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

C/

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street NW
Washington, DC 20536

[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER

Date: NOV 13 2003

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

[REDACTED]

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 N. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The approval of the immigrant visa petition was revoked by the Acting Director of the California Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the matter will be remanded for further consideration and action.

The petitioner is a temple. 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) in order to employ him as a pujari (priest).

The director revoked approval of the petition, based on a finding that the petitioner had not established that the beneficiary was qualified for a religious worker position within the religious organization.

On appeal, counsel states that the acting director's decision violated the petitioner's due process rights because counsel was not provided with a copy of either the Notice of Intent to Revoke or the Notice of Revocation.

Pursuant to 8 C.F.R. § 103.2(a)(16)(i):

If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service [now CIS] and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered. .

Pursuant to 8 C.F.R. § 103.2(a)(19):

An applicant or petitioner shall be sent a written decision on his or her application, petition, motion, or appeal. Where the applicant or petitioner has authorized representation pursuant to 8 C.F.R. § 103.2(a), that representative shall also be notified.

The Form I-360 petition was filed on August 5, 1997, and approved on August 15, 1997. The record contains a properly executed Form G-28, Notice of Appearance of Attorney, that was

submitted with the initial I-360 petition. It is noted that counsel was provided with a copy of the Form I-797 notice of approval of the petition.

Based on adverse information obtained during a Service (now CIS) field investigation, the acting director subsequently determined that the beneficiary was not clearly eligible for the benefit sought. On March 20, 2001, the acting director issued a notice advising the petitioner of his intent to revoke approval of the petition and informing the petitioner of the adverse information contained in the investigative report. The director did not provide counsel with a copy of the Notice of Intent to Revoke.

On October 11, 2001, the director revoked approval of the petition based on a finding that the petitioner had not overcome the stated grounds for revocation. The director did not, however, provide counsel with a copy of the Notice of Revocation.

Since the acting director did not provide counsel with a copy of the Notice of Intent to Revoke or the Notice of Revocation as required, the director's decision will be withdrawn. The director shall provide counsel with a copy of both notices.

It is noted that the petitioner has also failed to show that:

- (1) the beneficiary was engaged continuously in a qualifying religious vocation or occupation for two years immediately preceding the filing date of the petition;
- (2) it has the ability to pay the beneficiary the proffered salary;
- (3) it has extended a valid job offer to the beneficiary; and
- (4) the offered position qualifies as a religious occupation.

The director shall review all relevant issues and make a determination. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the

director. Upon receipt of all evidence and representations, the director will enter a new decision.

ORDER: The decision of the director is withdrawn. The matter is remanded to him for further consideration and action consistent with the above discussion, and entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.