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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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D13



FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 07 2011

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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:  
[Redacted]

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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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*  
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 appeal will be dismissed.

The petitioner seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 101(a)(15)(R)(1) of the Act to perform services as an Hispanic planting pastor. The director denied the petition based on the petitioner's failure to timely respond to the director's request for evidence (RFE).

On appeal, counsel asserts that the regulation at 8 C.F.R. § 103.2(b)(8) "clearly directs USCIS [U.S. Citizenship and Immigration Services] to grant a petitioner up to 12 weeks to respond to an RFE." Counsel submits the documentation that he states was submitted in response to the RFE.

Section 101(a)(15)(R) of the Act pertains to an alien who:

- (i) for the 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; and
- (ii) seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii).

Section 101(a)(27)(C)(ii) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii), pertains to a nonimmigrant who seeks to enter the United States:

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
- (II) . . . 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) . . . 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.

The issue presented is whether the director's denial based upon the petitioner's failure to timely respond to the RFE was in error.

The petition was filed on November 13, 2009. On February 2, 2010, the director issued the petitioner an RFE, requesting additional documentation to establish the beneficiary's eligibility for the visa classification, including documentation regarding the petitioner's denomination, the proffered position, and how the petitioner intends to compensate the beneficiary. The director advised the petitioner that it had until March 16, 2010 to submit the requested documentation.

In a letter dated March 15, 2010, received by USCIS on March 16, 2010, counsel requested a 30-day extension of the time in which to respond to the RFE. On April 13, 2010, the director denied the petition based on the petitioner's failure to respond to the RFE. The director cited the regulation at 8 C.F.R. § 103.2(b)(8), and stated that the regulation did not permit additional time in which to respond to the RFE. The director, however, erroneously quoted the regulation as requiring a period of 12 weeks in which to respond to the RFE.

On appeal, counsel does not dispute the petitioner's failure to submit a timely response. Rather, he argues that the regulation, as cited by the director in his decision, provided that the petitioner "shall be given 12 weeks" in which to respond to an RFE, that the petitioner had not been given the requisite time and that counsel had timely requested an extension of time to submit a response. We are not persuaded by counsel's arguments. While we acknowledge that the director cited to an outdated version of 8 C.F.R. § 103.2(b)(8) in the final decision, we find such error to be harmless.

The applicable regulations at 8 C.F.R. § 103.2(b)(8), which became effective on June 18, 2007,<sup>1</sup> provide, in pertinent part:

(iii) *Other evidence.* If all required initial evidence has been submitted but the evidence submitted does not establish eligibility, USCIS may: deny the application or petition for ineligibility; request more information or evidence from the applicant or petitioner, to be submitted within a specified period of time as determined by USCIS; or notify the applicant or petitioner of its intent to deny the application or petition . . . .

(iv) *Process.* A request for evidence . . . will be in writing and will specify the type of evidence required . . . The request for evidence . . . will indicate the deadline for response, but in no case shall the maximum response period provided in a request for evidence exceed twelve weeks . . . Additional time to respond to a request for evidence . . . may not be granted.

[Emphasis added.]

The director's issuance of the RFE with a specific date of less than 12 weeks is not in conflict with the regulation. The fact that the director cited to an erroneous provision in the final decision did not cause the petitioner any harm in regard to the issuance of the RFE. The regulation does not allow for extensions or for piecemeal responses; all requested material must be submitted at one time. *Id.* See also 8 C.F.R. § 103.2(b)(11). It remains that the petitioner failed to timely respond to the RFE which was issued in accordance with the regulation.

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<sup>1</sup> 72 Fed. Reg. 19100 (April 17, 2007).

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in a timely response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

The director denied the petition based upon the petitioner's failure to provide a timely response to the RFE. We find the petition was properly denied. Consequently, the appeal will be dismissed.

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 sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.