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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  
and Immigration  
Services**

C1

[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 05 2010  
WAC 07 171 50072

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:

[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.

*Mari Plunson*

*S* Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) remanded the matter for consideration under new regulations. The director again denied the petition and, following the AAO's instructions, certified the decision to the AAO for review. The AAO will again withdraw the director's decision and remand the petition for further consideration and action.

The petitioner is a 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 a minister. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous membership in the denomination and two years of continuous work experience in a qualifying religious vocation or occupation for the period immediately preceding the filing date of the visa petition.

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). 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).

Therefore, on December 12, 2008, the AAO remanded the petition to the director for consideration and action pursuant to the new regulations. On remand, the director issued the petitioner a Notice of Intent to Deny, advising the petitioner of the deficiencies in its petition, to which the petitioner responded with a letter and 13 exhibits. The director, however, did not address the petitioner's response or the new regulations in her certified decision to the AAO. The director erroneously based the certified decision on obsolete regulations that were no longer in effect.

Accordingly, the matter is again remanded to the director for consideration of the petitioner's evidence based on the new regulations promulgated on November 26, 2008. 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 for the issuance of 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 AAO for review.