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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



CL

FILE: [Redacted]
WAC 98 200 50468

Office: CALIFORNIA SERVICE CENTER

Date: 07 2 2011

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:



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.

Marie Johnson

S Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based immigrant visa petition. Following a standard adjustment interview with the beneficiary and subsequent review of the evidence, the director determined that the beneficiary was not eligible for the visa preference classification. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke (NOIR) the approval of the preference visa petition and his reasons therefore, and subsequently exercised his discretion to revoke the approval of the petition on May 14, 2004. The director dismissed a subsequent motion to reconsider as untimely filed and for failure to meet the regulatory requirements for a motion. The petitioner subsequently filed an appeal on Form I-290B, which was forwarded to the Administrative Appeals Office (AAO) pursuant to 8 C.F.R. § 103.5(a)(6). The petition is now before the AAO on appeal. The appeal will be summarily dismissed.

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 missionary. The director initially determined that the petitioner had not established that the beneficiary entered the United States solely for the purpose of working as a missionary. The director further determined that the petitioner had not established that the beneficiary had the required two years membership in the denomination or that it had extended a qualifying job offer to the beneficiary. The director subsequently dismissed the petitioner's motion to reconsider because it was untimely filed. It is that decision that is currently on appeal.

On appeal, counsel submits a brief and additional documentation.

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.*

On appeal, counsel asserts that neither the petitioner nor the beneficiary received a copy of the director's decision revoking approval of the visa petition. Counsel further asserts that the petitioner only became aware of the revocation upon denial of the beneficiary's application for adjustment of status.

The following timeline is pertinent to this decision:

- | | |
|-----------------|--|
| March 15, 2004 | Director's NOIR sent to petitioner at [REDACTED] the petitioner's address listed on the Form I-360, Petition for Amerasian, Widow or Special Immigrant. |
| May 6, 2004 | Upon inquiry by the beneficiary, Citizenship and Immigration Services (CIS) informs beneficiary that her Form I-485, Application to Register Permanent Residence or Adjust Status, was pending further review for possible revocation of the Form I-360. |
| May 14, 2004 | Director's decision revoking approval of the Form I-360 mailed to the petitioner at [REDACTED] |
| May 14, 2004 | Director notifies the beneficiary of the denial of her Form I-485 based on revocation of the underlying Form I-360. |
| June 11, 2004 | Beneficiary, through counsel, files motion to reconsider the denial of her Form I-485. ¹ |
| June 15, 2004 | Petitioner's notification of change of address to [REDACTED] dated May 28, 2004, received by the service center. |
| July 17, 2004 | Director dismisses motion to reconsider denial of the beneficiary's Form I-485 based on revocation of underlying Form I-360. |
| August 19, 2004 | Beneficiary, through counsel, files motion to reopen and reconsider director's July 17, 2004 decision, alleging that the beneficiary was denied the opportunity to rebut the evidence that CIS relied upon to revoke approval of the visa petition. Counsel also alleges that the petitioner did not receive a copy of the NOIR, and submits G-28s signed by the beneficiary and the petitioner. |

¹ Counsel of record served as beneficiary's counsel. However, counsel did not file a Form G-28, Notice of Entry of Appearance as Attorney or Representative, authorizing his representation of the petitioner until August 2004, three months after the notice of revocation was issued.

- September 29, 2004 Director dismisses the motion to reopen/reconsider the denial of the Form I-485 as untimely filed.
- October 29, 2004 Petitioner, through counsel, files a motion to reconsider the revocation of the Form I-360 petition, alleging that the petitioner did not receive a copy of the revocation decision until October 16, 2004.
- February 3, 2005 Director dismisses the motion as untimely filed and for failure to meet the regulatory requirements for a motion.
- March 1, 2005 Petitioner, through counsel, files appeal of the director's February 3, 2005 decision.

We note first that, contrary to counsel's assertion, the beneficiary does not have standing in this proceeding and the director was not required to provide notice to her of his decision to revoke the petition. 8 C.F.R. § 103.3(a)(1)(iii)(B). In its letter of May 6, 2004, CIS notified the beneficiary that she had no standing in matters regarding the Form I-360 petition, and that such inquiries must be initiated by the petitioner.

The record reflects that on May 14, 2004, the director properly mailed his Notice of Decision revoking approval of the visa petition to the petitioner's last known address, [REDACTED]. The petitioner did not notify CIS of its change of address until it submitted a letter dated May 28, 2004, received by the service center on June 15, 2004. On August 19, 2004, the petitioner, through the current attorney of record, filed a motion to reopen and reconsider the director's May 14, 2004 decision, alleging that the petitioner had not received the notice of revocation until October 16, 2004.

The regulation at 8 C.F.R. § 103.5a(c) provides:

In any proceeding which is initiated by the Service, with proposed adverse effect, service of the initiating notice and of notice of any decision by a Service officer shall be accomplished by personal service.

Pursuant to 8 C.F.R. § 103.5a(a)(2), personal service may be effected by any of the following:

- (i) Delivery of a copy personally;
- (ii) Delivery of a copy at a person's dwelling house or usual place of abode by leaving it with some person of suitable age and discretion;
- (iii) Delivery of a copy at the office of an attorney or other person including a corporation, by leaving it with a person in charge;
- (iv) Mailing a copy by certified or registered mail, return receipt requested, addressed to a person at his last known address.

The evidence establishes that the director's decision was mailed to the petitioner at its last known address. Therefore, the record establishes that the decision was properly served on the petitioner, and that the director properly dismissed the motion on February 3, 2005 because it was untimely filed.

The regulation at 8 C.F.R. § 103.5(a)(6) provides that a decision made as a result of a motion may be appealed to the AAO if the original decision was appealable to the AAO.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

On appeal, counsel claims that the beneficiary possessed the required two years membership in the denomination, the required two years experience in the religious occupation, and that the petitioner has the ability to pay the beneficiary the proffered wage. Other than alleging that the petitioner did not timely receive a copy of the revocation notice, counsel does not address the director's decision to dismiss the motion because it was untimely filed. Counsel does not assert that the petitioner's alleged failure to receive the director's notice of revocation was the result of CIS error.

Accordingly, the petitioner has failed to identify specifically any erroneous conclusion of law or a statement of fact in this proceeding; therefore, the appeal must be summarily dismissed.

ORDER: The appeal is summarily dismissed.

.EB4:09/13/05:AAOBJL01