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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

PUBLIC COPY



**U.S. Citizenship
and Immigration
Services**

C₁

DATE: **JUL 21 2011** OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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.

Thank you,

Perry Rhew

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center (NSC), initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The NSC director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The petitioner appealed the matter to the Administrative Appeals Office (AAO). The AAO remanded the matter for consideration under revised regulations, and the Director, California Service Center (CSC), denied the petition under the revised regulations, and certified that decision to the AAO for review. The AAO will withdraw the director's decision and again remand the matter to the director for further consideration and action.

The petitioner is a [REDACTED]. 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 orchestra conductor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as an orchestra conductor immediately preceding the filing date of the petition.

The most recent correspondence from the petitioner includes a brief from attorney [REDACTED]. The record, however, does not include an original Form G-28, Notice of Entry of Appearance as Attorney or Representative, designating Ms. [REDACTED] as the petitioner's attorney of record. Instead, Ms. [REDACTED] has added her name and signature to a photocopy of a Form G-28 from February 2008 that [REDACTED] pastor of the petitioning church, had previously signed to designate [REDACTED] as the attorney of record. Under the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 292.4(a), the Form G-28 must be properly completed and signed by the petitioner, applicant, or respondent to authorize representation in order for the appearance to be recognized by the Department of Homeland Security and its components, including USCIS and the AAO. The addition of Ms. [REDACTED] signature to a photocopy of a Form G-28 that the petitioner had signed more than a year and a half earlier does not meet this requirement, and therefore the AAO will not recognize Ms. [REDACTED] as the petitioner's attorney of record. The most recent properly executed Form G-28 in the record is from [REDACTED], who therefore remains the attorney of record in this proceeding.

The petitioner filed the Form I-360 petition on March 31, 1995. The NSC director approved the petition on January 16, 1996, but revoked the approval on February 16, 2008. The AAO remanded the matter to the CSC director on December 10, 2008. The CSC director's new decision, issued on September 8, 2009, is a denial of the petition rather than a revocation of the approval. Because the NSC director's prior decision had been a revocation, and the AAO withdrew that decision, any new adverse decision by the CSC director must also be a revocation.

Furthermore, in its 2008 remand notice, the AAO stated that the petition was subject to revised regulations published on November 26, 2008. This decision was in keeping with supplementary information published with the revised regulations, which 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). Upon further consideration and consultation with other USCIS components, however, the AAO has concluded that a petition approved before November 26, 2008 was not

“pending” on that date, even though USCIS subsequently revoked the approval and the appeal was pending on November 26, 2008.

Therefore, the proper course of action at this point is for the CSC director to issue a new decision under the pre-2008 regulations. If that decision will be adverse to the petitioner, then the decision must take the form of a revocation rather than a denial, and must conform to the USCIS regulations governing revocations on notice at 8 C.F.R. § 205.2.

In the course of any further adjudication of the petition, the AAO instructs the CSC director to take into consideration an investigative report stating that Social Security Administration (SSA) records show that the beneficiary worked as a full-time maintenance worker for several different employers between 1991 and 1996. The beneficiary omitted these other employers when instructed to list all of his employers over the past five years when he completed Form G-325A, Biographic Information, on February 5, 1996. Notations on that form warned the beneficiary of “severe penalties . . . for knowingly and willfully . . . concealing a material fact.” By failing to disclose extensive secular employment during the relevant period, the beneficiary concealed a material fact.

The record does not contain first-hand materials from the SSA itself to support the claims in the investigative report. The CSC director may choose to issue a request for evidence requesting supporting evidence from the SSA, Internal Revenue Service, and/or other verifiable sources of contemporary information and documentation. Nevertheless, attorney Safri and the petitioner have both acknowledged the beneficiary’s outside employment in subsequent correspondence, and therefore cannot credibly dispute that employment now.

The record contains two copies of an October 26, 1995 letter from [REDACTED] pastor of the petitioning church. The first submitted version of the letter included the following paragraph at the bottom of the first page onto the top of the second: “With these additional activities, [the beneficiary] spends more tha [sic] 35 hours per week working in the Church. This constitutes [the beneficiary] as a full time employee [sic] of this Church. He is paid for his services to our Church.”

Subsequently, when the petitioner submitted another copy of the October 26, 1995 letter, the petitioner substituted a new paragraph reading: “We expect [the beneficiary] to spend an average of 30 hours per week with these activities. Apparently, [the beneficiary] is supplementing his income by working for another company. We agree with this situation as long as it does not interfere with his duties at the Church.” The petitioner offered no explanation for this alteration of [REDACTED]

The petitioner’s submission of an altered letter and the beneficiary’s failure to report substantial secular employment on Form G-325A appear to constitute grounds for a finding of willful misrepresentation of a material fact. Any further action by the director should take this into account.

Therefore, the AAO will remand this matter for a new decision and related action concerning apparent material misrepresentation by the petitioner and by the beneficiary. The CSC 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.