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

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U.S. Citizenship  
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SEP 11 2009

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:  
EAC 06 215 50119

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO remanded the matter to the director for issuance of a new decision under substantially revised regulations. The director again denied the petition and, on the AAO's instruction, certified the decision to the AAO for review. The AAO will affirm the director's decision to deny the petition.

The beneficiary seeks classification 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 a minister at Metro International Church, Brooklyn, New York. The director denied the petition after receiving no response to a notice of intent to deny the petition.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.4(a)(2) indicates that the petitioner may submit a brief within 30 days after the director serves notice of a certified decision. The director issued the certified denial on July 16, 2009. The permitted time period has elapsed, and the AAO has received no response to the certified denial. The AAO therefore considers the record to be complete as it now stands.

We note that correspondence in the record indicates that the petitioner left the United States in January 2008, but has continued to use a Brooklyn mailing address. Because the petitioner has provided no other mailing address, we have used the Brooklyn address in this decision.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before September 30, 2009, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before September 30, 2009, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The petitioner filed the petition on July 17, 2006. The director initially denied the petition on January 16, 2008, under regulations at 8 C.F.R. § 204.5(m) in effect at the time. Because the AAO previously withdrew that decision, we need not discuss the original grounds for denial.

The petitioner appealed the decision on February 14, 2008. That appeal was still pending when, on November 26, 2008, 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).

In keeping with the above instructions, the AAO remanded the matter to the director on December 11, 2008, to allow the petitioner the opportunity to comply with substantial new evidentiary requirements.

On May 12, 2009, the director advised the petitioner of the new requirements, and stated that the petition would be denied unless the petitioner submitted the required evidence no later than June 11, 2009. The record does not contain any response to this notice.

On July 16, 2009, the director denied the petition based on the petitioner's failure to respond to the May 12, 2009 notice. As noted above, the record contains no response to the certified denial, and the deadline for a timely response has passed.

We affirm the director's finding that the petition must be denied because the petitioner failed to provide requested information. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. 8 C.F.R. § 103.2(b)(14).

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

We note that, in correspondence dated May 6, 2009, an official of Metro International Church wrote to the director, stating: "Metro International Church no longer intends to employ" the petitioner. Classification as a special immigrant religious worker requires a specific job offer from an identified employer; a general intent to perform religious work cannot suffice. 8 C.F.R. § 204.5(m)(7) lists the

information that the intending employer must provide in an attestation. Other references to the job offer can be found throughout the regulations at 8 C.F.R. § 204.5(m).

The petitioner based the present petition on a job offer from Metro International Church. Because “Metro International Church no longer intends to employ” the petitioner, the required job offer no longer exists. The petitioner can no longer meet a basic, essential requirement of the classification. The disappearance of the job offer provides a second reason why the petition cannot be approved, and must therefore be denied.

The AAO will affirm the denial for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The director’s decision of July 16, 2009 is affirmed.