



U.S. Citizenship
and Immigration
Services

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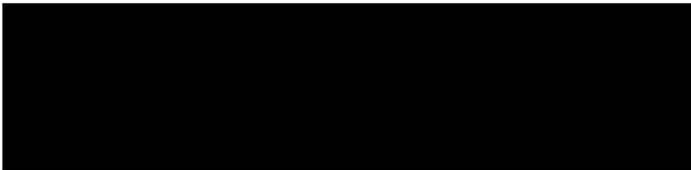


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 04 2009
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IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center (NSC), initially approved the employment-based immigrant visa petition. After disqualifying evidence came to light, 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 decision to the Administrative Appeals Office (AAO). The AAO subsequently remanded the petition to the Director, California Service Center (CSC), for a new decision based on revised regulations. The CSC director determined that the petitioner had failed to submit required evidence, and therefore the CSC director certified an adverse finding to the AAO. The AAO will affirm the CSC director's decision.

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)).

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.

The petitioner is a Sikh society. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Act to perform services as an assistant priest. 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 petition on February 6, 2006. The NSC director approved the petition on May 25, 2006, but subsequently determined that the operation of three taxi and limousine services from the petitioner's address, and the beneficiary's status as the secretary of the three corresponding corporations, indicated that the beneficiary was not solely employed as a minister as required by section 101(a)(27)(C)(ii)(I) of the Act.

On appeal, counsel argued that "[w]hat is a priestly duty in one religion may not be the case in another," and that the petition "needs to be analyzed through the lenses of an objective adjudicator."

On November 26, 2008, while the appeal was pending, U.S. Citizenship and Immigration Services (USCIS) published substantially revised regulations at 8 C.F.R. § 204.5(m) relating to special immigrant religious workers. The AAO remanded the petition to the CSC Director on December 15, 2008, for consideration under the new regulations.

On February 4, 2009, the CSC director advised the petitioner of new evidentiary requirements at 8 C.F.R. §§ 204.5(m)(7), (8), (10) and (11), relating, respectively, to the employer's detailed attestation; the employer's tax-exempt status; the beneficiary's intended future compensation; and the beneficiary's past employment. The director notified the petitioner that the petition could not be approved unless the petitioner provided all of the required evidence, and that "[f]ailure to respond to this request will result in the denial of the petition."

The record contains no response, either from the petitioner or from counsel.

The director issued a certified decision on May 30, 2009, stating that the petitioner had failed to respond to the February 4, 2009 notice, and that, therefore, the petitioner had failed to meet its burden of proof. As required by 8 C.F.R. § 103.4(b)(2), the director allowed the petitioner 30 days in which to submit a

brief in response to the certified decision. To date, more than five months later, the record contains no further correspondence from the petitioner or from counsel.

The record supports the director's narrative of events. Because the petitioner has proven to be either unwilling or unable to submit required evidence in this proceeding, we affirm the director's finding that the petitioner has not established that the petition can be approved. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. 8 C.F.R. § 103.2(b)(14).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will affirm the director's decision.

ORDER: The director's decision of May 30, 2009 is affirmed. The revocation remains in effect.