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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

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[Redacted]

DATE: **MAY 17 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,

Mari Plerson
S 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 withdraw the director's decision and remand the petition for further action and consideration.

The petitioner is a church belonging to the Korean Presbyterian Church in America. 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 education minister. The director determined that the petitioner had failed a compliance review, because a site inspection called the petitioner's continued existence into question.

On appeal, the petitioner submits documentation of its corporate status. Counsel indicates that a brief will be forthcoming within 30 days. To date, 19 months after the filing of the appeal, the record contains no further substantive submission from counsel or the petitioner. The AAO therefore considers the record to be complete as it now stands.

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 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 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 petitioner filed the Form I-360 petition on April 14, 2005. In an accompanying letter, Rev. [REDACTED], identified as the petitioner's senior minister, stated that the beneficiary "has been working as our full-time education minister since January 2003," with responsibility over the petitioner's "education staffs." Rev. [REDACTED] claimed a "congregation [of] over 100 registered members," still enjoying "continual growth." Regarding the church's activities, he stated:

Main services of our church include Sunday Worship Services, Sunday Evening Praise Worship Service, Sunday Youth Worship Service, Sunday Bible Study Class, Sunday thru Monday Early Morning Prayer Meetings, Wednesday Worship Service, Friday Lay Group Meeting, Sunday Elementary and Jr./Sr. High School Student Meetings, Saturday Youth Meeting, Korean School, Senior School, and Missionary Activities. Other church activities include New Member Orientation and Bible Study, Choir Practice, and Mission Explosion/Discipleship Classes.

The director approved the petition on October 29, 2005. On December 13, 2005, the beneficiary filed a Form I-485 application to adjust status. While that application was pending, the U.S. Citizenship and Immigration Services (USCIS) sought to verify the petitioner's claims through

compliance review. The USCIS regulation at 8 C.F.R. § 204.5(m)(12) describes the compliance review process:

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.

On August 8, 2007, a USCIS officer traveled to the Paramount, California address listed on the Form I-360, but found no evidence of the petitioning church. A search of public records indicated that the petitioner had begun using a different address, on [REDACTED] in Fullerton, California. The USCIS officer traveled to that address at 8:45 a.m. on Wednesday, August 15, 2007. A garment worker at that address stated that he did not know of the petitioning church. Another garment worker stated that she knew Rev. [REDACTED], and placed a telephone call to him. Rev. [REDACTED] told the USCIS officer that his church was located in suites G and H.

Suite G at that address showed a sign for Central America Gospel Mission Council, but no evidence of the petitioning church. Suite H had Korean-language church banners, and chairs and a pulpit were visible through the window. Cobwebs and dust on the door handle, and accumulated newspapers and mail by the door, did not suggest frequent use of the site. No employees or church members were present.

On July 26, 2009, the director notified the petitioner of USCIS's intent to revoke the approval of the petition, because the compliance review process had not shown that a functioning church operates at the petitioner's claimed address.

In response, Rev. [REDACTED] stated that the petitioner moved to the [REDACTED] address in November 2005, and "is using suite H . . . for a chapel and other suites G, E, P, S, etc. for office room, conference room, fellowship hall, Bible study room, and Sunday room, etc." The petitioner submitted a copy of a commercial lease agreement for suites E, G and H, effective December 1, 2005.

Rev. Son claimed that the site was unoccupied at the time of the 8:45 a.m. site inspection because petitioner's daily morning prayer services end at 7:00 a.m., and the employees report to work at 10:00 or later. Rev. [REDACTED] stated: "On the day the USCIS officer visited, I was supposed to meet the officer at 10:30 AM after I made a phone call with him, but he [had] already left when I arrived." This last sentence is consistent with the officer's report. The officer stated that Rev. [REDACTED] offered to meet the officer at 10:30 a.m., but the officer's narrative ended at the conclusion of the telephone

call. The officer did not claim to have waited for Rev. [REDACTED] or to have returned to meet him later in the morning.

The petitioner submitted photocopies of the petitioner's processed rent checks from April through June 2009. The address printed on these checks is on Palm Place in Cerritos, California.

The petitioner submitted early 2009 utility bills addressed to the petitioner at the Cerritos address, referring to service at suites G, H, M and P at the [REDACTED] address. A certificate of liability insurance shows the name of the church and an address including suites E, G and H. Invoices from [REDACTED] show sales to the petitioner at suite H.

Postal worker [REDACTED] attested to the petitioner's existence, and stated that mail is sometimes misdelivered "due to the complex structure of the building." To corroborate this assertion, the petitioner submitted photographs of several purportedly misdelivered mail items, most of them addressed to suite H of a neighboring building.

The petitioner submitted photographs of the exterior of Suite G, which resemble the USCIS officer's photographs. The petitioner also submitted a photograph of an exterior sign showing the name of the petitioning church and a telephone number, along with Korean characters. The USCIS officer's report includes a photograph of a sign in the same location. The two photographs, taken years apart, do not show identical signs, but both signs include the name of the petitioning church and the same telephone number. That number is also legible on a banner that the officer photographed outside suite H. The petitioner also submitted a photograph of the window of Suite E, which shows the same Korean characters from the exterior sign as well as the English phrase "Fellowship Music Center."

The petitioner's exterior photographs of suite H show a larger, sliding glass door around the corner from the door that the USCIS officer had previously photographed. Rev. [REDACTED] stated that the petitioner "hardly uses" the smaller door.

The petitioner submitted copies of certificates, newspaper clippings, and other materials, but these items are in Korean with no certified English translation as required by the regulation at 8 C.F.R. § 103.2(b)(3). Without such translations, these submissions lack evidentiary weight.

The director revoked the approval of the petition on September 21, 2009. In the revocation notice, the director listed the petitioner's various submissions. The director concluded: "The petitioner has not submitted sufficient evidence in rebuttal to the USCIS's notice of intent to revoke," but did not elaborate as to how the evidence was insufficient. The director did not, for instance, report unsuccessful efforts to verify the new evidence such as the lease on the property.

The director stated: "Despite the evidence the petitioner has provided, it has been determined through the [REDACTED] and the California Business Portal that the [petitioning church] . . . has been 'suspended.'" The director stated that, owing to California's

suspension of the petitioner's corporate status, "it does not appear that the petitioning organization is operating as a legal, non-profit entity in the State of California. Therefore, it has not been clearly established that a bona-fide religious worker position has been proffered to the beneficiary."

On appeal, counsel notes that the petitioner had already demonstrated "there are a lot of mail delivery errors in the petitioner's location. . . . The petitioner never received" the renewal materials to keep its corporation in good standing. The petitioner submits documentation showing its "active" status as of October 2, 2009.

The regulation at 8 C.F.R. § 205.2(b) requires USCIS to give the petitioner the opportunity to offer evidence in support of the petition and in opposition to the grounds alleged for revocation of the approval. A decision to revoke approval of a visa petition can only be grounded upon, and the petitioner is only obliged to respond to, the factual allegations specified in the notice of intention to revoke. *Matter of Arias*, 19 I&N Dec. 568, 570 (BIA 1988).

In this instance, the petitioner responded to the notice of intent to revoke with a substantial quantity of evidence. The director dismissed this evidence without comment, and revoked the approval based on the suspension of the petitioner's corporate status – an issue that USCIS did not raise in the notice of intent to revoke. Under *Arias*, the revocation cannot stand. If the director seeks to base the revocation on the suspension of the petitioner's corporate status, then the director must first issue a superseding notice of intent to revoke to that effect.

As the director had acknowledged in the revocation notice, suspension of corporate status reflects "failure to file the required Statement of Information" rather than dissolution or cessation of the corporation. As such, suspension is an administrative issue, rather than direct evidence that the corporation has ceased to exist or to conduct business. Therefore, it is not clear that suspension of corporate status is, by itself, sufficient grounds for revocation, particularly if the petitioner takes action to remedy the suspension.

The AAO notes that, as of May 6, 2011, the searchable database maintained by the California Secretary of State at <http://kepler.sos.ca.gov/cbs.aspx> once again lists the petitioner's corporate status as "suspended." (Printout added to record May 10, 2011.)

The August 2007 compliance review raised significant questions about the petitioner's ongoing operation, but the petitioner appears to have answered those questions. If the director continues to be concerned about the validity of the job offer, then another site inspection would be in order.

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.

The AAO notes that, because USCIS approved the petition in 2005, and did not revoke that approval until 2009, the petition was not pending on November 26, 2008. Therefore, the petition is not subject to new evidentiary requirements that apply to petitions pending on that date. *See* 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008).

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.