

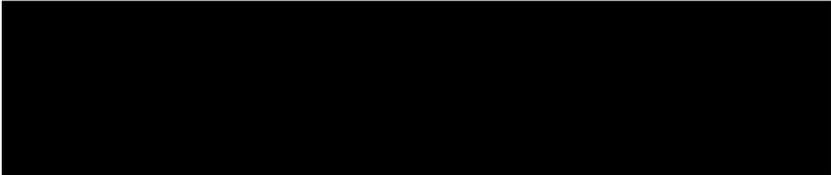


U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **JUL 26 2007**

WAC 02 194 50041

IN RE:

Petitioner:



Beneficiary:

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
f Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California 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 matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is a church affiliated with Vineyard International. 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 its head pastor. The director determined that the petitioner had not established that had the requisite two years of continuous work experience as a head pastor immediately preceding the filing date of the petition. The director arrived at this conclusion after an investigation of the petitioner's claimed address led the director to doubt the petitioner's existence as a *bona fide* church. The director also concluded that the petitioner had failed to establish its ability to compensate the beneficiary.

On appeal, the petitioner submits letters, a brief from counsel and copies of various documents, some of them submitted previously.

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 unrebutted, 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* at 590. 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.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination . . . ; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The regulation at 8 C.F.R. § 204.5(m)(1) indicates that the “religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.” 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on May 24, 2002.

The petitioner filed the Form I-360 petition on May 24, 2002. At that time, the petitioner claimed [REDACTED], California, as its address. The initial submission also included copies of checks from the petitioner to the beneficiary, as well as bank statements for the account from which the checks were paid. The checks and bank statements showed the petitioner’s address as [REDACTED]. At the time of filing, the beneficiary resided at the [REDACTED] address.

A letter from the Internal Revenue Service, dated March 23, 1998, verified the petitioner’s tax-exempt status. This letter was addressed in care of [REDACTED] at [REDACTED] which the beneficiary was to claim as his own address in late 1999.

On October 3, 2002, in response to an inquiry from the director, counsel stated that the petitioning church “moved locations since the tax exemption letter was first issued.” Counsel referred to the petitioner’s “current address of [REDACTED].”

The director approved the petition on November 5, 2002. On December 17, 2002, the beneficiary applied for adjustment to lawful permanent resident status. In conjunction with that application, the beneficiary submitted an employment verification letter from the petitioner on October 16, 2003, in support of the beneficiary’s adjustment application. The letterhead of that letter listed the petitioner’s address as [REDACTED]. Copies of more recent paychecks, dated 2003, show the petitioner’s address as [REDACTED].

In August 2005, in an effort to verify the petitioner’s claims, a Citizenship and Immigration Services (CIS) officer visited [REDACTED] and found the site to resemble “a small office.” The officer noted the presence of several Korean-language signs, which the officer was unable to read. Next door

to this site in [REDACTED], previously listed as the petitioner's address. At the time of the site visit, the site at [REDACTED] housed a print shop. The owner of the print shop stated that there was "not enough room" for a church next door at [REDACTED]. The property manager who rents out the above [REDACTED] sites indicated that the site at [REDACTED] "had been rented out to a [REDACTED] since 04/14/97."

The CIS officer also visited [REDACTED], which was a two-bedroom apartment. The apartment was occupied, but not by the beneficiary or the petitioner.

On January 9, 2006, the director issued a notice of intent to revoke, stating that the investigation described above cast doubt on the petitioner's claim to have employed the beneficiary.

In response, counsel stated:

At the time of the initial I-360 filing, the address listed for the church in May 2002 was [REDACTED]. The lease for this space was maintained from August 2001 through August 2002. . . .

[The petitioner] maintained offices at the [REDACTED] site . . . on a temporary basis only. When the lease had expired at the [REDACTED] location in August 2002, the church was without permanent facilities. [T]he church made arrangements to meet during the off-business hours at the [REDACTED] location. The church held meetings in the rear of the [REDACTED] location and did not maintain permanent signage as the church was using the space only temporarily. . . .

In the interest of centralizing the administrative office, the church elders made the decision to have the banking records forwarded to the residence of the pastor at [REDACTED].

To support counsel's claims, the petitioner submitted a copy of a letter from an official of the property management company, stating that the beneficiary "once leased the building located at [REDACTED] Bl." from August 16, 2001 to August 31, 2002.

Counsel indicated that the petitioning "church is currently located at [REDACTED] Lakewood, California." Corroborating this claim are photocopies of a lease agreement dated October 1, 2005; a Statement of Information from the California Secretary of State, dated October 12, 2005; and utility bills. Counsel indicated that the petitioning church had routinely used the beneficiary's home address for banking and other purposes, hence the use of the beneficiary's then home address on bank statements and checks.

The director revoked the approval of the petition on July 21, 2006, stating that the petitioner's rebuttals did not suffice to resolve the questions raised by CIS' site investigation. The director observed that the petitioner had not submitted any actual lease documentation relating to the Garden Grove properties, and that "the petitioner's membership roster . . . failed to include the name of the renter since 1997 of the building in

question.” The director also noted the congregation’s small size, and questioned whether there was a legitimate need for the beneficiary’s full-time pastoral (rather than administrative) services.

On appeal, counsel condemns the director’s reliance on “speculation” that the petitioner’s prior address could not have housed a church. Counsel states that, if the CIS investigator “took a photograph of the sign, and requested the services of a Korean translator to determine what the sign [at ██████████] read, the Service would discover that it read, ‘Calvary Church.’” Counsel adds: “the lessee, ██████████ is a Christian pastor and missionary who has leased the premises for the purpose of maintaining his church office and conducting religious services and group Bible studies on those premises.” The petitioner submits a new statement from ██████████, Senior Pastor of Calvary Church, who states: “From August 2002 until October 2005, our church allowed the members of [the petitioning] Church to occupy and use our premises for the purpose of conducting worship services and religious activities.” Pastor ██████████ asserts that he was outside the United States at the time of CIS’ site visit, and that no investigator left contact information or attempted a follow-up visit.

We note that the investigative report in the record does, in fact, include photographs of the visited sites. The property at ██████████ shows a large cross painted on the door, below the legend “O.C.” followed by several Korean characters. The large cross is, to say the least, consistent with the use of the property as a church. The report also states: “Lexis/Nexis shows that ‘Orange County Calvary Church’ is located at [██████████].” The director did not advise the petitioner of this information, which contradicts one of the grounds for revocation – *i.e.*, the statement by a neighboring businessman that there was “not enough room” for a church at ██████████. The director’s apparent failure to consider this information appears to have prejudiced the director’s decision to revoke the approval of the petition.

Site visits are, and should be, legitimate investigative tools when attempting to verify the claims of a petitioner or applicant. The AAO also acknowledges that legitimate doubts can arise when a CIS investigator fails to find evidence of a given petitioner or beneficiary during site visits. Here, however, the site visits did not take place until more than three years after the filing of the petition, giving both the petitioner and the beneficiary ample time to move to new locations. The fact that the current tenants of neighboring apartments and businesses did not recognize or recall the petitioner or the beneficiary, several years after the fact, is not by itself sufficient grounds for revoking the approval of a special immigrant religious worker petition. The information from the site visits, however, seems to have formed the sole articulated basis for revocation as stated in the notice of intent to revoke.

While the petitioner appears to have overcome the above basis for revocation, the record reveals an issue of grave concern. (Because this issue directly affects the petitioner’s credibility, the resolution of this issue may weigh on the sufficiency of the petitioner’s response to the originally stated grounds for revocation.) A decision in the petitioner’s favor is not possible unless and until the petitioner is able to resolve this issue satisfactorily. The petition cannot be approved based on the record as it now stands.

In the notice of revocation, the director raised the issue of the petitioner’s ability to pay the beneficiary’s \$1,800 monthly salary, as required by 8 C.F.R. §§ 204.5(g)(2) and, less directly, (m)(4). The director did not raise this issue in the notice of intent to revoke. 8 C.F.R. § 205.2(b) requires that the petitioner must be given

the opportunity to offer evidence in support of the petition and in opposition to the grounds alleged for revocation of the approval. A decision to revoke approval of a visa petition can only be grounded upon, and the petitioner is only obliged to respond to, the factual allegations specified in the notice of intention to revoke. *Matter of Arias*, 19 I&N Dec. 568, 570 (BIA 1988).

We note that the director, in arriving at this conclusion regarding the petitioner's ability to pay the beneficiary, relied on the beneficiary's "tax returns for 1999-2001." 8 C.F.R. § 204.5(g)(2) requires only that the petitioner is able to pay the beneficiary's proffered compensation from the priority date (*i.e.*, filing date) to the date the beneficiary becomes a lawful permanent resident. Because the petition was filed in May 2002, the beneficiary's 1999-2001 tax returns have no direct relevance to the petitioner's ability to pay the beneficiary from the filing date onward.

Notwithstanding the above procedural flaws in the director's decision, the petitioner, on appeal, submits copies of canceled checks to show that the beneficiary has consistently received at least \$1,800 per month, an amount that later increased to \$2,000 per month. These canceled checks warrant considerable scrutiny.

Typically, when a check is presented for payment, the amount of the check is printed in the bottom right corner of the face of the check, next to the bank's routing number, the check number, and the account number. Older checks presented to the beneficiary fit this pattern. Each of a series of \$900 checks shows [REDACTED] in the lower right hand corner. More recent \$1,800 checks show [REDACTED] in the lower right corner.

The most recent checks, dated from December 2004 onward, do not show the amount printed in the corner, although the backs of the checks show various processing stamps.

Of greatest concern to the AAO are the checks dated between January 2003 and August 2003, and those dated between July 2004 and November 2004. Each of these checks is supposedly in the amount of \$1,800. Each check shows an imprinted amount in the lower right corner, but none shows \$1,800 as that amount. Instead, the checks show the following information:

DATE	NUMBER	AMOUNT	DATE	NUMBER	AMOUNT
1/10/03	1622	\$200.00	8/10/03	1904	\$413.94
2/10/03	1695	330.00	7/10/04	2028	70.00
3/12/03	1752	250.00	8/10/04	2040	50.00
4/10/03	1824	33.00	9/11/04	2052	20.00
5/10/03	1827	784.00	10/10/04	2075	1,611.00
6/12/03	1831	1,200.00	11/10/04	2078	329.78
7/10/03	1865	50.00			

The above evidence strongly suggests that at least some of the beneficiary's purported photocopied paychecks have been altered. Such alteration, intended to obtain immigration benefits for the beneficiary, would constitute fraud. It is therefore imperative that the director take additional steps to verify the checks listed above, for example by reviewing the original checks and the corresponding bank statements.

Immigration fraud would be a valid basis for revocation of the approved petition; Section 204(b) of the Act, 8 U.S.C. § 1154(b), allows for the approval of an immigrant petition only upon a determination that “the facts stated in the petition are true.” Nevertheless, fraud was not a basis cited in the notice of intent to revoke, and *Arias* prevents the introduction of the issue at the appellate stage. Therefore, if further investigation confirms fraud, the proper course of action would be to issue a new notice of intent to revoke, citing all relevant derogatory information. Under no circumstances should the director take any further action toward granting the beneficiary any further immigration benefits, until such time as the director has adequately investigated and verified the 2003-2004 checks described above.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

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, regardless of the outcome, is to be certified to the Administrative Appeals Office for review.