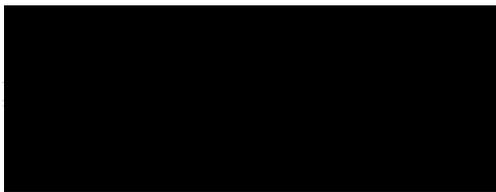




U.S. Citizenship
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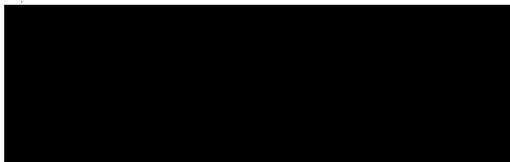
Office: CALIFORNIA SERVICE CENTER Date: DEC 16 2005

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.

Mari Johnson

S Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based immigrant visa petition. Upon further 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 the reasons therefore, and subsequently revoked the approval of the petition on September 16, 2003. The director dismissed a subsequent motion to reopen or reconsider. Following a subsequent appeal, the Administrative Appeals Office (AAO) withdrew the director's decision to revoke approval of the petition, and remanded the petition to the Service Center for issuance of a new decision. The director issued a new request for evidence, subsequent to which the director issued a new decision (labeled a "denial") and certified the decision to the AAO on September 8, 2005. The decision of the director will be withdrawn and the petition will again be remanded for further action and consideration.

The petitioner is an Orthodox Jewish day school. The petitioner seeks classification of 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 teacher of religious studies. The director originally revoked the approval of the petition based on a finding that the petitioner does not qualify as a religious organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. In its previous decision, the AAO withdrew the director's decision and found that the petitioner does qualify as a tax-exempt religious organization. The AAO also found, however, that the petition could not be approved because the petitioner had not demonstrated that the beneficiary had the requisite two years of continuous work experience as a teacher of religious studies immediately preceding the filing date of the petition.

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 April 19, 2005, the director issued a notice headed "Government Motion to Reopen/Reconsider," advising the petitioner of gaps in the beneficiary's documented employment history. The director concluded: "the petitioner is requested to submit documentation that the beneficiary worked full-time and was compensated for her employment as a religious worker from October 23, 1999 to October 23, 2001." The director allowed the beneficiary twelve weeks to respond.

In response to the above notice, the petitioner has submitted letters from several of the beneficiary's claimed employers.

On September 8, 2005, the director issued another notice, which contains several confusing passages. The September 8, 2005 notice, like the previous notice, bears the heading "Government Motion to Reopen/Reconsider," which is misleading because the proceeding was already open. The third paragraph reads: "According to the AAO's decision, the case may not be approved as the record now stands, and it will be remanded to the director to enter a decision." The ordered remand had already taken place.

The director concluded that the petitioner had not adequately established that the beneficiary worked continuously throughout the two-year period immediately prior to the filing of the petition, as required by 8 C.F.R. § 204.5(m)(3)(ii)(A). Near the conclusion of the September 8, 2005 notice, the director wrote: "the original decision stands as is." The "original decision," however, was based on a completely different basis, specifically the petitioner's tax status.

Finally, the director stated: "The denial will be certified to the AAO for their review and final decision." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the certifying party to notify the affected party (i.e., the petitioner) and allow the affected party 30 days to supplement the record. The director, in the September 8, 2005 notice, did not afford the petitioner this opportunity.

The director's latest decision cannot stand. In the decision of September 8, 2005, the director affirms the "original decision" of September 16, 2003. The AAO, however, had withdrawn that decision. The regulation at 8 C.F.R. § 205.2 provides that the service may revoke approval of a visa petition only upon notice to the petitioner. The regulation at 8 C.F.R. § 205.2(b) states:

Notice of intent. Revocation of the approval of a visa petition . . . 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.

Rather than issue a clearly worded notice of intent to revoke approval of the visa petition for a second time, the director issued a request for evidence and subsequently affirmed the previously withdrawn revocation decision in a confusing notice that referred to itself as a "motion" and stated that the matter "will be remanded." As approval of a petition may be revoked only on notice, the director's certified decision of September 8, 2005 was improperly issued and is withdrawn. The record is remanded in order for the director to address the issues raised in the AAO's previous remand of December 30, 2004, and for entry of a new decision. If the director ultimately revokes approval of the petition, the revocation must be in accordance with the provisions of 8 C.F.R. § 205.2.

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.