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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

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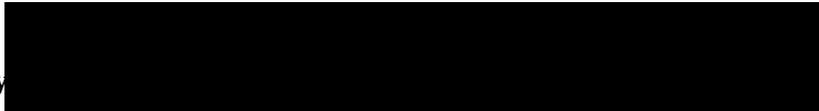
Office: NEBRASKA SERVICE CENTER

Date:

APR 06 2005

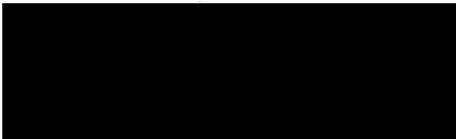
IN RE:

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:



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.

Maie Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, initially approved the employment-based immigrant visa petition. On further review, the director determined that the petitioner was not eligible for the visa preference classification. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke the approval of the preference visa petition and his reasons therefore, and subsequently exercised his discretion to revoke the approval of the petition on August 8, 2003. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The petitioner is a monastery. It seeks to classify 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 monk. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition, that the petitioner has the ability to compensate the beneficiary, or that the petitioner had extended a qualifying job offer to the beneficiary.

Section 205 of the Act, 8 U.S.C. § 1155, states that the Secretary of the Department of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Id.*

The regulation at 8 C.F.R. § 205.2(d) states, in pertinent part:

The petitioner or self-petitioner may appeal the decision to revoke the approval within 15 days after the service of notice of the revocation.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B) states:

Untimely appeal – (1) Rejection without refund of filing fee. An appeal which is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

The record indicates that the director issued the decision on August 8, 2003. It is noted that the director improperly advised the petitioner that it had 30 days in which to file the appeal, rather than the 15 days allowed by the regulation. The service center initially returned the petitioner's appeal as the petitioner submitted a fee payable to the wrong agency. Citizenship and Immigration Services received the I-290B, Notice of Appeal to the Administrative Appeals Unit, with the proper fee attached on September 24, 2003, or 47 days after the decision was issued. Accordingly, the appeal was untimely filed.

As the petitioner failed to timely appeal the director's notice of revocation of the visa preference classification, the appeal will be rejected.

ORDER: The appeal is rejected.