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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

C1

[redacted]

DATE: MAY 09 2012 OFFICE: CALIFORNIA SERVICE CENTER FILE: [redacted]

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.

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, California Service Center, ("the director") initially approved the employment-based immigrant visa petition. The director subsequently revoked the petition. The matter is now before the Administrative Appeals Office ("AAO") on appeal. The AAO will dismiss the appeal.

The petitioner is a Christian 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 education director/instructor. On November 14, 2005, the petitioner filed a Form I-360 petition. On March 27, 2006, the director initially approved the petition. However, on April 12, 2010, the director sent to the petitioner a notice of intent to revoke. ("NOIR") On July 28, 2010, the director revoked the petition, finding that the petitioner had failed a compliance review, and that the petitioner did not provide the beneficiary a valid job offer.

On appeal, the petitioner submits a brief and further evidence.

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 first issue in this case is whether the director was correct in finding that the petitioner was not a valid entity.

First, the AAO finds that the director was incorrect in determining that the petitioner was not a valid organization because the petitioner and the beneficiary failed to appear for an interview. In her decision, the director stated:

> The beneficiary, the petitioner and the attorney of record were sent appointment notices for interviews. The notices were sent for interviews for April 16, 2007. The Service did not receive any word from the petitioner, beneficiary or the attorney of record until September 13, 2007. A systems check of change of address indicates the petitioner submitted only one change of address; Change of address is listed as January of 2009. Therefore, it can be concluded the two addresses visited by the investigating officer in March of 2007 were correct. The petitioner has failed to submit independent cooperative evidence of a valid reason for both the lack of a valid business address, and the failure to appear for interview.

8 C.F.R. § 103.2(ii) states:

> Failure to appear for biometrics capture, interview or other required in-person process. Except as provided in 8 CFR 335.6, if USCIS requires an individual to appear biometrics capture [sic], an interview, or other required in person process

> but the person does not appear, the application or petition shall be considered abandoned and denied unless by the appointment time USCIS has received a change of address or rescheduling request that the agency concludes warrants excusing the failure to appear....
>
> The Service scheduled an interview for the beneficiary and the petitioner for April 16, 2007. An interview notice was sent to all concerned parties. The signatory, the beneficiary and the attorney of record failed to appear for this interview or contact the Service to reschedule prior to the appointment. Regardless of the reason, waiting five months before contacting the Service; indicating a conflict in scheduling is not a convincing argument for failure to appear. The service will view the lack of contact prior to the appointment date as an abandonment of the I-360 petition.

On appeal, the petitioner rebutted this by stating that:

> A compliance review interview was scheduled, at which time Appellant's prior attorney responded that a conflict existed in the scheduling of said inspection. Attached for the Court's review as Exhibit A, is said letter of April 8, 2007 requesting the interview and the FILE DATE STAMPT [sic] of the receipt by the SERVICE of the notice conflict dated April 16, 2007.
>
> Subsequent to said request for a rescheduled inspection, on or about September 13, 2007. Said prior attorney, [redacted] mailed via registered mail a request for action on said matter and advising the investigating office that no word had been received with regards to a subsequent scheduled inspection or interview. A copy of said letter and the evidence of the registered mail receipt is attached hereto as Exhibit B and incorporated herein by this reference.

The AAO has reviewed the submissions by the petitioner and determined that in this instance, the petitioner is correct and the director was wrong. The record shows a date stamp on the USCIS interview notice that on April 16, 2007 at 2:17 PM prior counsel went to the USCIS office and told them that he was unable to keep this appointment "due to a conflict." On September 13, 2007, the petitioner sent a letter asking to reschedule the case. Therefore, the AAO finds that counsel's account of these events was factually incorrect, and the AAO will dismiss this part of the decision.

The AAO will, however, uphold the director's decision. On the Form I-360 petition, the petitioner indicated that the organization was located at [redacted] CA. The director conducted a site inspection there, and found the location to be an abandoned building.

On May 11, 2010, in response to the NOIR, the petitioner submitted a letter from [redacted] regarding the rental space for the petitioner. This letter stated that [redacted]e was renting space from them. The USCIS did not give this letter any weight because:

> The letter stated [redacted] was in this premises from March 16, 2005 until August 2007. This letter was not convincing. The letter was dated April 11, 2007. Knowledge of being on the premises after the date of the letter brings doubt on the letter's weight. Further, the officer found the location abandoned. No contracts or lease agreements showing occupancy during the time indicated were submitted into evidence.

On appeal, the petitioner made no attempt to rebut this information. Neither the petitioner nor counsel explained why the letter from [redacted] was dated April 11, 2007, yet stated that the petitioner was located there until August of 2007. Without this explanation, the letter from [redacted] is not credible. Further, in the appeal brief, the petitioner stated that the sublease agreement would be included with the evidence. However, a review of the evidence that the petitioner submitted does not show that this evidence was submitted. The AAO notes that the evidence contains a sublease agreement for the property located at [redacted] Los Angeles, CA. Therefore, the AAO will uphold the director's decision on this basis.

The petitioner also submitted photos of the petitioner's location at this space. Taking the petitioner at his word that this is where the petitioner was located, the AAO notes that the photos show the outside being a warehouse with [redacted] in giant letters above the door, and below that just above the door a sign saying "[redacted] There is no indication from the outside front of the building that the petitioner was located there. Further, the pictures that the petitioner states are from the inside of the building provide no evidence that the petitioner is actually physically located in that building.

The director found that even if the petitioner were located there, there is no proof that it was conducting business as a religious organization there:

> Phone bills were submitted into evidence to collaborate the petitioner's claim of the business location. The phone records indicate one fact. The petitioner's business address is listed as [redacted] Los Angeles California until October of 2008. The payments reflect for service only. No long distance calls are indicated. The Service questions how a nonprofit charitable organization conducts business without showing the use of a phone, when the charities they represent are international.

The petitioner did not address this issue on appeal. While a phone bill on its face can show that the petitioner was located at that address, it is unclear that this location was used for a religious purpose. As a result, the director's decision will be upheld.

The AAO also notes that the petitioner provides a sublease for another location, located at [redacted] Los Angeles, CA. The petitioner submitted a sublease, which began in January of 2009, and a change of address to the location, dated November of 2009. The director also doubted the veracity of this location as well. The director stated:

> The pictures of the organization show some signs on windows and doors, however, the location is still vague. The sublease is for 200 sq ft of office space. This is an office approximately 20 x 10 ft. The service questions how the organization conducts the business of seminars in such a small location. However, this sublease does not explain the lack of accessibility by the petitioner during the site inspection of March of 2007.

The petitioner submitted photographs of the outside and the inside of the location, although the photographs do not show that this is the actual address. The AAO agrees with the director that the location is a very small one, and it is unclear how the organization can conduct seminars from that location. Finally, the petitioner submitted bank statements and rent checks to show that it was located at [redacted] California from February 2007 through August 2009. This evidence does not show that the location was being used for a religious purpose, and the address on the checks is not sufficient to overcome the site visit which showed that the location was an abandoned building. As a result, the director's decision will be upheld on this basis.

The director also denied this petition because he found that the petitioner had not given the beneficiary a job offer. The regulation at 8 C.F.R. § 204.5(m)(4) states:

> *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.

In the present case, the director found that the petitioner did not provide sufficient evidence to establish a job offer to the beneficiary because:

> Little if any evidence was submitted to indicate the petitioner's business requires a full time employee. The beneficiary's duties indicate he is to provide training for missionaries every quarter (4 times a year). According to the employment letter, the beneficiary will be responsible for teaching culture, language personal and group evangelism, counsel, pasturing, church growth, bible church administration, church music, along with Christian ethics. The petitioner fails to state the curriculum, or time frame for the training. Where and when the training will occur, and the schedule of work the beneficiary will provide to the organization on a weekly basis.
>
> The petitioner submitted the beneficiary's federal tax returns into evidence. The beneficiary lives at [redacted] California. An internet

> search shows this address along with the beneficiary as the principal owner and the location of a business called, [redacted] Although the beneficiary's tax returns indicate he is working as a religious worker, other evidence leads the Service to consider there is reasonable probability the beneficiary is working in the home improvement construction industry.

On appeal, the petitioner states:

> Appellant argues that it did meet the requirements as set forth under the Act. The fact that the service implies that the Beneficiary is possibly doing construction work is a further incorrect conclusion. The beneficiary's spouse, does maintenance work under the name [redacted] and reports the approximate tax information in their joint return. Schedule CEZ evidence the principal business or profession as "maintenance."

With the appeal, the petitioner submitted evidence of a business license issued to [redacted] and a declaration of publication, which shows that the business is issued in the name of [redacted] who is the beneficiary's spouse. Further, in the beneficiary's tax returns that the beneficiary submitted, more specifically schedule C-EZ, the beneficiary's spouse is listed as the sole proprietor. Therefore, the AAO is persuaded that [redacted] is run by the beneficiary's spouse and not the beneficiary himself.

The petitioner has not, however, addressed the director's concerns regarding the beneficiary's actual duties for the petitioner and the validity of the petitioner's job offer. As such, the AAO affirms the director's decision on this basis as well.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.