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

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAY 09 2007  
WAC 04 016 53066

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:

SELF-REPRESENTED

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.

*Maurya Deadnick*  
fr 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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.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 [REDACTED]. 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. Following interviews and a site visit, the director determined that the petitioner's claims about the beneficiary's past experience as a monk were not credible.

On appeal, the petitioner submits copies of certificates and photographs.

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.

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,

(II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; 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 October 23, 2003. Therefore, the petitioner must establish that the beneficiary was continuously carrying on the vocation of a monk from late October 2001 through the filing date.

The petitioner has claimed that the beneficiary was ordained as a Buddhist monk on June 12, 1998, and since that time has been serving as a monk at [REDACTED] in [REDACTED]. The petitioner submitted a letter to this effect, dated June 16, 2003 and signed by [REDACTED], identified as “head monk of [REDACTED].” The initial filing included copies of several certificates purportedly issued by the Cambodian Ministry of Cults and Religion in 2000, 2001 and 2002, each with a photograph of the beneficiary affixed.

The director approved the petition on August 20, 2004. In the course of adjudicating the beneficiary’s immigrant visa application, consular officials interviewed the beneficiary and visited the temple in Cambodia where the beneficiary had resided. Documents in the record indicate “[t]he interviewing officer noted that [the beneficiary] was unable to discuss in any detail his duties at the Temple. . . . The officer also noted that his Buddhist certificates, issued in different years, all had the exact same photo.” The interview notes contain the following exchange:

Q: What is the name of the abbot?

A: [REDACTED]

Q: How many abbots are there at Nagavon?

A: Just one.

As a result of information obtained during interviews and the site visit, the director issued a notice of intent to revoke the approval of the petition on January 30, 2006. In that notice, the director stated:

[The beneficiary] was interviewed by a consular officer on March 29, 2005, at which time he claimed to have been a monk since 1998 at [redacted] in [redacted]. The interviewing officer noted that [the beneficiary] was unable to discuss in any detail his duties at the Temple or his proposed duties at the [petitioning] Temple in the United States. The officer also noted that [the beneficiary's] Buddhist certificates, issued in different years, all had the exact same photo.

Another interview was completed on May 17, 2005 and a visit to [redacted] on May 19, 2005 was also completed.

Numerous discrepancies were revealed between the interview with [the beneficiary] and the actual circumstances at the Temple where he had allegedly been living since 1998. For Example [*sic*], [the beneficiary] claimed to have been living at the Temple since 1998 but his monk book showed he had moved there in 2003; and the person [the beneficiary] claimed was abbot of the Temple had actually passed away several months before.

The director found that, because of these discrepancies, the petition lacked credibility and therefore should not have been approved.

In response to the notice of intent to revoke, the petitioner submitted a letter from [redacted], chief executive officer of the petitioning temple, who attempted to explain the perceived discrepancies listed in the notice of intent to revoke. The petitioner also submitted new documents, purportedly from [redacted].

The director deemed the petitioner's rebuttals to be insufficient, and revoked the approval of the petition on April 19, 2006. In the revocation notice, the director repeated the various grounds listed in the notice of intent, summarized the petitioner's rebuttals, and concluded "[t]he petitioner has not submitted sufficient evidence" to overcome those grounds. The director did not explain the failings of the petitioner's rebuttals, thereby denying the petitioner an opportunity to mount a meaningful appeal.

We further note, here, that the record documents several discrepancies that the director did not mention in the notice of intent to revoke. The director implied the existence of these discrepancies by referring to the cited discrepancies as "examples," but this cannot suffice as specific notice of the remaining discrepancies. If the credibility of the petitioner's claims is in doubt, the petitioner should be advised of all the factors underlying that doubt. 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). Pursuant to this binding case law, the revocation cannot rest on factual allegations not contained in the notice of intent to revoke.

A May 26, 2005 memorandum prepared by an officer at the Consular Section of the American Embassy in Bangkok, Thailand, contains the following "Report of Factual Findings" (in which the name of the Cambodian temple is spelled "Nagayon" rather than "Nagayon")

1. [The beneficiary] indicated Monk [redacted] as abbot of [redacted] when Monk [redacted] passed away two and a half months ago.
2. [The beneficiary] claimed . . . that he had been residing at [redacted] Temple since 1998. His Monk [redacted] indicated that he had moved into the temple in 2003. There was no record of his previous monastery residence. The abbot indicated during the investigation that [the beneficiary] had been with [redacted] for 3-4 years.
3. [The beneficiary] stated that there were 27 monastery residence buildings at [redacted] Temple. The abbot stated 33 buildings.
4. [The beneficiary] stated that there were 16 monks in his residence buildings [sic]. The Deputy Chief of his residence building stated 8 monks.
5. [The beneficiary] was supposed to have his own room at the residence building. During the investigation, another monk had inh[a]bited in [the beneficiary's] bedroom, using his bed.
6. [The beneficiary's] frontal photo was put up in the residence building when there was no other monk's frontal photo on the wall. While other photo[s] and certificate[s] display[ed] showed traces of being there for a long period of time [such as cobwebs and dust], [the beneficiary's] photo was still clean.
7. Registration record at [redacted] Temple showed traces of add-ons for [the beneficiary]. Deputy Chief of [the beneficiary's] residence building confirmed that there [was a] total of eight monks residing in the building. Registration record showed ten monks with [the names of] two monks being written down in different ink. [The beneficiary's] name was listed as No. 10 in the registration.
8. [The beneficiary] stated that he had not studied [redacted] for more than five years but Mr. [redacted] who claimed to know [the beneficiary] well, stated that [the beneficiary] studied [redacted] in Year 1.

The meaning of "Year 1" referenced in item 8, above, is not clear.

Some, but not all, of the above discrepancies were discussed in the notice of intent. The petitioner has not been advised nor had an opportunity to rebut the other discrepancies. We note, further, that some of the petitioner's responses appear to conflict with the available evidence – but, because the petitioner was not advised of that evidence, such evidence cannot support the revocation as it now stands.

The field investigation report states: "[redacted] . . . The Abbot introduced himself as [redacted]. . . He added that he was considered by other monks as the present abbot of Nagayon Temple though it would be official [only] after the cremation ceremony for late Abbot [redacted]." The petitioner has claimed that [redacted] successor is named "[redacted] or "[redacted]

During their May 2005 site visit to ██████████, consular officials saw and photographed a list of the residents of ██████████. That list was prepared no earlier than 2003, and possibly as late as 2005 (some dates on the photographed document are not clear). This is the list of ten names mentioned in item 7 of the above discussed consular memorandum. The names on the list are written in what appears to be the ██████████ language with no translation provided, but the list shows the date of birth and the ID number, in Arabic numerals, of each listed monk. The petitioner's response to the notice of intent to revoke included an "Updated List of Monk[s who] Stayed in Nagavon Temple in 2005 [in] House #8." The new list includes ten names, of which the beneficiary's is the second listed. The new list indicates that the beneficiary arrived in House #8 in 1998. One other monk is said to have arrived in 1997. The remaining monks and novices are said to have moved into ██████████ between 2000 and 2005.

Although the two lists purport to represent overlapping periods of time, and the new list identifies eight people who supposedly moved into ██████████ before 2003, only three ID numbers (including the beneficiary's ID number) appear on both lists.

We note that the "Report of Factual Findings" mentions the beneficiary's "██████████" and the director repeated this information, but the record does not appear to contain the beneficiary's ██████████ or any reproduction thereof. The petitioner has not disputed the director's reference to the beneficiary's ██████████, but has claimed that all monks at ██████████ received new documents in 2002-2005 owing to unspecified changes in "religious law."

The Embassy memorandum reads, in part:

Monks had to have in their possession an ID book called "██████████". This ██████████ book served [as an] ID card and contained record[s] of monks of the time they were ordained.

[An officer] asked the abbot to see the record when [the beneficiary] moved to ██████████. ██████████ left ██████████ with his assistants to retrieve the record.

Meanwhile, [the officer] asked the other monks in ██████████ 8 to see their ██████████ Book[s]. One monk presented his ██████████ Book to [the officer].

An examination of the book showed that this monk was issued [his] Jaya Book in 1999. It also showed that he moved into Negavon Temple (Page 6) in 2001. He was previously logged out from another temple in 1999 (Page 5). . . .

Thus, as of May 19, 2005, at least one monk at ██████████ was still in possession of a "██████████" containing information going back to 1999. The memorandum does not indicate that the temple was or had been in the process of issuing new "██████████" or other identification documents to its monks. This information appears to undermine the petitioner's explanation for the absence of pre-2003 information in the beneficiary's ██████████, but once again the petitioner was not advised of this information in the notice of intent and therefore *Arias* does not permit its use except in the context of a new notice of intent.

The director should issue a new notice of intent to revoke, providing a more comprehensive accounting of the derogatory information. If the director finds that the petitioner's response to that notice does not overcome the stated grounds, then the director's new decision should explain why the response is deficient, rather than simply quote the response and declare it to be insufficient.

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, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.