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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**



C,

DATE: **AUG 14 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, 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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) remanded the matter for consideration under new regulations. The director again denied the petition and, following the AAO's instructions, certified the decision to the AAO for review. The AAO will withdraw the director's decision and will again remand the matter for further action and consideration.

The record reflects that the petitioner was represented by [REDACTED] during the initial stages of this proceeding. On August 14, 2006, [REDACTED] submitted a properly executed Form G-28, Notice of Entry of Appearance as Attorney or Representative, authorizing him to act on behalf of the petitioner. On appeal, the current counsel, [REDACTED] of the law firm of [REDACTED] submitted a Form G-28 dated November 18, 2008 authorizing him to represent the petitioner. Accordingly, as of that date, [REDACTED] became the petitioner's attorney of record.

The regulation at 8 C.F.R. § 292.5(a) provides:

Whenever a person is required by any of the provisions of this chapter to give or be given notice; to serve or be served with any paper other than a warrant of arrest or a subpoena; to make a motion; to file or submit an application or other document; or to perform or waive the performance of any act, such notice, service, motion, filing, submission, performance, or waiver shall be given by or to, served by or upon, made by, or requested of the attorney or representative of record, or the person himself if unrepresented.

However, following the AAO's remand for consideration under new regulations, the director issued a request for evidence (RFE) dated April 22, 2010 to [REDACTED] seeking the attestation required by the regulation at 8 C.F.R. § 204.5(m)(7). [REDACTED] responded with the requested documentation in a letter dated May 18, 2010. The director's certified decision was sent to the petitioner and to [REDACTED]. The AAO received no additional documentation on certification.

The director failed to properly serve a copy of the RFE and the certified decision on [REDACTED] who is now counsel of record. Therefore, the matter is remanded for service in accordance with the regulation at 8 C.F.R. § 292.5(a).

Additionally, although the AAO remanded the decision for consideration under regulations promulgated on November 26, 2008, the director again issued her decision citing to the superseded regulations. Accordingly, the matter is also remanded to the director for consideration of the petition under current regulations.

The AAO notes that in her initial decision, the director determined that the petitioner had not established that the beneficiary worked continuously in a qualifying religious occupation or vocation for the two years immediately preceding the filing of the petition. However, the director's certified decision does not cite this issue as a basis for denying the petition. Nonetheless, the director still questions whether the beneficiary worked as an imam during the

qualifying period. While the current controlling regulation does not require the beneficiary's qualifying work to be in the same religious occupation or vocation, his failure to work as an imam raises the issue of whether the petitioner and beneficiary complied with the terms of the previously approved R-1 nonimmigrant visa petition. The director shall inquire into this issue on remand.

The matter will be remanded. 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 AAO for review.