

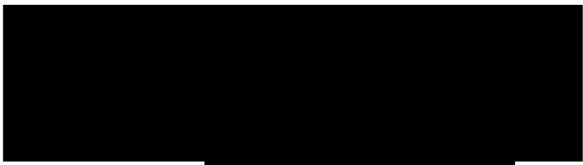
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Office: CALIFORNIA SERVICE CENTER

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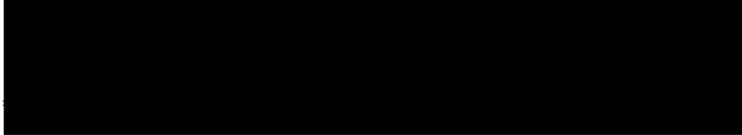
Petitioner:

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.

2 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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.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 regional organization of the International Society for Krishna Consciousness (ISKCON), a Hindu denomination commonly known as [REDACTED] (from the first two words of the group's devotional chant). 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 priest. The director stated that investigation of temples connected to the beneficiary revealed a pattern of fraud, fatally compromising the credibility of the present petition.

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*. 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).

A résumé in the record states that the beneficiary was a priest at the "Sri Ram Society, Tuscan [sic], AZ" from 1996 to July 1998, and at the "Sri Ram Society, Hindu Temple, HI" from July 1998 to March 2001. We note that both of these periods fall outside the two-year 2001-2003 qualifying period.

We note that the Sri Ram Society had filed its own special immigrant religious worker petition on the beneficiary's behalf, with receipt number WAC 97 223 52126, on August 21, 1997. The director approved this petition, but subsequently revoked that approval, and rejected the Society's appeal as untimely. The earlier petition is contained within the alien beneficiary's A-file, as is the present petition. The A-file record is before the AAO. The petitioner has been apprised of adverse information from the 1997 petition in accordance with 8 C.F.R. § 103.2(b)(16)(i).

The AAO shall not reopen the Sri Ram Society's petition here, but certain documents submitted with that petition bear mentioning in this proceeding. That petition included an undated letter from [REDACTED] of the Sri Ram Society Hindu Temple in Swarup Ganj, Nadia District, West Bengal, India. The letter reads, in part: "[The beneficiary] took initiation as Hindu Priest . . . on March 14, 1995 - by Mr. [REDACTED] Hindu Temple, in Tucson, Arizona, U.S.A., in Hawaii, in Bangladesh and in India." Because of its ambiguous wording, it is not clear whether [REDACTED] is listing locations where the beneficiary has worked, or simply the locations that [REDACTED] oversees as president of the Sri Ram Society. Other documents in the record appear to support the latter interpretation.

Copies of various corporate documents for the Sri Ram Society, Honolulu, Hawaii, dated between 1990 and 1997, [REDACTED]. The beneficiary's name is not on this document, and his résumé does not place him in Hawaii in 1990-1997. Documents from the Arizona Corporation Commission indicate that the Sri Ram Society filed an "Application for Authority to Conduct Affairs" in Arizona in September 1996. The application indicates that the Society's principal office was based in Honolulu. Judging from these documents, we conclude that, [REDACTED] referred to the "Hindu

Temple, in Tucson, Arizona, U.S.A., in Hawaii, in Bangladesh and in India," he was referring simply to the locations of various Society temples, rather than to sites where the beneficiary had worked.

Following the approval of the 1997 petition, the beneficiary applied for adjustment to permanent resident status. As part of that application, the beneficiary executed Form G-325A, Biographic Information, on November 1, 1997. On that form, the beneficiary listed various residential and employment addresses; the most recent address on the form is the Tucson address of the Sri Ram Society. The 1997 adjustment application was denied following the revocation of the approval of the associated petition.

Following the June 25, 2004 approval of the present petition, the beneficiary again applied for adjustment of status. The August 24, 2004 Form G-325A accompanying the second application places the beneficiary in Tucson from 1996 to March 2001, and in San Diego from March 2001 onward.

On August 9, 2005, the director issued a notice of intent to revoke (NOIR). In this notice, the director detailed the results of "an investigation of the Sri Ram Temple . . . in Honolulu," and then indicated that the beneficiary's "Form G-325A, Biographic Information dated 08/24/2004," places the beneficiary in Hawaii from 1997 to 2001. The director also stated:

A report of Investigations from Tucson Immigration Investigations concludes that the [Sri Ram Society] is not a bona fide nonprofit religious organization as follows:

On February 29, 2000, a search warrant was served on subject. Over \$20,000 cash was seized from the office. Four guns and narcotics were seized from various rooms on the property.

On March 12, 2000, Immigration Agents interviewed the beneficiary. Boxes and piles of Hawaiian T-shirts were seen behind the desk.

On March 14, 2000, Immigration Agents were informed that the beneficiary was selling T-shirts at Sabino Canyon.

The Immigration agents interviewed a college professor who has lived in Arizona since 1963. He stated that he is the only Hindu Priest in Arizona and he has never heard of the subject organization.

The director noted the reference to Hawaii on the beneficiary's résumé, and stated: "The investigations in Honolulu, Hawaii and the investigations in Tucson, Arizona revealed that the beneficiary's work experience claim is fraudulent."

The record includes an investigative report, which in turn includes a copy of "County after crack motel," an article from the June 21, 2000 issue of the *Arizona Daily Star*. The article states: "The Pima County Attorney's Office recently initiated civil forfeiture proceedings against the [Sri Ram Society's] building, at

The article indicates that one room in the Monterey Motel, at that address, was used as a temple.

In response to the NOIR, counsel states "the grounds stated in the notice of intended revocation are based on misleading and untrue accusation[s]. . . . The authority has mistaken the identity of the beneficiary and the statements do not truly represent the facts." As noted above, the investigative report does not, in fact, relate specifically to the beneficiary as the director had claimed in the NOIR. Counsel also observes that the petitioner has no affiliation with the Sri Ram Society, and that any accusations against the Society therefore should not color the director's assessment of the petitioner's credibility. Even then, counsel observes that the officials of the Sri Ram Society "were . . . released without charge" when it became evident that the illegal activities at the Monterey Motel were undertaken by certain tenants rather than by the Society. Counsel maintains that the "allegations that Sri Ram Temple was not a bona fide nonprofit religious organization [are] without sufficient cause or merit."

As for the "college professor," whom the director did not identify in the NOIR, counsel sensibly observes that the professor's ignorance of the Society is not evidence that the Society does not exist as a legitimate religious organization. It is not clear upon what evidence the professor based his claim to be the only Hindu priest in Arizona.

Counsel states that the petitioner's "Bankruptcy case is settled," and the petitioner submits documentation to corroborate this assertion.

In a sworn statement, the beneficiary states: "There is obviously a grave mistake of identity on the part of the immigration investigation officers and CSC [the California Service Center], as I never visited, lived or worked in HI. Any reference of me in Hawaii is untrue and incorrect." The beneficiary also stated: "I have never been interviewed by any immigration agents, or police, or any other authorities at any time. . . . I never sold any T-shirts at Sabino Canyon." We note that the director was clearly in error when the director stated that the beneficiary's Form G-325A from 2004 places the beneficiary in Hawaii from 1997 to 2001. That form remains in the record, and it places the beneficiary in Tucson during the specified period.

The director's summary of the investigative report, as set forth in the NOIR, is not entirely accurate. The "subject" mentioned in the report is not the beneficiary, but the Sri Ram Society's premises. [REDACTED] did interview officials of the Sri Ram Society on March 12, 2000, but the beneficiary was not among these individuals. The beneficiary's name never appears in the report. The director, in preparing the NOIR, seems arbitrarily to have substituted the word "beneficiary" when the report refers to other individuals, or even to the site itself.

After responding to the NOIR, the petitioner submitted a copy of the police report from the narcotics investigation at the Monterey Motel, showing that charges were dismissed against the officials of the Sri Ram Society. The report does not appear to identify the beneficiary.

On December 30, 2005, the director revoked the approval of the petition. Most of the wording of the revocation notice is copied directly from the wording of the NOIR. The revocation notice does not mention

the petitioner's bankruptcy proceedings, and therefore the director appears to have considered that matter to be settled.

The director also excised the erroneous reference to the beneficiary's August 2004 Form G-325A, but the director repeated the observation that the beneficiary's résumé lists employment in Hawaii from 1998 to 2001. The director quoted from the beneficiary's more recent statement that he "never visited, lived or worked in" Hawaii. Noting that this statement contradicts the Hawaii reference on the beneficiary's résumé, the director stated: "This is a wilfull [*sic*] misrepresentation as to the claimed experience of the beneficiary in his resume and the fact in his sworn affidavit." The director then quoted passages from the statute, regulations, and case law relating to false statements.

On appeal, the petitioner resubmits copies of some of the materials first submitted in response to the NOIR and argues: "The ground for revocation is based on unfounded allegation."

Upon consideration, we find no fraudulent intent in the contradictory statements regarding the beneficiary's purported work in Hawaii. The beneficiary did not claim employment in Hawaii on his Form G-325A, as the director mistakenly alleged in the NOIR. The letter from [REDACTED] mentions Hawaii, but the reference is ambiguous and seems to be part of a listing of temple locations rather than a chronicle of this particular beneficiary's past employment. The lone remaining reference to employment in Hawaii is on the beneficiary's résumé, submitted with the initial petition. When this document is reviewed in the context of the record of proceeding, it appears that Hawaii is mentioned as a reference to the location of what was then the United States headquarters of the Sri Ram Society. That is, the beneficiary worked in Tucson, for an organization based in Hawaii. In reaching this conclusion, the AAO notes that the beneficiary has, on every other occasion, specified that he worked in Tucson during the period in question. Furthermore, the beneficiary has provided an exact street address for his Tucson work location; he identified no such specific site in Hawaii. We conclude, based on the available information, that the beneficiary's résumé contains an ambiguous statement or perhaps a careless error [REDACTED] petitioning entity and member of ISKCON's international governing body, calls the reference "a single stray typo error"), but it does not contain willful misrepresentation of a material fact, nor does it otherwise appear to represent any deliberate attempt at fraud.

Because the purported finding of fraud is the sole basis stated in the director's notice of decision, and because the AAO rejects this finding, the director's December 30, 2005 notice of revocation cannot stand, and is hereby withdrawn. That being said, however, an impediment to approval of the petition remains.

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 September 2, 2003. Therefore, the petitioner must establish that the beneficiary was continuously performing the vocation of a priest throughout the two years immediately prior to that date.

The record indicates that the beneficiary has a lengthy history within his particular Hindu denomination. For instance, a copy of the beneficiary's passport, issued September 28, 1993, lists an ISKCON temple in India as the beneficiary's address. There is no evidence that the beneficiary or any other party fabricated the beneficiary's religious history for the purpose of obtaining immigration benefits. That being said, the statute and regulations are quite clear that a general history of involvement is not sufficient. Such involvement must have been continuous throughout the two years immediately prior to the petition's filing date. Therefore, regardless of the extent or duration of the beneficiary's prior history, a significant interruption during that key two-year period can be a disqualifying factor in a given petition. (It would not, however, be a permanent disqualification, as it would not affect any petition filed more than two years after the interruption ended and the active religious work resumed.)

Robert Morrill states that he has known the beneficiary "since the early 1980s" and that, since 2001, the beneficiary "has continued to serve the San Diego temple as a full time priest up to the present except for a brief period from January 2003 to May 17, 2003. . . . He left for India on an emergency visit in January 2003 to seek his father who was seriously ill." [REDACTED] describes a shorter trip in 2004, during which the beneficiary "attend[ed] seminars at our international headquarters in Mayapur, and visit[ed] various places of holy pilgrimage." [REDACTED] describes no such religious activities by the beneficiary during his 2003 visit. There is, therefore, no evidence that the beneficiary carried on the vocation of a minister between late January and mid-May 2003. The passive act of simply being qualified as a priest does not constitute carrying on the vocation of a minister. Thus, the petitioner has attested to a span of nearly four months in early 2003 during which the beneficiary's only claimed activity was visiting his ailing father. Because this period fell during the September 2001-September 2003 qualifying period, it may constitute a disqualifying interruption in the continuity of the beneficiary's religious work.

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). Therefore, the newly identified grounds of ineligibility described above cannot be used against the petitioner until a new NOIR is issued, setting forth those grounds and affording the petitioner an opportunity to overcome them (for example, by producing credible evidence that the beneficiary carried on the vocation of a Hindu priest during his time in India in early 2003).

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.