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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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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: NOV 27 2009
SRC 06 068 51020

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.

Perry Rhew
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.

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. 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).

Despite the issuance of new regulations (which superseded and replaced the old regulations), the director denied the present petition on January 6, 2009 under the old regulations, rather than under the new regulations. Therefore, the director erroneously based the decision on obsolete regulations that were no longer in effect at the time of the decision.

The director must issue a new decision based on the new regulations published on November 26, 2008. Because the new regulations include substantial new evidentiary requirements, the director must also afford the petitioner an opportunity to submit all such evidence that the petitioner did not initially submit, or that the director has not previously requested. 8 C.F.R. § 103.2(b)(8). 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 (if necessary) 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.