

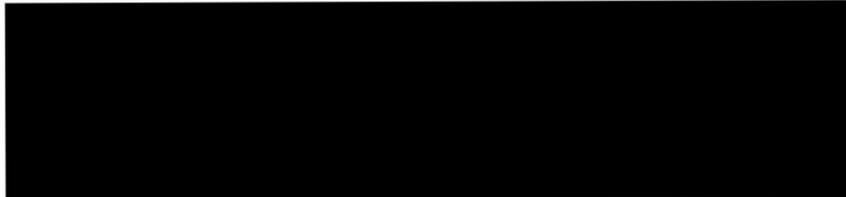
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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
and Immigration
Services

PUBLIC COPY



C1

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **JUL 17 2009**
WAC 08 098 51197

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

SELF-REPRESENTED

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, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision and remand the petition to the California Service Center for further consideration and action pursuant to new regulations.

The petition was filed February 19, 2008. On September 23, 2008, pursuant to 8 C.F.R. § 103.2(b)(8), the director issued a request for evidence (RFE). The RFE quoted extensively from the regulations at 8 C.F.R. § 204.5(m) in effect at that time. The director allowed the petitioner until December 16, 2008 to respond to the RFE.

On November 26, 2008, 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), U.S. Citizenship and Immigration Services (USCIS) promulgated a rule setting forth new regulations for special immigrant religious worker petitions. 73 Fed. Reg. 72276 (Nov. 26, 2008). This rule replaced the old regulations at 8 C.F.R. § 204.5(m) with new regulations.

The director denied the petition on December 22, 2008. In the decision, the director quoted extensively from the new regulations and found that the petitioner had failed to provide evidence of tax-exempt status. The new regulation at 8 C.F.R. § 204.5(m)(8) requires specific documentation that was optional under the older regulation at 8 C.F.R. § 204.5(m)(3)(i).

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).

The director, however, did not follow this instruction. The director denied the petition based on new evidentiary requirements, without first issuing a new RFE to give the petitioner the opportunity to meet those new requirements.

Also, the director's decision was limited to only one of the new requirements. Documents submitted on appeal appear to meet this requirement (pertaining to tax-exempt status). The new regulations, however, contain several other new requirements. 8 C.F.R. § 204.5(m)(11), for instance, requires the petitioner to show that the beneficiary's employment in the United States during the two years immediately preceding the petition's filing date was authorized under United States immigration law.

The director must issue a new RFE based on the new regulations promulgated on November 26, 2008, and then issue a new decision based on the petitioner's response to the RFE (as well as evidence already in the record). 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 matter is remanded to the director, California Service Center, for the issuance of a request for evidence and a new decision in accordance with the requirements of the new regulation published at 73 Fed. Reg. 72276 (Nov. 26, 2008). If the new decision is adverse to the petitioner, it shall be certified to the Administrative Appeals Office for review.