



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 04 2009
WAC 05 111 53107

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based immigrant visa petition. The director later determined that the beneficiary was no longer eligible for the benefit sought. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO remanded the matter for consideration under new regulations. The director again found that the petition could not be approved and, following the AAO's instructions, certified the decision to the AAO for review. The AAO will affirm the director's decision.

The petitioner is a church. 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 pastor of the petitioner's Mid-Presbytery Hispanic Ministry. The director revoked the approval of the petition after learning that the petitioner no longer operates a Hispanic ministry.

When the director certified the decision to the AAO, the director allowed the petitioner 30 days to submit a brief, as required by the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.4(a)(2). The record contains no further correspondence from the petitioner, and therefore we consider the record to be complete as it now stands.

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 Dec. 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.* 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 589.

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 September 30, 2012, 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 September 30, 2012, 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).

8 C.F.R. § 204.5(m)(12) reads:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

The petitioner filed the petition on March 11, 2005. A position description submitted with the petition indicated that the beneficiary's roles included "To preach and conduct a weekly Spanish worship

service" and "To administer the Hispanic ministry." The director approved the petition on August 17, 2005.

Subsequently, on May 29, 2007, a USCIS Immigration Officer conducted an on-site inspection of the petitioning organization. [REDACTED] and other church workers indicated that the beneficiary worked for the petitioning church for about two years, but then left the church because there were not enough Hispanic members to justify a continued Hispanic ministry at the church. [REDACTED] indicated that she helped the beneficiary secure a new position at Sinai Presbyterian Church.

On July 17, 2007, as required by 8 C.F.R. § 205.2(b), the director issued a notice of intent to revoke the approval of the petition, on the grounds that the job offer described in the petition no longer existed. The director allowed the petitioner 30 days to respond. The record contains no response to the notice.

The director revoked the approval of the petition on September 26, 2007, based on the petitioner's failure to respond to the notice of intent to revoke. On appeal from that decision, [REDACTED] of the petitioning church, stated:

In August 2007, our organization filed paperwork with U.S. Citizenship and Immigration Services following the instructions of [the beneficiary and his spouse]. . . . When we filed the paperwork in August 2007, our intention was to indicate that [the beneficiary's] ministry had transferred from our church to Sinai Presbyterian Church in Laredo, TX. Our intention was also to continue to support [the beneficiary] as a Special Immigrant. Upon receiving the Notice of Revocation, we have learned that our correspondence indicated to U.S. Citizenship and Immigration Services that [the beneficiary] no longer was employed at our particular church and that we wished to end the process of supporting him as a Special Immigrant. We want to make clear for the record that while [the beneficiary] was no longer employed at our location, our intention was to transfer, not terminate, [the beneficiary's] ministry.

The petitioner submitted a photocopy of an August 14, 2007 letter on the letterhead of Sinai Presbyterian Church, unsigned but attributed to [REDACTED] of the Pastor Nominating Committee. The letter reads, in part: "It has been brought to our attention that the . . . original petitioner no longer employs [the beneficiary], is being recommended for voluntary withdrawal of original petitioner [*sic*]."

The petitioner, on appeal, appears to be under the impression that the director considered the above letter to be a withdrawal of the petition. The director, however, did not base the denial on that letter. Rather, the notice of revocation indicated "the California Service Center has received no communication concerning this matter." The original letter from Sinai Presbyterian Church does not appear to have reached the record. The copy submitted on appeal shows a partially legible date stamp, indicating that the director did not receive the letter until September 2007, well after the end of the period allowed for the petitioner to respond to the notice of intent to revoke. Because the letter showed the letterhead of Sinai Presbyterian Church, rather than the petitioning church, the director may have

considered the letter to be third-party correspondence rather than a response directly from the petitioner. The record does not show whether the petitioner or Sinai Presbyterian Church mailed the letter.

The specifics of the original revocation and appeal became moot when, on November 26, 2008, USCIS published new regulations for special immigrant religious worker petitions which applied to all pending petitions, including pending appeals. On December 11, 2008, the AAO remanded the matter to the director, with instructions to allow the petitioner an opportunity to meet several new documentary requirements found in the revised regulations.

On February 4, 2009, the director informed the petitioner that the petition could not be approved unless the petitioner submitted substantial new evidence required under 8 C.F.R. §§ 204.5(m)(7), (8), (10) and (11), no later than March 4, 2009. The record contains no response to that notice. The director issued a new certified decision on May 30, 2009, stating that the petitioner had failed to submit required evidence and the petition could not be approved. The record contains no response from the petitioner.

The beneficiary's change of employment in 2006 is not, by itself, necessarily grounds for denial or revocation, provided that the new employment was consistent with the classification sought. At this point, however, the key issue is not the beneficiary's change of employment, but rather the petitioner's repeated failure to respond, in a timely manner, to USCIS correspondence relating to the petition. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. 8 C.F.R. § 103.2(b)(14).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. We agree with the director's finding that, because the petitioner has apparently failed to submit substantial required evidence, the petition cannot be approved. We affirm the director's decision.

ORDER: The director's decision of May 30, 2009 is affirmed. The revocation of the approval of the petition remains in effect.