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



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE NOV 27 2013

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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in cursive script, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, initially approved the employment-based immigrant visa petition on June 20, 1998. On further review, the Director, California Service Center, determined that the beneficiary was not eligible for the visa preference classification. Accordingly, the director issued a Notice of Intent to Revoke (NOIR) the approval of the preference visa petition and subsequently exercised her discretion to revoke the approval of the petition on February 19, 2013. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will remand the petition for further action by the director.

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. In the NOIR, the director discussed the negative findings of a site visit which called into question the existence of the petitioning church. The director afforded the petitioner thirty days to offer evidence in support of the petition and in opposition to the proposed revocation. In the final decision, the director revoked the petition finding that the petitioner had failed to respond to the NOIR.

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.

The director issued the NOIR on September 18, 2012, and sent the notice to [REDACTED] Texas, the petitioner's address as provided in the January 7, 1998, Form I-360, Petition for Amerasian, Widow or Special Immigrant. The site visit discussed in the notice was conducted at the same address on December 17, 2010 and found that the petitioning church was not operating at that location. The director stated: "Search for the church [REDACTED]"

brought out two locations in [REDACTED] Texas. No such church had been located in [REDACTED] TX.” On February 19, 2013, the director revoked the petition, finding that the petitioner failed to respond to the NOIR. The decision was sent to the beneficiary’s home address, as found during the site visit.

On appeal, counsel for the petitioner asserts that the petitioner did not receive or have an opportunity to respond to the NOIR, and that “the beneficiary only received notice of the Decision to revoke the petition.” Counsel states: “The Service wishes to revoke the [...] petition on the basis that the Petitioner moved addresses 12 years after the petition was submitted and approved.” Counsel asserts that the church is “now located at [REDACTED]” and that the beneficiary “was eligible for the visa when he initially applied and has maintained a qualifying position with the Church for all relevant periods of time.” The petitioner submits evidence pertaining to its current address, its continuing existence, and its employment of the beneficiary subsequent to the petition’s approval.

The director sent the revocation not to the petitioning church, but to the alien beneficiary. Thus, the director never issued the revocation decision to the petitioning church. 8 C.F.R. § 103.5a(a)(1) defines “routine service” as mailing a copy by ordinary mail addressed to a person at his last known address. 8 C.F.R. § 103.5a(b) states that service by mail is complete upon mailing. Here, because the director never sent the final decision revoking the petition to the petitioning organization, the director has arguably never served the notice of revocation. Thus, the petitioner has never had the opportunity to file a timely appeal. Further, in the NOIR, the director cited the current regulations pertaining to special immigrant religious workers, published on November 26, 2008. Supplementary information published with the new rule specified that it would apply to all cases pending on the rule’s effective date. *See* 73 Fed. Reg. 72276 (Nov. 26, 2008). As the instant petition was approved prior to the effective date, the current regulations do not apply. The director must make the initial determination as to whether or not the petitioner has met the regulatory requirements according to the regulations in effect at the time of approval of the petition. If the director intends to revoke the petition based on that determination, the director must issue a new NOIR based upon those regulations and send it to the petitioning church at its current address in order to give the petitioner an opportunity to respond.

ORDER: The matter is remanded to the director, California Service Center, for issuance of a new Notice of Intent to Revoke the petition (if necessary) and a new decision in accordance with the requirements of the regulations in effect at the time of approval of the petition. If the new decision is adverse to the petitioner, it shall be certified to the Administrative Appeals Office for review.