

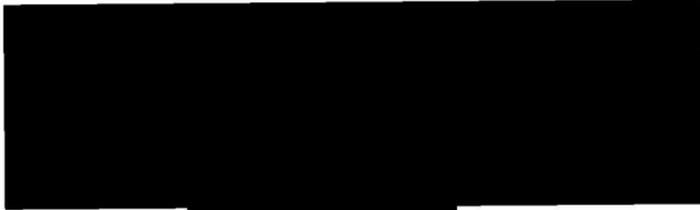
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

JAN 06 2010

WAC 07 140 50276

IN RE:

Petitioner:



Beneficiary:

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 Director, California Service Center, denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO subsequently remanded the petition to the director for a new decision based on revised regulations. The director determined that the petitioner had failed to submit required evidence, and therefore the director again denied the petition and certified the decision to the AAO. The AAO will affirm the director's decision.

The petitioner is a church of the Roman Catholic denomination. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Act to perform services as a deacon. 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, 2012, 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, 2012, 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 April 25, 2007. The director denied the petition on November 28, 2007, based on the finding that the beneficiary's secular work as a laboratory coordinator interrupted the continuity of his religious work. [REDACTED] of the petitioning church, had stated that the beneficiary's "employment at Mount Sinai as a Lab Coordinator is only supplementary, for the purpose of maintaining him and his family (wife and two adult children) above the poverty level." This indicates that the beneficiary's salary from his religious work was not sufficient, by itself, to keep the beneficiary's family "above the poverty level."

On appeal, counsel contested the director's interpretation of the term "continuous."

On November 26, 2008, while the appeal was pending, U.S. Citizenship and Immigration Services (USCIS) published substantially revised regulations at 8 C.F.R. § 204.5(m) relating to special immigrant religious workers. 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." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008).

Section 557(b) of the Administrative Procedure Act (APA), 5 U.S.C. § 557(b), provides that an initial agency decision is not final if "there is an appeal to, or review on motion of, the agency within time provided by rule." Therefore, USCIS considered the matter to be still pending on November 26, 2008, and therefore subject to the new rule. The AAO remanded the petition to the director on December 16, 2008, for consideration under the new regulations.

On February 4, 2009, the director advised the petitioner of new evidentiary requirements at 8 C.F.R. §§ 204.5(m)(7), (8), (10) and (11), relating, respectively, to the employer's detailed attestation; the employer's tax-exempt status; the beneficiary's intended future compensation; and the beneficiary's past employment. The director notified the petitioner that the petition could not be approved unless the petitioner provided all of the required evidence, and that "[f]ailure to respond to this request will result in the denial of the petition." The record contains no response to the director's notice, either from the petitioner or from counsel.

The director denied the petition on May 31, 2009, stating that the petitioner had failed to respond to the February 4, 2009 notice, and that, therefore, the petitioner had failed to meet its burden of proof. As required by 8 C.F.R. § 103.4(b)(2), the director allowed the petitioner 30 days in which to submit a brief in response to the certified decision. To date, six months later, the record contains no further correspondence from the petitioner or from counsel.

The record supports the director's narrative of events. Because the petitioner has proven to be either unwilling or unable to submit required evidence in this proceeding, we affirm the director's finding that the petitioner has not established that the petition can be approved. 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 burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will affirm the director's decision.

**ORDER:** The director's decision of May 31, 2009 is affirmed. The petition is denied.