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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  
and Immigration  
Services**



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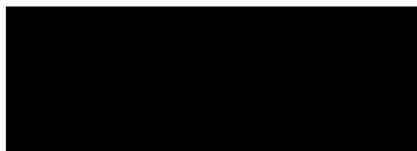
DATE: **FEB 29 2012** OFFICE: CALIFORNIA SERVICE CENTER

FILE:

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:**

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is a subsidiary church of the Church of Scientology International. 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 ethics officer. The director determined that the petitioner had not established that the beneficiary had the required two years of continuous, lawful work experience immediately preceding the filing date of the petition.

On appeal, counsel indicates that a brief will be forthcoming within 30 days. To date, 20 months after the filing of the appeal, the record contains no further substantive submission from the petitioner. The AAO therefore considers the record to be complete as it now stands.

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 U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the beneficiary has been working as a minister or in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States, continuously

for at least the two-year period immediately preceding the filing of the petition. The USCIS regulation at 8 C.F.R. § 204.5(m)(11) requires that qualifying prior experience, if acquired in the United States, must have been authorized under United States immigration law.

The petitioner filed the Form I-360 petition on December 11, 2009. On that form, asked to specify the beneficiary's current nonimmigrant status, the petitioner stated: "Pending Adjust[ment] of Status." Asked whether the beneficiary had worked in the United States without authorization, the petitioner answered:

Yes. Petitioner filed a Form I-129 Petition for a Nonimmigrant Worker on behalf of [the beneficiary] in June 2009, requesting an extension of his R-1 status (Receipt number was [REDACTED]). A denial decision was issued on 10/27/2009, which contains errors of law and fact, however rather than filing a Form I-290B [Notice of Appeal or Motion], we are addressing the denial reasoning herein, while filing a concurrent Form I-360 petition and I-485 application, as is allowed under INA 245(k).

The director denied the petition on May 13, 2010, stating that USCIS had no record of a "change in status, approved extension of status or the beneficiary leaving the United States at the end of his validity date of June 27, 2009." The director concluded that the petitioner failed to maintain lawful nonimmigrant status during the two-year qualifying period.

On appeal, counsel repeats the prior claim that "[t]he I-129 R-1 extension denial was clearly flawed." The extension application was a separate proceeding from the present special immigrant petition. A special immigrant petition is not a forum for disputing the denial of a previous petition or application. There is no appeal from the denial of an application for extension of stay filed on Form I-129. 8 C.F.R. § 214.1(c)(5). The petitioner does not claim to have filed a motion to reconsider the director's decision on the extension application under the regulation at 8 C.F.R. § 103.5(a), which is the proper forum to claim that the decision was based on an incorrect application of law or USCIS policy.

At the appellate stage, the petitioner's filing of the present appeal did not, and cannot, place the previously denied extension application under the AAO's jurisdiction. Therefore, the AAO cannot entertain any claim that the extension denial was in error and should therefore be ignored.

Counsel also disputes the regulatory provisions at 8 C.F.R. §§ 204.5(m)(4) and (11), requiring lawful status and employment authorization. The AAO lacks the authority to overturn USCIS regulations. The regulations are binding on USCIS employees in their administration of the Act, and neither the director nor the AAO has discretion to disregard it. *See, e.g., Panhandle Eastern Pipe Line Co. v. Federal Energy Regulatory Commission*, 613 F.2d 1120 (C.A.D.C., 1979) (an agency is bound by its own regulations); *Reuters Ltd. v. F.C.C.*, 781 F.2d 946, (C.A.D.C., 1986) (an agency must adhere to its own rules and regulations; *ad hoc* departures from those rules, even to achieve laudable aims, cannot be sanctioned).

The record does not contain the promised supplement to the appeal. Therefore, the appeal rests entirely on two points: (1) the director should have approved the previous extension application; and (2) the director erred by following the existing regulations. Neither of these assertions is grounds for reversing the denial of the present special immigrant petition, and therefore the AAO must dismiss the appeal.

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 met that burden. Accordingly, the AAO will dismiss the appeal.

**ORDER:** The appeal is dismissed.