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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date:
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JUL 23 2009

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:

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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska 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 Administrative Appeals Office (AAO) summarily dismissed the petitioner's appeal. The matter is now before the AAO on a motion to reopen. The AAO will dismiss the motion.

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.

8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part, "[a]n officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

The director approved the petition on September 20, 2005. Subsequently, on January 30, 2008, the director issued a notice of intent to revoke the approval. In the notice, the director stated that a visit to the petitioning church and interviews with church personnel raised questions about the beneficiary's true role within the petitioning organization. As required by the regulation at 8 C.F.R. § 205.2(b), the director allowed the petitioner 30 days to submit evidence in response to the notice.

The director revoked the approval of the petition on April 16, 2008, on the grounds that the petitioner's response to the above notice failed to provide necessary evidence of eligibility. The petitioner appealed

that decision on April 30, 2008, indicating that a “brief and/or additional evidence . . . will be submitted to the AAO within 30 days.”

The AAO summarily dismissed the petitioner’s appeal on December 10, 2008, stating that “the AAO has received nothing further” to support the appeal. The AAO also, as a matter of routine, advised the petitioner of its rights to file a motion to reopen or a motion to reconsider.

On January 7, 2009, the petitioner filed the present motion to reopen. On motion, the petitioner does not dispute the AAO’s finding that the petitioner failed to submit the promised brief and/or evidence to support the appeal. Instead, the petitioner, through counsel, argues the merits of the director’s decision.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

In this instance, the petitioner did not file a motion to reopen the director’s decision to revoke the approval of the petition. Rather, the petitioner filed a motion to reopen the AAO’s summary dismissal of the appeal. The appeal was the petitioner’s opportunity to contest the director’s decision. The petitioner requested an additional 30 days to supplement that appeal. When that 30-day period expired, so did the petitioner’s opportunity to contest the director’s decision.

On motion, we will only consider arguments and evidence relating to the grounds underlying the AAO’s decision. If the petitioner had shown that a brief was timely filed, and that the AAO erred by missing or disregarding that brief, then there would be grounds to reopen the proceeding. The petitioner has not done so in this proceeding. The petitioner having forfeited its original opportunity to file a meaningful appeal, the filing of a motion does not present a new opportunity as though the summary dismissal never existed. The petitioner has not claimed or shown that the AAO should not have summarily dismissed the appeal, and we will not, at this late date, entertain the petitioner’s untimely arguments regarding the underlying notice of revocation.

ORDER: The motion is dismissed.