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



U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:
WAC 05 239 51914

APR 08 2010

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based immigrant visa petition. On further review, the director determined that the beneficiary was not eligible for the visa preference classification. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke (NOIR) the approval of the preference visa petition and her reasons therefore and subsequently exercised her discretion to revoke approval of the petition on February 29, 2008. The Administrative Appeals Office (AAO) remanded the matter for consideration under new regulations. The director again denied the petition and, following the AAO's instructions, certified the decision to the AAO for review. The AAO will withdraw the director's decision, and remand the petition for further action and consideration.

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 its education minister. On certification, the director determined that, based on a site verification visit, the petitioner "does not appear to be operating as a functional church" and that the beneficiary "does not appear to be working at the proffered position."

On certification, the petitioner, through counsel, asserts that the director's decision was "[b]ased on [] erroneous information and conclusions drawn from the site visits." Counsel submits a brief and additional documentation on certification.

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.* 22

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).

In its April 14, 2005 letter submitted in support of the petition, the petitioner, through its senior pastor, [REDACTED] stated that it sought to employ the beneficiary as its education minister at the rate of \$2,000 per month. The petitioner stated that it had “been growing steadily and now has over 140 people attending its services “and “more than \$224,000 in annual revenue.” The petitioner’s letterhead showed a church office address at [REDACTED] California and a church address of [REDACTED] in Los Angeles. The petitioner submitted a partial copy of a July 6, 2004 lease “dated for reference purposes only” with [REDACTED] for premises to use as a church and office at [REDACTED] in Los Angeles. The period of the lease was from July 26, 2004 to July 25, 2005. The petitioner also provided copies of photographs that purportedly depict the beneficiary standing in front of the entrance to the church and a sign showing its hours of worship.

The director approved the petition on February 6, 2006. On April 13, 17 and 19 of 2007, a site verification visit was conducted by immigration officials. According to the investigative report, the investigators first visited the listed address of the church office in [REDACTED]. The address was that of a residence occupied by renters. Information was left with the residents with the request that the landlord contact the investigators. A call was received from an individual who

identified herself as the daughter of [REDACTED]. According to the investigative report, [REDACTED] stated that church hours were “mostly Sundays only.”

On April 17, 2007, the investigators visited [REDACTED] the address identified as the church address on the petitioner’s letterhead, and determined that the property was occupied by a furniture business. The investigators subsequently talked with [REDACTED] who stated that he was in Alaska and provided the name and number of his successor with the petitioning organization, [REDACTED]. According to the investigators, [REDACTED] provided a new address for the petitioner and stated that church services were held on Tuesdays through Fridays from 5:30 am to 7:00 am, on Fridays from 8:30 p.m. to 9:30 pm, and on Sundays from 11:00 am to 12:30 pm.

The investigators visited the new address provided by [REDACTED] at 5:30 am on April 19, 2007, and found the organization closed. [REDACTED] returned the investigator’s call five hours later and stated that the church was closed because he was sick. The investigators reported that a records check revealed that the property located at [REDACTED] in Los Angeles was owned by [REDACTED]. The investigators were therefore unable to verify that the petitioner existed and was operating as stated in its petition.

Accordingly, on December 4, 2007, the director notified the petitioner of the investigators’ findings and advised the petitioner of her intent to revoke approval of the petition filed on behalf of the beneficiary. In response, [REDACTED], stated in a December 28, 2007 letter, that [REDACTED] had apparently “neglected to make [an] address change” after the church relocated, that the church property was rented from [REDACTED], and that:

For that week of April, 2007 which you visited [the petitioning organization], I did not attend the early morning prayer meetings due to my [health] and I asked [the beneficiary] to lead that meetings. He took his task well as I instructed. But he did not attend that Thursday meeting. As far as I know, every Thursday early morning [the beneficiary] gave a ride for his daughter at that time for her college chemical experiment. . . . Due to this reason I waived [the beneficiary] to attend Thursday prayer meeting.

also stated that [REDACTED] daughter had left the church shortly after her father moved to Alaska.

¹ Counsel makes much of the fact that [REDACTED] is identified as [REDACTED] instead of [REDACTED]. However, a review of the investigative report reveals that the investigator was not sure of the caller’s first name or its spelling. [REDACTED] first name is irrelevant to this decision.

² Counsel also makes much of the fact that the investigators reported that [REDACTED] stated he was retired from the petitioning organization rather than [REDACTED]; contention that he accepted a position in Alaska. Again, this is a nonissue as [REDACTED], who was the signatory of the petition on behalf of the petitioner, was no longer the contact person for the organization and the petitioner had failed to notify USCIS of its change of address.

The director revoked approval of the petition, stating:

The petitioner [sic] attempted to explain his health issues, however neglected to submit proof from the doctor or the hospital. The petitioner also attempted to give an explanation regarding the beneficiary. . . . However, the discrepancies encountered at the mandatory site visit question the petitioner's ability to document the requirements under the statute and regulation. The discrepancies in the petitioner's submission have not been explained satisfactorily. . . . The petitioner also has failed to submit proof that the church does function as such.

On appeal, the petitioner submitted documentation, including copies of lease agreements, processed checks reflecting rental payments, photographs, and business documentation, indicating that it leased and occupied space for a church and offices at [REDACTED] and that in August 2005, it moved to [REDACTED] both in Los Angeles. The petitioner also submitted a statement from [REDACTED] who acknowledged that she had not attended church with the petitioning organization since approximately September 2006.

On December 12, 2008, the AAO remanded the decision for consideration under new regulations. The new regulation at 8 C.F.R. § 204.5(m)(12) provides:

Inspections, evaluations, verifications, and compliance reviews. 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. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

In a Notice of Intent to Deny (NOID) issued on remand, the director again advised the petitioner of the investigators' findings. The petitioner did not address the investigator's findings in its response. On certification, in addition to copies of previously submitted documentation, counsel submits a brief and additional documentation.

The evidence of record sufficiently establishes that the petitioner existed as an entity at the addresses that it alleges in its documentation. The petitioner also provided a reasonable explanation for the closure of its facilities at the date and time of the investigators' visit. The investigators' report does not identify any other reasons why they concluded that the organization did not exist as a functioning church other than the church was closed on the one day they visited. The finding of the investigators during a single visit, especially considering the

other evidence of record, does not, by itself, provide a sufficient basis on which to conclude that the organization does not exist as claimed. If the director believes a site visit is necessary to the adjudication of this petition, the director must attempt another visit.

Additionally, the petitioner has not established how it intends to compensate the beneficiary.

The new USCIS regulation at 8 C.F.R. § 204.5(m)(10) provides that the petitioner must submit:

Evidence relating to compensation. Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS [Internal Revenue Service] documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

In its August 14, 2005 letter, the petitioner stated that the beneficiary would be compensated in the amount of \$2,000 per month. The petitioner submitted a copy of a State of California Form DE-6, Quarterly Wage and Withholding Report, on which it reported that it paid the beneficiary \$5,400 during the quarter ending June 30, 2005, and copies of three processed checks, reflecting that it paid the beneficiary approximately \$1,643 in April, May and June of 2005. The petitioner also submitted copies of its monthly bank statements for June 2005 and a March 9, 2005 letter from its bank, indicating that it had a balance of over \$12,000 in its checking account. The petitioner submitted copies of its "budget/settlement of accounts" for 2003 through 2005. The budgets do not include a specific category for salaries, but does include a line item for "pastor instance" in the amount of \$24,000 in 2003 and 2004 and \$26,400 in 2005. It is not clear what this category includes, especially since the petitioner had more than one pastor at the time.

On appeal, the petitioner submitted a copy of an IRS Form W-2, reflecting that it paid the beneficiary \$21,600 in 2005. None of the petitioner's documentation indicates that it had previously paid the beneficiary the proffered wage of \$2,000 per month.

With the documentation submitted in response to the director's NOID issued on remand, the petitioner submitted copies of its unsigned IRS Form 990-EZ, Short Return of Organization Exempt from Income Tax, for 2008, and its unsigned California State Form 199, California Exempt Organization Annual Information Return, on which it reported it paid the beneficiary \$29,000 in compensation. The petitioner also submitted a copy of its 2009 budget, on which it shows a pastor honorarium of \$30,000. The petitioner also provided the following:

1. A copy of an IRS Form 941 for 2003 dated February 25, 2009, reflecting that it paid the beneficiary \$5,400 for the quarter ending December 2003.

2. Copies of IRS Forms 941, dated February 4, 2005, for the quarters ending September and December 2004, reflecting that it paid the beneficiary \$5,400 during each quarter. The petitioner also submitted a copy of a California State Form DE 6 dated February 4, 2005, also reporting that it paid the beneficiary \$5,400 during these quarters.
3. Copies of IRS Forms 941, dated July 27, 2005 for the quarter ending June 2005, and January 19, 2006, for the quarter ending December 2005, indicating that it paid the beneficiary \$5,400 in each quarter.
4. The petitioner also resubmitted the copy of the California State Form DE 6 for the quarter ending June 20, 2005.

These documents are questionable, however, not only because of the dates in which they were allegedly prepared, but also because the petitioner alleged in its letter submitted in support of the petition, that the beneficiary did not begin employment with the petitioning organization until April 2005. This is confirmed in the "verification of employment" letter from [REDACTED] which indicates that the beneficiary worked for that institution from August 1, 2003 to March 31, 2005. It is also confirmed by the copies of the beneficiary's Forms W-2, from [REDACTED]. Thus, the petitioner's purported submission of IRS Forms 941 and California State Forms DE 6 for periods in which the beneficiary worked for another church is illogical and questionable. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The matter will therefore be remanded. On remand, the director should address whether the petitioner has established how it intends to compensate the beneficiary.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of the petition 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.

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 AAO for review.