



U.S. Citizenship
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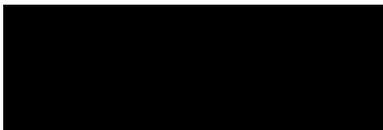
FILE: [Redacted]
SRC 00 102 52362

Office: TEXAS SERVICE CENTER Date: DEC 19 2005

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

PETITION: Immigrant 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The Administrative Appeals Office (AAO) remanded the matter for further consideration and action. The director has subsequently revoked the approval a second time and, pursuant to the AAO's remand order, certified the decision to the AAO for review. The decision of the director will again be withdrawn and the petition will again be remanded for further action and consideration.

The petitioner is a church. 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 minister. The director determined that the petitioner had not established its ability to pay the beneficiary's proffered wage. The AAO found that the director had not properly addressed that issue. The AAO also found that the petitioner had not adequately established the beneficiary's employment history for the two-year period immediately preceding the filing of the petition. The director, in the second revocation notice, found that the petitioner had not resolved the above issues. The director also found that the petitioner had failed to establish that it qualifies as a tax-exempt religious organization.

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Secretary 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. *Matter of Ho*. The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 582.

Following the AAO's April 15, 2005 remand order, the director issued a "Notice of Request for Evidence" on June 9, 2005. The next action taken by the director was a certified notice of revocation, issued on October 31, 2005.

8 C.F.R. § 205.2(b) states:

Notice of intent. Revocation of the approval of a petition or self-petition under paragraph (a) of this section will be made only on notice to the petitioner or self-petitioner. The petitioner or self-petitioner must be given the opportunity to offer evidence in support of the petition or self-petition and in opposition to the grounds alleged for revocation of the approval.

Here, the director did not issue a notice of intent to revoke. The director issued only a “request for evidence,” with the advisory that the “petition may be denied” if the petitioner failed to respond. Furthermore, the notice of revocation itself raised a new ground of ineligibility (relating to the petitioner’s tax status) that was not mentioned in the “request for evidence.” Therefore, the director has failed to follow the correct procedure for revocation of an approval.

Therefore, this matter will again be remanded. The director shall review the petitioner’s most recent petition. If the director deems this submission to be deficient, the director must issue a notice of intent to revoke. Any subsequent notice of revocation must only be concerned with issues already addressed in such a notice of intent.

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 Administrative Appeals Office for review.