

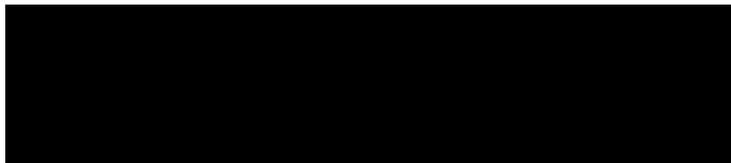
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U.S. Department of Homeland Security
20 Mass. Ave, N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship and Immigration Services

PUBLIC COPY



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FILE:



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Office: TEXAS SERVICE CENTER

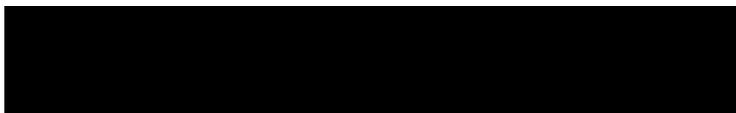
Date:

NOV 07 2005

IN RE:

Petitioner:

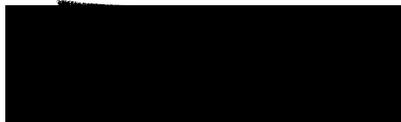
Beneficiary:



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.

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas 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 her reasons therefore, and subsequently exercised her discretion to revoke the approval of the petition on July 9, 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 acting director again revoked approval of the immigrant visa petition, citing the petitioner's failure to submit further evidence in support of the petition, and certified her decision to the AAO on June 15, 2005. The decision of the director will be withdrawn and the petition will again be remanded for further action and consideration.

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 its director of education, youth and children's ministry. In its previous decision, the AAO withdrew the director's decision to revoke approval of the petition based on a determination that the evidence established that the beneficiary was engaged in the solicitation of funds. The AAO found that the director had failed to address the petitioner's evidence rebutting the determination, as outlined in the NOIR, that the beneficiary had not been compensated for her services for the petitioner. The AAO further determined that the record presented conflicting evidence about the amount and nature of the beneficiary's compensation from the petitioning organization and that the evidence established that the position offered only part-time employment. Finally, the AAO raised concern that the petitioner's apparent *modus operandi* was to use subterfuge to gain entry into a foreign country, and that, given the inconsistencies in the record, the petitioner should be given an opportunity to verify that its application for the visa preference classification was not based on false information and to establish that there are no credibility issues.

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 certification, counsel submits a motion for remand or extension of time, asserting that neither counsel nor the petitioner received the director's request for evidence. Counsel moves the AAO to remand the record to the

service center to afford the petitioner at least 60 days to submit additional evidence, or on *de novo* review by the AAO, an extension of time in which to submit additional evidence and argument of counsel.

The record reflects that, on February 9, 2005, the director notified the petitioner that additional evidence was required to process its Form I-360, Petition for Amerasian, Widow or Special Immigrant. The petitioner was afforded 12 weeks in which to submit the additional evidence. The notice was sent to the petitioner at its address of record, [REDACTED] in Doraville, GA. A similar request was sent to counsel of record on March 9, 2005 at 21 Atlanta Street, Marietta, GA.¹ Counsel and the petitioner were afforded 12 weeks from the dates of the notice to submit additional evidence.

The petitioner submitted no evidence in response to the request for evidence, and the acting director subsequently affirmed the prior revocation of approval of the petition and certified her decision to the AAO.

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 request for additional evidence in support of the petition was properly service on the petitioner and counsel when they were mailed to their last known addresses. The U.S. Postal Service did not return the notices as undeliverable. Counsel submits no evidence and advances no argument that the failure to receive these notices was due to an error by Citizenship and Immigration Services. Further, although counsel requested additional time in which to submit evidence, as of the date of this decision, more than three months after the motion was filed, the AAO has received no additional documentation.

Nevertheless, the acting director's decision cannot stand. In her decision of June 15, 2005, the acting director affirms the service center director's prior revocation decision of July 9, 2003. However, that decision was withdrawn by the AAO, and the acting director was directed to issue a new decision as to the eligibility of the beneficiary for the visa classification. 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.

¹ In her Notice of Certification of Revocation, the acting director stated that the notice was sent to counsel following the service center's discovery that counsel had not been sent separate notice of the request for additional evidence.

The regulation at 8 C.F.R. § 205.2(b) provides:

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 notifying the petitioner of her 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. As approval of a petition may be revoked only on notice, the director's certified revocation of June 15, 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 is to be certified to the Administrative Appeals Office for review, regardless of the outcome.