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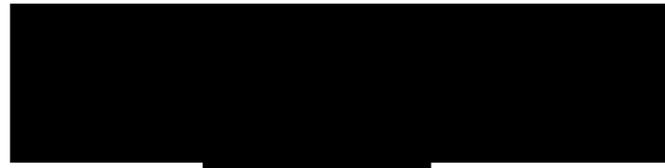
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: **MAR 17 2010**
EAC 01 177 55629

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.

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).

Mari Plerson

✓ Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant petition and certified its decision to the Administrative Appeals Office (AAO) for review. The AAO affirmed the director's decision on December 22, 2006 with a separate finding of willful misrepresentation of a material fact. On June 24, 2009, the AAO reopened this matter pursuant to 8 C.F.R. § 103.5(a)(5)(ii) for the limited purpose of revisiting the finding of willful misrepresentation of a material fact; the AAO did not disturb the denial of the underlying petition. The AAO allowed the petitioner 84 days to address the grounds for that finding. On October 14, 2009, the AAO affirmed its finding of willful misrepresentation of a material fact, and stated that the record contained no response from the petitioner. The petitioner submitted a timely response, which did not reach the record before the AAO rendered its decision. On January 14, 2010, the AAO reopened the proceeding strictly on procedural grounds, to acknowledge the petitioner's timely submission of correspondence. The AAO will reaffirm its finding of willful misrepresentation of a material fact.

On September 11, 2009, the petitioner, through counsel, stated: "The petitioner hereby withdraws the petition," adding: "The petitioner reiterates that it has perpetrated no fraud." Counsel did not address or dispute the AAO's finding that the beneficiary also participated in the willful misrepresentation, as described in previous decisions and correspondence. The record contains no further correspondence from the petitioner or from counsel.

We note that *Matter of Cintron*, 16 I&N Dec. 9 (BIA 1976) prohibits the denial of a petition after its withdrawal. Here, however, the petition has been denied since 2006. The AAO's subsequent action has only involved the finding of willful misrepresentation.

An applicant or petitioner may withdraw an application or petition at any time until a decision is issued by USCIS [U.S. Citizenship or Immigration Services] However, a withdrawal may not be retracted. 8 C.F.R. § 103.2(b)(6). Here, USCIS issued its decision nearly three years before the petitioner attempted to withdraw the petition. The petition itself is administratively closed and cannot be withdrawn at this late date.

By attempting to withdraw the petition, the petitioner has signaled its intent to abandon all attempts to pursue this petition. The petitioner's apparent failure to respond to the AAO's latest correspondence reinforces that conclusion. The AAO now considers this matter closed.

In previous decisions and notices, the AAO has already described in detail its grounds for a finding of willful misrepresentation of a material fact; the AAO will not repeat that discussion here. The declaration (through counsel) that the petitioner "has perpetrated no fraud" does not resolve those grounds, and the attempted withdrawal of the petition cannot and does not nullify the AAO's prior findings, nor does it prevent the AAO from reaffirming, here, those prior findings. The AAO hereby reaffirms its prior findings of willful misrepresentation of a material fact, and notes that the petitioner has submitted no substantive evidence in response to the AAO's June 24, 2009 notice.

ORDER: Pursuant to 8 C.F.R. § 103.2(b)(6), the AAO disregards the withdrawal of the petition. The December 22, 2006 denial of the petition remains in force and undisturbed.

FURTHER ORDER: The AAO reaffirms its December 22, 2006 and October 14, 2009 findings that the petitioner and the beneficiary knowingly misrepresented material facts relating to the beneficiary's employment and income in order to conceal potentially disqualifying information relating to the beneficiary's eligibility for a benefit sought under the immigration laws of the United States.