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U.S. Department of Homeland Security
Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536



DEC 16 2003

File:

Office: VERMONT SERVICE CENTER

Date:

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:



PUBLIC COPY

INSTRUCTIONS:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Cindy M. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, approved the immigrant visa petition on motion, following an appeal. The Director, Vermont Service Center received a request to withdraw the I-360, Petition for Amerasian, Widow or Special Immigrant, from representatives of the petitioning organization. Following the submission of a Form I-485, Application to Register Permanent Residence or Adjust Status, the Philadelphia District Director denied the permanent resident application and forwarded an Acknowledgement of Withdrawal of the I-360 petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner is a religious organization. It seeks classification of 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 "Minister."

On appeal, a Form G-28, Notice of Entry of Appearance as Attorney or Representative, was entered by David E. Piver, of Wayne, Pennsylvania, on behalf of the petitioner, Apostolic Church International, USA, Inc., with Victor Oswald Boafo consenting on behalf of the petitioner. Counsel requests a Motion to Reconsider or Reopen, and in the Alternative, Appeal of the I-485 Denial. Counsel asserts that the petitioner "never wrote, provided or sanctioned" a request to withdraw the petition. The petitioner, through counsel, contends it has no knowledge of such a "rogue letter written by someone seeking to harm the Church or Pastor Ayetty," and on appeal submits substantial evidence indicating that Pastor Ayetty has remained associated with and continuously engaged as a religious worker for the petitioner to date.

The record indicates that the I-360 petition was filed on behalf of the beneficiary on July 23, 1997. The I-360 petition was signed by Victor Oswald Boafo on behalf of the petitioner, the Apostolic Church International, USA, Inc. The record reflects that Reverend Boafo is the National Superintendent of the Apostolic Church International, USA and Canada, and is recognized as an authorized official of the religious denomination. The record contains a properly authorized Form G-28, Notice of Appearance as Attorney or Representative, dated July 21, 1997, signed by Pastor Victor Oswald Boafo on behalf of the petitioning church, and authorizing Janet A Fofie, Esq. to act as attorney of record.

On August 5, 1997, the Service sent a request for additional evidence to address deficiencies in the application. Following a timely response, the Director, Vermont Service Center, issued a decision on December 2, 1997, denying the petition for failure to demonstrate that the beneficiary had the required experience for the two-year period immediately preceding the filing date of the petition; and for failure to submit appropriate documentation to demonstrate the petitioner's ability to pay the proffered wage, in accordance with 8 C.F.R. §204.5(g)(2).

The original attorney of record, Janet A. Fofie, submitted a Form I-290B, Notice of Appeal, and additional evidence in support of the appeal on January 7, 1998. On January 20, 1998, the Director, Vermont Service Center, reviewed and approved the petition on motion under 8 C.F.R. §103.3(a)(2)(iii).

The record contains a letter dated September 10, 1998, to the Vermont Service Center, from Kwadwo A. Opoku, Esq., received on September 18, 1998. This letter states:

Please be advised that I represent the above-mentioned Petitioner ["Apostolic Church"] regarding the above-mentioned case ["Ayettey [sic] N. Winfred]. Kindly be advised also that as per the enclosed Petitioner's affidavit, the Petitioner hereby moves to withdraw its petition filed on behalf of the Applicant, Ayettey N. Winfred. Said Winfred N. Ayettey is no longer associated with the Petitioner.

The Form G-28 submitted with this letter, is dated September 6, 1998, and bears the signature of, and lists the name of, the person consenting for the petitioner as Mac Kwasi Otchere. The letter seeking withdrawal of the petition is accompanied by a sworn affidavit signed by David Owusu Asimeng, Mac Kwasi Otchere, Alexander Osei Tutu, George Kofi Adarkwa, and Elijah Yaw Addei. The sworn affidavit states that the signers of the affidavit are Elders as well as individual members of the Apostolic Church International, USA, Inc.; and, as the Elders, on behalf of the Church, they are the petitioners; and, they hereby withdraw the petition on behalf of the beneficiary "because he is no longer in the employ of, or associated with, said Church."

The chronology of the file then contains an inquiry dated May 26, 2000, from Janet A. Fofie, original attorney of record, advising the service of her new address, and requesting an update of the

status of the Form I-485, Application to Register Permanent Residence or Adjust Status, filed in 1998.

Based on the petitioner's withdrawal, the District Director, Philadelphia District, issued the beneficiary a denial of his Form I-485. The District Director's decision states that:

On 10 September 1998, the approval of the Form I-360, Petition for Amerasian, Widow or Special Immigrant filed on your behalf by the Apostolic Church International, was revoked by the Immigration and Naturalization Service, pursuant to Section 205 of the Act and Part 205.1(a)(iii) of Title 8, Code of Federal Regulations. The Service received a written statement from the Apostolic Church International, dated 10 September 1998 requesting to withdraw the petition filed on you[r] behalf. The church board stated that you are no longer employed or associated with the church.

The record also contains an "Acknowledgement of Withdrawal," dated August 12, 2002, from the District Director, Philadelphia District, acknowledging withdrawal of the petition based upon the letter of September 10, 1998, and revoking the I-360 petition.

Current counsel asserts that the withdrawal letter was not sanctioned by the petitioner, and as such, should not warrant an automatic revocation.

It is noted, however, that the person consenting on the Form G-28, Mac Kwasi Otchere, or "Mac Otchere," has signed as "Secretary" on the petitioner's Internal Revenue Service (IRS) Forms 990, Return of Organization Exempt from Income Tax, for the years 1996, 1995, and 1994. It is noted that the 1994 and 1995 tax forms are each dated "2/4/97" next to his signature. The 1996 tax form is dated "9/26/97" next to his signature. The Certificate of Incorporation dated February 22, 1997, bears the signature and name of "Mac Otchere."

The record reflects that the names of the others identified on the affidavit seeking withdrawal of the petition also appear in the record. The names and signatures of "Owusu Asimeng" and "Alexander Osei Tutu" appear on the petitioner's Mortgage document dated October 10, 1996. The Certificate of Incorporation dated February 22, 1997, bears the signatures and names of "David Owusu Asimeng," "Elijah Addai," "George Adarkwah," and "Nana Osei Tutu." The signatures of "Nana Osei Tutu" and "Alexander Osei Tutu"

appear to match. On Part V of the IRS Form 990 for 1996, the "List of Officers, Directors, Trustees, and Key Employees" includes "Deacon Nana Osei Tutu" as the petitioner's Treasurer, "Elder David Asimeng" as Vice President, and "Elder Elijah Addae" as Trustee. These three individuals are also listed on Part V of the 1995 and 1994 IRS Forms 990. The tax forms also list "Elder Mac Otchere" as Secretary, while the 1996 tax form lists "Manthony Otchere", as Secretary.

The persons identified in the record as officers, elders, and otherwise significant personnel for the petitioner submitted the letter requesting withdrawal of the petition, and as such the director reasonably determined that the withdrawal of the petition was made at the request of the petitioner.

Under "Part 205 - Revocation of Approval of Petitions," the regulations at 8 C.F.R. § 205.1(a) state:

Reasons for automatic revocation. The approval of a petition or self-petition made under section 204 of the Act and in accordance with part 204 of this chapter is revoked as of the date of approval:...

(iii) *Petitions under section 203(b), other than special immigrant juvenile petitions...*

(C) Upon written notice of withdrawal filed by the petitioner, in employment-based preference cases, with any officer of the Service who is authorized to grant or deny petitions.

8 C.F.R. § 103.2(b)(6) states:

Withdrawal. An applicant or petitioner may withdraw an application or petition at any time until a decision is issued by the Service or, in the case of an approved petition, until the person is admitted or granted adjustment or change of status, based on the petition. *However, a withdrawal may not be retracted.* [emphasis added].

Pursuant to 8 C.F.R. § 103.1(f)(3)(iii)(D), the Associate Commissioner for Examinations exercises appellate jurisdiction over decisions on "[R]evoking approval of certain petitions under section 205.2 of this chapter." However, because a withdrawal by the petitioner may not be retracted, this appeal must be rejected.



The AAO notes that the rejection of this appeal does not preclude the petitioner from filing a new special immigrant religious worker petition with all supporting documentation on behalf of the beneficiary.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is rejected.