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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: OCT 06 2009

WAC 04 009 52459

IN RE: Petitioner:
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:

[redacted]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, approved the 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 petitioner appealed the director's decision to the Administrative Appeals Office (AAO). The AAO remanded the matter for consideration under new regulations. The director issued a new notice of revocation and, acting on the AAO's instructions, certified the decision to the AAO for review. The AAO will affirm the revocation.

The petitioner is a mosque. 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 an imam (minister). The director determined that the beneficiary operated a publishing business, and therefore the beneficiary did not work solely as a minister during the statutorily required two years immediately preceding the filing date of the petition. The director also found that the beneficiary's business violated his R-1 nonimmigrant status.

In the notice of certification, the director advised the petitioner that U.S. Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. § 103.4(a)(2) allowed the petitioner 30 days to submit a brief in response to the notice. The permitted time has elapsed, and the record contains no further submission from the petitioner or counsel. We therefore consider the record to be complete as it now stands, and issue our decision accordingly.

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 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, 2009, 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, 2009, 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).

The director revoked the approval of the petition based on two related findings: that the beneficiary's operation of a publishing business meant that he did not work solely as a minister, and that his engagement in that business violated his nonimmigrant status as an R-1 religious worker.

The definition of a "minister" at 8 C.F.R. § 204.5(m)(5) includes the requirement that the alien works solely as a minister in the United States. An alien who engages in other employment necessarily falls outside this definition, and cannot qualify for classification as a minister.

Qualifying prior experience during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work, must have occurred after the age of 14, and if acquired in the United States, must have been authorized under United States immigration law. 8 C.F.R. § 204.5(m)(11). Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act. 8 C.F.R. § 214.1(e).

The petitioner filed the Form I-360 petition on October 9, 2003. At that time, the beneficiary was an R-1 nonimmigrant religious worker, with status valid through January 26, 2005. In a letter accompanying the initial filing, [redacted] of the petitioning entity, listed the beneficiary's duties, including leading prayers, delivering daily lectures, and officiating at weddings, burials and other religious ceremonies. [redacted] asserted that the beneficiary's "sole reason for entering the U.S. and sole reason for remaining in the U.S. has been to carry on the vocation of an Imam (i.e. Minister) at the [petitioning institution]."

In a subsequent submission, the petitioner included a detailed "Imam's Weekly Work Schedule," listing prayers, services, lectures, and other functions, often timed to the nearest five minutes. Nothing on the schedule relates to publishing except for the preparation of the petitioner's "Community Newsletter," and there is no reference to the sale of published materials.

Copies of the beneficiary's bank statements show regular deposits of the beneficiary's monthly $1,800 salary, as well as occasional deposits of unspecified origin, in amounts ranging from $300 to over $3,000. Transcripts of the beneficiary's federal income tax returns indicate that the beneficiary reported business income of $29,924 in 2003. His salary would have amounted to $21,600 per year during that time. Therefore, the documentation indicates a supplemental source of income over and above that salary. Other information on the transcripts reflects sums listed under "gross receipts or sales" and "cost of goods sold," and one transcript shows a NAICS (North American Industry Classification System) Code of 424920, which corresponds to "Book, Periodical, and Newspaper Merchant Wholesalers." The beneficiary separately reported income under NAICS Code 813000; NAICS Code 813 refers to "Religious, Grantmaking, Civic, Professional, and Similar Organizations."

Another transcript document uses NAICS code 454390, which corresponds to "Other Direct Selling Establishments" such as temporary stands and door-to-door sales. The beneficiary reported $31,162 in "gross receipts or sales," offset by "cost of goods sold" ($6,767), "car and truck expenses" ($2,515), "travel" ($315) and "other expenses" ($12,306), leaving net proceeds of $9,259.

The director approved the petition on March 30, 2005. Subsequently, on August 23, 2007, the director issued a notice of intent to revoke the approval of the petition, pursuant to 8 C.F.R. § 205.2(b). In the notice, the director noted that the beneficiary's tax return transcripts show "entries consistent with a business. Therefore, the record indicates that the beneficiary owns a business and is not solely carrying on the vocation of a minister." The director instructed the petitioner to submit evidence and information relating to "all businesses owned by the beneficiary and any significant changes in the beneficiary's business(es) from 2002 to the present."

In response, counsel stated:

> [The beneficiary] owned an internet business which sold Islamic religious books. This business did not operate out of any physical location, as all merchandise was

> sold via the website at [redacted] Beneficiary's time spent running the website was minimal, as much of the operation was automated through the website. [The beneficiary] owned the business from February 27, 2002 until August 2004 when it was sold to another individual. [The beneficiary] did have a business license to operate the website, which was terminated upon sale of the website business. All products sold on the website were purely Islamic in nature relating directly to his vocation.
>
> . . . The time needed to run his business was no more than approximately 30 minutes daily as he received on average about 3 to 5 orders per week through the website or by word-of-mouth. This time was needed mainly to package the orders and mail them off to the buyers. In this day and age of internet commerce, it is very common for individuals employed full-time to supplement income by operating an internet business. . . . The operation of this website was relating to his vocation as an Imam and used to disseminate Islamic literature for his own congregation and throughout the Muslim community.

Having implied that the beneficiary "supplement[ed his] income by operating an internet business," counsel then claimed that the beneficiary "does not take a salary from this business, as all revenue generated is used in publishing additional texts and books. The purpose of this 'business' is not profit, but is created as [a] service for the congregation and the Muslim community" (counsel's emphasis). This assertion fails to explain why the beneficiary reported proceeds in excess of his costs and expenses. The petitioner failed to document the reinvestment claimed by counsel, even after the director specifically requested evidence regarding the beneficiary's business activities.

Furthermore, when considering the issue of whether the beneficiary maintained lawful status or violated that status, the claim that "it is very common" to run an internet business is beside the point. The standard is not whether the beneficiary engaged in "very common" activities, but whether he restricted his income-generating activities to those permitted by his R-1 status. Similarly, with respect to counsel's argument that the beneficiary devoted little time to his publishing business, there is no statutory or regulatory minimum time period that would allow an R-1 nonimmigrant "to supplement income" for a limited time each week or each month.

Also, it is significant that, when the petitioner previously provided detailed descriptions of the beneficiary's duties as an imam, the petitioner made no mention of book publishing or sales. The assertion that the books contained religious subject matter is beside the point. Selling books with religious content is not a standard duty of a minister, any more than selling books with medical content is a standard duty of a physician.

The director revoked the approval of the petition on December 14, 2007. On appeal, the beneficiary asserted he "did not take a salary from the operations of Whitethread Press." The beneficiary's tax documents show that his income from sales exceeded his costs. Whether he referred to the excess as "salary" is irrelevant. Counsel has claimed that the funds were reinvested in the beneficiary's

religious activities, but the record contains no documentary evidence to support this claim. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record shows only that the beneficiary reported these sums as business income on his tax returns.

Counsel argued that the petitioner has submitted ample evidence of the beneficiary's work as an imam. The director did not claim that the beneficiary worked as a publisher instead of an imam. Rather, the director found that the beneficiary worked as a publisher in addition to his work as an imam, in a venture intended (in counsel's words) "to supplement income." Evidence that the beneficiary was an imam does not, somehow, disprove the finding that he was also a publisher.

The AAO remanded the petition to the director on December 16, 2008, for consideration under new regulations under 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008). Subsequently, the director issued a new notice of revocation on August 10, 2009, having found that the previously stated grounds of revocation still applied under the new regulations. To date, the record contains no response from the petitioner to the certified decision.

For the reasons discussed above, we agree with the director's finding that the beneficiary did not work solely as a minister (imam) during the two-year qualifying period, but rather operated a publishing business on the side, thereby violating his R-1 nonimmigrant status which allowed him only to work for the petitioning mosque. We find, therefore, that the director had good cause to revoke the approval of the petition, and we hereby affirm that decision for the above stated reasons, with each considered as an independent and alternative basis for revocation. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The AAO affirms the director's decision of August 10, 2009.