

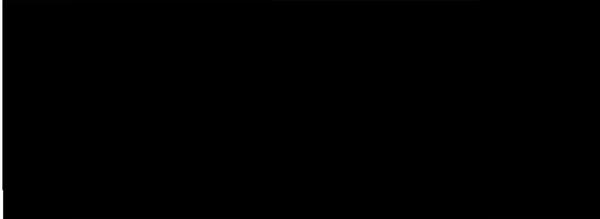
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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FILE: [Redacted]  
WAC 07 227 50741

Office: CALIFORNIA SERVICE CENTER

Date:

MAY 12 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)

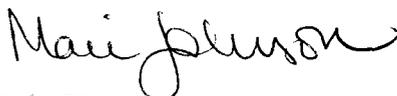
ON BEHALF OF PETITIONER:



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 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 denied the petition for abandonment. The petitioner filed a motion to reopen the petition. The director dismissed the motion. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will reject the appeal.

The petitioner is a Conservative Jewish temple. 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 teacher in the petitioner's children's center.

On July 28, 2009, the director issued a notice of intent to deny the petition. The director allowed the petitioner until August 27, 2009 to respond to the notice, and advised the petitioner: "Failure to respond to this request will result in the denial of the petition." The record contains no timely response to the notice.

The petitioner submitted an untimely response to the notice, postmarked September 3, 2009. The director received the response the next day. Counsel, at the time, stated that because "the Notice was sent in the middle of the summer, the school's director, [REDACTED] was not available to sign [a required] attestation until now. We hope that you consider the enclosed evidence and not penalize my clients for the timing of this Response."

Additional time to respond to a request for evidence or notice of intent to deny may not be granted. 8 C.F.R. § 103.2(b)(8)(iv). There exists no provision to allow for a late response to a notice of intent to deny.

The director denied the petition on September 5, 2009, citing the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.2(b)(13), which states: "If the petitioner or applicant fails to respond to a request for evidence or to a notice of intent to deny by the required date, the application or petition may be summarily denied as abandoned."

Under 8 C.F.R. § 103.2(b)(15), a denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under 8 C.F.R. § 103.5(a)(2), which states that a motion to reopen an application or petition denied due to abandonment must be filed with evidence that the decision was in error because:

- (i) The requested evidence was not material to the issue of eligibility;
- (ii) The required initial evidence was submitted with the application or petition, or the request for initial evidence or additional information or appearance was complied with during the allotted period; or
- (iii) The request for additional information or appearance was sent to an address other

than that on the application, petition, or notice of representation, or that the applicant or petitioner advised the Service, in writing, of a change of address or change of representation subsequent to filing and before the Service's request was sent, and the request did not go to the new address.

The cited regulation does not identify any other circumstance under which the petitioner may successfully move to reopen a petition denied for abandonment.

The director dismissed the petitioner's motion on November 10, 2009. The petitioner appealed the director's decision on December 10, 2009. A field office decision made as a result of a motion may be appealed to the AAO only if the original decision was appealable to the AAO. 8 C.F.R. § 103.5(a)(6). Because a denial for abandonment is not appealable to the AAO, the dismissal of the petitioner's motion is, likewise, not appealable to the AAO. Procedurally, this matter lies outside of the AAO's jurisdiction and we must reject the appeal.

**ORDER:** The appeal is rejected.