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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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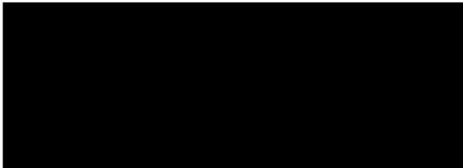
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAR 17 2011

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Derry 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 issued a notice of approval, then a notice of automatic revocation, and afterward certified a denial decision to the AAO. The AAO will withdraw the director's decision and remand the petition for further action and consideration.

The petitioner is a Baptist 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 an English teacher at the petitioner's school. The director determined that the petitioner had not established that the position fits the regulatory definition of a religious occupation at 8 C.F.R. § 204.5(m)(5).

The petitioner filed the Form I-360 petition on May 18, 2006. The director denied the petition on September 20, 2007, stating that the petitioner had not shown that the duties of an English teacher relate to a traditional religious function (a requirement under the regulatory definition of "religious occupation"). The petitioner filed a timely appeal to that decision on October 22, 2007.

While the appeal was pending, USCIS published 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). On December 5, 2008, the AAO remanded the petition to the director for a new decision under the revised regulations.

USCIS records indicate that the director issued a notice of approval on September 1, 2009. Later, on September 30, 2009, the director issued a notice that read, in part:

The Director . . . approved the petition on September 1, 2009.

After further review it has been determined that the prior decision was made in error; the beneficiary was not eligible for the classification granted. A separate notice will follow.

In accordance with 8 C.F.R. 204.9(f), the approval of the petition is automatically revoked as of the date of its approval because the petitioner is no longer qualified for classification as special immigrant as defined by section 101(a)(27)(C) of the Act.

All USCIS action in this matter is terminated as of the date of this notice. There is no appeal from this decision.

On October 13, 2009, the director issued a notice of certification, informing the petitioner of the denial of the petition and allowing the petitioner 30 days to submit a response. The record contains no further correspondence from the petitioner or counsel.

The director's September 30, 2009 notice is flawed and cannot stand. The director stated: "In accordance with 8 C.F.R. 204.9(f), the approval of the petition is automatically revoked." The regulation at 8 C.F.R. § 204.9(f), however, has nothing to do with special immigrant religious worker petitions. The cited regulation reads, in part:

If an Armed Forces special immigrant ceases to be a qualified enlistee by failing to complete the required active duty service obligation for reasons other than an honorable discharge prior to entering the United States with an immigrant visa or approval of an application for adjustment of status to that of an alien lawfully admitted for permanent residence, the petition designating his or her classification as a special immigrant is revoked automatically under the general provisions of section 205 of the Act.

The petitioner seeks to classify the beneficiary as a special immigrant religious worker, not as an Armed Forces special immigrant. The director clearly cited the regulation at 8 C.F.R. § 204.9(f) in error, but the director offered no other justification for the automatic revocation of the approval of the petition.

The regulation at 8 C.F.R. § 205.1(a)(3)(iii) spells out four limited circumstances that permit the automatic revocation of the approval of a petition filed under section 203(b) of the Act. Clauses (A) and (D) do not apply to special immigrant religious worker petitions. The director has not shown that clauses (B) (death of the petitioner or beneficiary) or (C) (written notice of withdrawal) apply here.

If the director believes that USCIS approved the petition in error, then the director must first issue a notice of intent to revoke the approval, following the procedures outlined in the regulations at 8 C.F.R. § 205.2. The director cannot simply issue a notice of automatic revocation (citing inapplicable regulations) followed by a certified denial.

Therefore, the AAO will remand this matter for a new decision. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. 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 director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.