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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: WAC 07 267 50623 Office: CALIFORNIA SERVICE CENTER Date:

**JAN 07 2010**

IN RE: Petitioner:  
Beneficiary:



PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1)

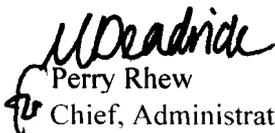
ON BEHALF OF PETITIONER:



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 nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will reject the appeal.

The petitioner is a Baptist church. It seeks to extend the beneficiary's status as a nonimmigrant religious worker under section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1), to perform services as a music director. The director determined that the petitioner lacked the ability to compensate the beneficiary at the offered rate.

When the director denied the petition on November 19, 2008, the regulations in effect at that time contained no provision to allow the petitioner to appeal the denial of an R-1 nonimmigrant visa petition. While a new regulation establishing such appeal rights went into effect on November 26, 2008, that regulation applied only to newly filed petitions and to "cases pending on the rule's effective date." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008). Because the petition was denied without appeal rights on November 19, 2008, the petition was not "pending" when the new rule took effect on November 26, 2008.

Because the petition was denied at a time when no provision existed to allow for an appeal, the AAO cannot accept, and must therefore reject, the appeal.

**ORDER:** The appeal is rejected.