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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

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 13 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 petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO subsequently remanded the petition to the director for a new decision based on revised regulations. The director determined that the petitioner had failed to submit required evidence, and reaffirmed the prior decision. The director certified the decision to the AAO. The AAO will withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, the AAO will remand the petition for further action and consideration.

The petitioner is a non-denominational Christian missionary organization. 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 assistant pastor. The director determined that the petitioner had not established the existence of a qualifying job offer.

In response to the certified decision, the petitioner submits a brief from counsel and a letter from the secretary of the petitioning organization.

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, 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).

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(7)(xii) requires the prospective employer to attest that it has the ability and intention to compensate the alien at a level at which the alien and accompanying family members will not become public charges, and that funds to pay the alien's compensation do not include any monies obtained from the alien, excluding reasonable donations or tithing to the religious organization.

The USCIS regulation at 8 C.F.R. § 204.5(m)(10) states:

> *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.

The petitioner filed the petition on January 30, 2006. The initial filing included a December 23, 2005 letter from [redacted] described various aspects of the beneficiary's work, but did not specify the terms of compensation.

The petitioner submitted a copy of its Internal Revenue Service (IRS) Form 990 return, comparable to an income tax return, for 2004. According to this return, the petitioner took in $689,531 in revenue and spent $691,500, for a deficit of $1,969 for the year. The petitioner began the year with $2,203 in net assets, leaving, after the deficit, net assets of $234 at the end of the year. The petitioner's itemized expenses included $34,100 in salaries.

The director approved the petition on May 8, 2006. Subsequently, the director obtained a copy of the petitioner's IRS Form 990 return for 2006. Such returns are generally available for public inspection under section 6104 of the Internal Revenue Code. According to the return, the petitioner's income exceeded its expenses by only $28 that year, and the petitioner reported no other assets. The petitioner reported paying a total of $19,200 in salaries in 2006.

In August 2007, a USCIS officer conducted a compliance review including a site visit and various interviews. The officer visited the petitioning entity and examined the petitioner's accounting ledger, finding that the petitioner routinely maintained a low fund balance. [redacted] stated that the petitioner originally paid the beneficiary $2,000 per month, but reduced his monthly salary to $1,600. The beneficiary indicated that he speaks at various area churches and receives additional money from their congregations.

On August 28, 2008, the director issued a notice of intent to revoke the approval of the petition. The director stated that the petitioner had not submitted copies of IRS Form W-2 Wage and Tax Statements, tax returns, or other documents to establish the beneficiary's past compensation. The director also noted that the beneficiary supplemented his income by speaking at other churches, and "the petitioner has failed to show that the beneficiary was able to survive with sole income received from" the petitioner. Noting the significant salary reduction, the director questioned the petitioner's ability to pay the beneficiary.

In response, [redacted] stated that one of the beneficiary's routine duties is to visit hundreds of '[redacted] churches . . . in [the] Bay area" to support the petitioner's missionary efforts. This indicates that the beneficiary's travels to area churches are part of his work for the petitioner, rather than separate, independent efforts to supplement his income.

We note that the USCIS regulation at 8 C.F.R. § 204.5(m)(7)(xi) requires the intending employer to attest that any salaried or non-salaried compensation for the work will be paid to the alien by the attesting employer. Similarly, the regulation at 8 C.F.R. § 204.5(m)(10) requires the petitioner to submit verifiable evidence of how the petitioner intends to compensate the alien. There is no provision for third-party compensation of the beneficiary. We must also acknowledge, however, that voluntary donations from third parties are not inherently disqualifying, so long as it is clear that these "donations"

are not simply a front for outside employment or a means of covering a salary that the nominal employer cannot afford to pay.

The petitioner also submitted a copy of its 2007 IRS Form 990 return, indicating that it ended the year with $156,277 in net assets, reflecting both a substantial increase in revenue and a substantial decrease in expenses. As with the previous year, the petitioner reported paying $19,200 in salaries for the year.

Copies of IRS Forms W-2 show that the petitioner paid the beneficiary $21,500 in 2004, and $19,200 per year in 2005 through 2007 (indicating that the beneficiary is the petitioner's only salaried employee). These documents confirm the reduction of the beneficiary's salary.

The director issued a notice of revocation on October 10, 2008, based on several findings, including the absence of "a credible job offer" and the documented reduction of the beneficiary's salary.

While the petitioner's appeal of the revocation was pending, USCIS published new regulations on November 26, 2008 that included significant new documentary requirements. On December 17, 2008, the AAO remanded the matter to the director for consideration under the new regulations.

On February 4, 2009, the director advised the petitioner of the new regulations and instructed the petitioner to submit the newly required evidence. In response, the petitioner submitted the requested materials, including the beneficiary's most recent IRS Form W-2, showing that the petitioner paid the beneficiary $19,200 in 2008, the same amount he had earned in the previous three years. The petitioner also submitted an attestation in which the petitioner stated that it would pay the beneficiary $1,800 per month, or $21,600 per year, an amount $2,400 higher than what the petitioner actually paid the beneficiary per year in 2005-2008.

On July 14, 2009, the director issued a new certified decision, repeating the earlier findings that the petitioner's "minimal assets" do not establish its ability to compensate the beneficiary, and that "the beneficiary must also rely [on] outside solicitation [of funds] . . . and work at different churches as a guest speaker in order to support himself and his family in the United States."

In response to the certified decision, [redacted], secretary of the petitioning organization, noted that the petitioner takes in hundreds of thousands of dollars every year, but considers itself obligated to "use all our . . . assets [in] a year to do God's work in that year."

In an accompanying brief, counsel argues that the petitioner has submitted sufficient evidence to show that it has continuously compensated the beneficiary in the past, and its income is sufficient for it to continue to pay him. On careful consideration of the evidence presented, it is difficult to argue with this basic point. The director, to support the finding that the petitioner lacks adequate funds, discussed the petitioner's IRS Form 990 returns from 2006 and earlier years, but failed to acknowledge the significant increase in revenue shown on the 2007 return. Because we know that the petitioner did, in fact, compensate the beneficiary in 2006, we cannot now question whether the petitioner was able to do so at the time.

With respect to the beneficiary's visits to other churches, the petitioner has consistently indicated that this activity is part of the beneficiary's work for the petitioner rather than a spare-time activity that the beneficiary is forced to pursue to augment his income. Any payment that the beneficiary receives for these visits appears to be an addition to, rather than a substitute for, his base compensation from the petitioner.

For the reasons discussed above, we will withdraw the director's sole stated basis for denying the petition. We cannot, however, approve the petition outright at this time, because a major issue remains that the director has not yet addressed. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

On its publicly available IRS Form 990 return for 2008, the petitioner reported paying a total of only $16,778 in salaries that year. This appears to contradict the IRS Form W-2, claiming that the petitioner paid the beneficiary $19,200 that same year. This discrepancy casts doubt on the petitioner's other financial claims, and lends credence to the director's misgivings about the petitioner's financial status. Because this material was not in the record at the time of the director's decision, we will not base an adverse decision on the 2008 Form 990 without prior notice to the petitioner, as required by the regulation at 8 C.F.R. § 103.2(b)(16)(i). If the director intends to base a new decision, in whole or in part, on this discrepancy, the director must first allow the petitioner an opportunity to explain and overcome the discrepancy.

Another issue arises from the information available to the AAO. For an alien to qualify as a special immigrant religious worker, it cannot suffice for the petitioner to show that the alien has the proper credentials to perform religious work. Eligibility also rests on a single, distinct job offer with a specific employer, rather than on the general principle that the alien intends to perform some kind of religious work. This is clear, for instance, from the regulation at 8 C.F.R. § 204.5(m)(7), which calls for numerous details about the prospective employer and the terms of the job offer.

The regulation at 8 C.F.R. § 204.5(m)(12) gives the director discretion to verify the terms, and ongoing existence, of the required job offer:

> *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.

In this instance, efforts by USCIS officers to verify the petitioner's employment of the beneficiary in August 2007 revealed that the beneficiary has started his own church, New Spring Christian Church, from his home in San Jose, California. Based on this information, the officers determined that the petitioner had failed its compliance review. This failed review is, itself, grounds for denial under 8 C.F.R. § 204.5(m)(12). The director cannot approve the petition without credible evidence that the job offer from the petitioning organization remains valid, and that the beneficiary still has a good faith intention to work for the petitioner. Some evidence in the record suggests that the beneficiary is the petitioner's only paid employee, and has been so for some time. If this employment arrangement exists only for the purpose of securing immigration benefits for the beneficiary, then we would not consider it to be a *bona fide* job offer.

Therefore, the AAO will remand this matter for a new decision. 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.