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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

C<sub>1</sub>

[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **FEB 18 2011**

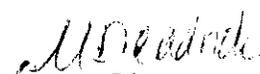
IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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:  
[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.  
If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, initially approved the employment-based immigrant visa petition on April 25, 2006. On further review, the Director, California Service Center (CSC) determined that the beneficiary was not eligible for the visa preference classification. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke (NOIR) the approval of the preference visa petition and her reasons therefore and subsequently exercised her discretion to revoke the approval of the petition on April 24, 2008. The Administrative Appeals Office (AAO) remanded the matter for consideration under new regulations. The director again denied the petition and, following the AAO's instructions, certified the decision to the AAO for review. The AAO will withdraw its previous decision and the previous decision of the Director, CSC, and remand the matter to the director for further action and consideration.

As stated, the instant petition was previously approved on April 25, 2006 and subsequently revoked. The AAO's remand for application of the new regulation was in error. Accordingly, for purposes of this certification, we withdraw our previous finding and focus our review on the original decision of the Director, CSC, which was correctly based upon the regulations in effect at the time the petition was originally approved.

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 a pastor. The director determined that the petitioner had failed to satisfactorily pass a compliance review.

On appeal, counsel asserts that the site inspection was not conducted at the physical location of the church or at the place where the beneficiary conducts religious services for the petitioner. Although counsel stated on the Form I-290B, Notice of Appeal or Motion, that she would submit a brief and other additional evidence in support of the appeal, no additional documentation was received by the AAO in support of the appeal. However, as the AAO conducts de novo review, we will consider all evidence of record, including any relevant evidence submitted by the petitioner following the remand.

Section 205 of the Act, 8 U.S.C. § 1155, states that the Secretary of the Department 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 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.*

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 director's revocation of the approval of the petition was predicated on the site verification visits conducted on January 31 and February 5 of 2007. According to the investigating officers, the visits were conducted at the address listed on the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, which was revealed to be a residential address. The investigators were permitted to enter the home and take photographs. The investigators found no evidence of a church or church office. The investigators also visited the work site of [REDACTED], the president and treasurer of the petitioning organization and the signatory of the Form I-360 petition. The investigations reported that when asked to produce financial documentation for the petitioning organization, [REDACTED] stated that the documents were at the

petitioner's office. The investigators stated that during their visit, the beneficiary of this petition arrived and that after discussion, the two men then stated that the documentation was actually on a computer at the beneficiary's home. When again asked to produce the documentation, [REDACTED] and the beneficiary stated that the only documents they possessed were bank statements that, according to [REDACTED] were in his name. According to the investigators, when they asked to see the statements, [REDACTED] declined.

On November 20, 2007, the director notified the petitioner of the results of the onsite inspection and of her intent to revoke approval of the petition based on these results. The director requested additional documentary evidence to establish that the petitioning organization operated as claimed in its petition.

In response, [REDACTED] stated in a December 20, 2007 letter:

At the time [the] petition [was] filed, for a place of worship we were temporarily renting a church building from [REDACTED] Concerning [sic] about unstable rental status, we used by residence address (the church office address) as a mailing address for the church and the petition of I-360.

We are currently renting a building of [REDACTED] . . . since April 2006 to present.

[REDACTED] denied that he declined to produce the financial records of the church. He stated that the investigators visited him at his business and he could not produce the records because they were at his house, which served as the church office.

The petitioner submitted a copy of its April 30, 2006 "facility use agreement" with the [REDACTED] The parties entered into another one-year agreement on dated April 25, 2007. The petitioner also submitted a December 11, 2007 agreement from the rector of [REDACTED] the [REDACTED] confirming the agreement with the petitioner.

In response to the NOIR, prior counsel questioned the motives and ability of one of the investigators.<sup>1</sup> The record, however, does not support, and prior counsel provided no documentary evidence, that the investigators conducted themselves in less than an official and professional manner. Prior counsel alleges that [REDACTED] and the beneficiary "speak only rudimentary English" and that the investigators "did not bother to bring a Korean-speaking interpreter to aid in the 'investigation.'" However, nothing in the record supports counsel's assertions regarding the abilities of the beneficiary or [REDACTED]. The record does not indicate that the investigators had any difficulty in communicating with either of these individuals. The

<sup>1</sup> Different counsel represents the petitioner on appeal.

unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Nonetheless, we find that the petitioner has submitted a reasonable explanation to rebut the findings of the investigating officers regarding the existence and location of the church. The matter is remanded for the director to determine if an additional site visit is appropriate for the location that the petitioner currently identifies as its worship site. On remand, the director may also address other issues resulting from the onsite verification visit, applying the regulations that were in effect at the time of approval.

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 AAO for review.