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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] SRC 96 239 51316

Office: TEXAS SERVICE CENTER Date: [REDACTED]

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.

Mari Johnson

& Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center initially approved the special immigrant religious worker petition. On further review of the record, the director determined that the beneficiary was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the immigrant visa petition, and the reasons therefore, and exercised his discretion to revoke the approval of the petition on December 18, 2001. The petitioner filed an appeal to this decision, which was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be dismissed, the previous decision of the AAO will be affirmed and the petition will be denied.

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Attorney General 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.* at 582. 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.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) states, in pertinent part:

Any motion to reconsider an action by [Citizenship and Immigration Services (CIS)] filed by an applicant or petitioner must be filed within 30 days of the decision the motion seeks to reconsider. Any motion to reopen a proceeding before [CIS] filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before the period expires, may be excused in the discretion of [CIS] where it is demonstrated that the delay was reasonable and way beyond the control of the applicant or petitioner.

The record reflects that the AAO issued its decision dismissing the petitioner's appeal on September 23, 2002. The petitioner initially submitted the motion without the requisite filing fee on November 22, 2002. Accordingly, the Service Center director rejected the filing. The instant motion was properly filed with the requisite fee on December 6, 2002. As cited in the regulation above, in order to properly file a motion, the

affected party must file the motion within 30 days after service of the unfavorable decision. If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

In this instance, the motion was received by CIS 74 days after the AAO's decision was issued. Accordingly, the motion was not timely filed. The petitioner's excuse that the delay in filing the motion was due to the fact that "documents in support of [new] facts are unavailable," does not sufficiently establish that the delay in filing the motion was reasonable or beyond the petitioner's control. The motion does not indicate what the new facts are, what the documents are, or provide any explanation as to why such documents are not available to the petitioner.

ORDER: The motion is dismissed. The previous decision of the AAO will be affirmed and the petition will be denied.