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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

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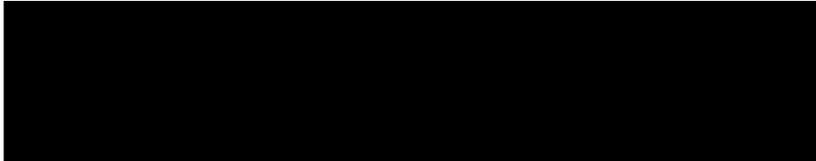


FILE: WAC 06 216 51639 Office: CALIFORNIA SERVICE CENTER Date: FEB 26 2010

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)

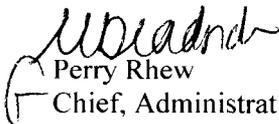
ON BEHALF OF PETITIONER:



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).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a second appeal. The appeal will be rejected.

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 pastor. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition and that it has extended a qualifying job offer to the beneficiary. The director therefore denied the petition on August 30, 2007. The AAO dismissed the petitioner's appeal on October 16, 2008. On November 17, 2008, the petitioner appealed the AAO's dismissal of the appeal.

The petitioner's appeal must be rejected. The AAO does not exercise appellate jurisdiction over AAO decisions. The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). *See* DHS Delegation Number 0150.1; 8 C.F.R. § 103.3(a)(iv). Accordingly, the appeal is not properly before the AAO.

Therefore, as the appeal was not properly filed, it will be rejected. 8 C.F.R. §103.3(a)(2)(v)(A)(I).

It should be noted that the petitioner had the option of filing a motion to reopen or a motion to reconsider the AAO's most recent decision within 33 days of service pursuant to 8 C.F.R. § 103.5 but neither the Form I-290B itself nor counsel's brief indicated an intent to file a motion.¹

ORDER: The appeal is rejected.

¹ Even if properly under the AAO's jurisdiction as a motion, which it is not, counsel's claims are not sufficient to meet the requirements of a motion to reopen or reconsider. Counsel argues the ineffective assistance of counsel who previously represented the petitioner. However, the record does not contain an affidavit from the petitioner and does not reflect whether or not a complaint has been filed against prior counsel as required by *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988).