

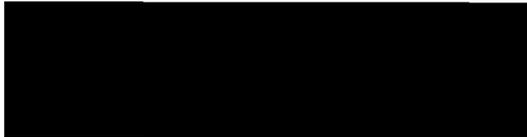
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



C1

DATE: **MAR 28 2012** OFFICE: CALIFORNIA SERVICE CENTER

FILE:



IN RE:

Petitioner:

Beneficiary:



PETITION: 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 California Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

A handwritten signature in cursive script that reads "Perry Rhew".
Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The Director, Milwaukee Field Office, (“MFO”) denied the employment-based immigrant visa petition. The petitioner timely filed an appeal to the denied petition. The matter is now before the Administrative Appeals Office (“AAO”) on appeal. The AAO will withdraw the MFO’s decision and remand the petition to the Director, California Service Center (“CSC”), for further consideration and action.

The petitioner is a Sikh 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 temple priest. On August 18, 2009, the petitioner filed a Form I-360 petition. On September 1, 2010, the MFO denied the petition, finding that “the beneficiary is in violation of his R-1 visa status” and will not be coming to the United States solely for the purpose of carrying on the vocation of a minister.

On appeal, the petitioner submits a brief and further evidence.

The AAO will withdraw the MFO’s adverse decision because the MFO based its decision on outdated regulations and because it had no authority to issue the decision.

On November 26, 2008, as required under section 2(b)(1) of the Special Immigrant Nonminister Religious Worker Program Act, Pub. L. No. 110-391, 122 Stat. 4193 (2008), U.S. Citizenship and Immigration Services (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).

As this petition was filed after promulgation of these new regulations, the new regulations apply.

The supplemental information further provides:

[A]t this time, the USCIS California Service Center is processing all religious nonimmigrant and immigrant religious worker petitions. This specialization promotes expertise that leads to prompt processing of religious worker petitions.

73 Fed. Reg. 72282.

As jurisdiction over all religious worker petitions rested with the CSC at the time of the MFO’s decision, the MFO had no authority to adjudicate the petition.

Accordingly, this matter will be remanded to the Director, CSC for issuance of a new decision based on the regulations promulgated on November 26, 2008.

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 matter is remanded to the director, California Service Center, for the issuance of a request for evidence (if necessary) and a new decision in accordance with the requirements of the new regulation published at 73 Fed. Reg. 72276 (Nov. 26, 2008). If the new decision is adverse to the petitioner, it shall be certified to the AAO for review.