not adequately justified the denial of the petition. Nevertheless, the AAO noted that "the petitioner must establish that the beneficiary was continuously performing the duties of a religious education minister throughout the two years immediately prior to [the petition's filing] date," under the regulation at 8 C.F.R. § 204.5(m)(3)(ii)(A) then in effect. The AAO also found that further evidence was necessary to establish the existence of a valid job offer and the petitioner's ability to meet the terms of that job offer, pursuant to 8 C.F.R. §§ 204.5(g)(2) and (m)(4) then in effect. The AAO instructed the petitioner to request the necessary evidence and issue a new, certified decision.

On February 14, 2008, the director issued a request for evidence pursuant to the AAO's instructions, and allowed the petitioner 33 days to respond. The record contains no response to that notice. The director denied the petition on February 27, 2009, stating:

It does not appear that the petitioner has responded to the notice within the allowed period of time.

Therefore, upon review and consideration of the record, and upon certification of the AAO, the petition will be deemed abandoned and denied per 8 C.F.R. 103.2(b)(13).

The director sent the notice of certification to counsel's address of record. The director allowed the petitioner 30 days to respond to the certified decision, pursuant to 8 C.F.R. § 103.4(a)(2). Because 8 C.F.R. § 103.2(b)(15) precludes appellate review of denial due to abandonment, the AAO will limit its consideration to the grounds on which a denial due to abandonment may be reopened. Those grounds are set forth at 8 C.F.R. § 103.5(a)(2), which states that a motion to reopen an application or petition denied due to abandonment must be filed with evidence that the decision was in error because:

- (i) The requested evidence was not material to the issue of eligibility;
- (ii) The required initial evidence was submitted with the application or petition, or the request for initial evidence or additional information or appearance was complied with during the allotted period; or

(iii) The request for additional information or appearance was sent to an address other than that on the application, petition, or notice of representation, or that the applicant or petitioner advised the Service, in writing, of a change of address or change of representation subsequent to filing and before the Service's request was sent, and the request did not go to the new address.

If the petitioner cannot establish that the director erred by denying the petition for abandonment, then there is no provision for the AAO to consider the merits of the petition.

As noted above, the director allowed the petitioner 30 days to respond to the notice of certification. The allotted period has elapsed, and the record contains no further response from the petitioner. The AAO therefore considers the record to be complete. Because the record lacks a timely response to the notice of certification, the AAO affirms the director's denial of the petition for abandonment.

ORDER: The director's decision of February 27, 2009 is affirmed. The petition is denied for abandonment.