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

U.S. Citizenship and Immigration Services

C1

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: OCT 14 2010

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
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 AAO will sustain the appeal and reinstate the approval of the petition.

The petitioner is an "organization which oversees the [redacted] [Buddhist] Temple." 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 monk. The director determined that the petitioner had not established its ability to fully support the beneficiary.

On appeal, the petitioner submits copies of financial documents and arguments from counsel.

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).

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.

The petitioner filed the Form I-360 petition on November 28, 2005. At that time, the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(4) read:

> *Job offer.* The letter from the authorized official of the religious organization in the United States must also state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration), or how the alien will be paid or remunerated if the alien will work in a professional religious capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support. In doubtful cases, additional evidence such as bank letters, recent audits, church membership figures, and/or the number of individuals currently receiving compensation may be requested.

Accompanying the petition was a letter from [redacted] of the petitioning entity, who stated: "As a Buddhist monk, in lieu of monetary compensation, [the beneficiary] will receive free room and board at our community for his service rendered." The petitioner submitted a copy of a bank statement showing that the petitioner had a total of $9,515.52 in two accounts as of October 20, 2005.

The director approved the petition on March 21, 2006. Subsequently, on February 20, 2008, a USCIS officer visited the petitioner's temple to verify the petitioner's claims. The regulation at 8 C.F.R. § 204.5(m)(12) provides for such visits at USCIS's discretion. During that visit, the officer ascertained

that the petitioner "does not provide any health insurance to the Buddhist Monks," and concluded that, therefore, the petitioner has not taken full responsibility for the monks' needs.

On May 16, 2009, the director notified the petitioner of USCIS's intent to revoke the approval of the petition. Noting the finding that the petitioner does not provide health insurance to its monks, the director instructed the petitioner to submit evidence to satisfy the regulation at 8 C.F.R. § 204.5(m)(10), which reads as follows:

> *Evidence relating to compensation.* Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

In response, counsel asserted that the petitioner's

> Board of Directors, Volunteers, and entire congregation make sure that all of [the beneficiary's] expenses, including, but not limited to: housing, food, clothing, medical care (and recently health insurance), are completely paid for either by the donation funds in the [petitioner's] bank account, or by direct donations from members of the . . . congregation.

The petitioner submitted documentation showing that the beneficiary now has individual coverage under [redacted] California, effective June 1, 2009. A new bank statement shows that the petitioner's accounts contained a total of $26,430.11 as of April 30, 2009.

On July 15, 2009, the director revoked the approval of the petition, stating: "the petitioner has not established that it will compensate the beneficiary. . . . The petitioner has not established that it is financially responsible for the beneficiary's expenses."

On appeal, counsel states that the petitioner, "through its retained funds and its congregation, has been providing, and will continue to provide [the beneficiary] with room, board, clothing, medical insurance, and any other necessities to ensure that [the beneficiary] will not need to take on any supplemental employment or solicit funds for support."

The director, in revoking the approval of the petition, relied on the USCIS regulation at 8 C.F.R. § 204.5(m)(10). That regulation was not in effect in 2005, when the petitioner filed the petition, or in 2006, when the director approved the petition. USCIS issued a rule in late 2008, publishing new regulations including the regulatory language quoted by the director.

Supplementary information published with the new rule specified: "All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008). The present petition was not pending on the rule's effective date. Nothing in the regulations or the supplementary information indicated that previously-approved petitions should be reopened and held to the standards of the new regulations.

Even then, neither the old regulations nor the new ones specifically require the petitioner to provide health insurance to beneficiaries. Also, while the petitioner did not insure the beneficiary prior to 2009, this does not mean that the petitioner did not cover the beneficiary's medical expenses as they occurred. The director cited no evidence that the beneficiary relied on outside assistance or public funds for medical care prior to 2009. The director simply concluded that the absence of medical insurance demonstrated that the petitioner has not adequately supported the beneficiary.

The director's inference is not sufficient basis to revoke the approval of this petition or to hold that petition to standards that did not apply when USCIS approved that petition. There is no evidence that the beneficiary has required expensive medical care in the past. Even if there were concerns about such needs arising in the future, the record shows that the petitioner has now obtained coverage for the beneficiary, so this is no longer a concern.

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 met that burden. Accordingly, the AAO will withdraw the director's denial decision and reinstate the approval of the petition.

ORDER: The appeal is sustained and the petition is approved.