

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

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
and Immigration
Services

41



FILE: [REDACTED]
SRC 06 118 53705

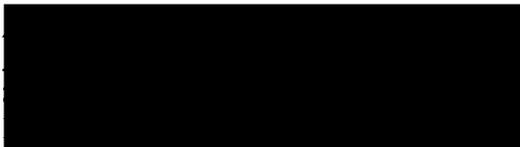
Office: TEXAS SERVICE CENTER

Date: **AUG 05 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:



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 \$585. 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, Texas 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 his reasons therefore, and subsequently exercised his discretion to revoke the approval of the petition on March 20, 2009. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a "non-denominational religious organization of Christian faith." 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 missionary. Based on the results of a compliance review verification site visit, the director determined that the petitioner had not established that it is a bona fide nonprofit religious organization.

On appeal, counsel states that the petitioner "submitted close to 100 pages of supporting documentation" which was sufficient to "overcome the negative implication of the investigation." Counsel submits a brief and additional documentation in support of the appeal.

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 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 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.*

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 petition was filed on March 3, 2006. In Part 1 of the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, the petitioner listed its address as [REDACTED]. The petitioner's February 2006 letterhead listed an address of [REDACTED]. On December 5, 2006, immigration officials (IO) visited the petitioner's address at [REDACTED] in Plano for the purpose of conducting a compliance review verification. The IO found that the address was that of a vacant duplex that was for sale. The IO also visited the petitioner's address at [REDACTED] in Arlington at approximately 11:40 a.m. on December 7, 2006. Suite 220 was found to consist of three offices, one used for soccer training and the other two apparently used by the petitioning organization. The IO found the lights out and the doors locked. He also observed "a couple of small tables and chairs with some Chinese religious literature."

On December 8, 2006, the IO called and spoke with the beneficiary of the petition, who stated that she "had been working all that week full time at the office in Plano," and "that the office was open from Tuesday through Friday at 10:00 am, and that 4 other people worked there full-time."

In response to the director's NOIR issued on February 18, 2009, [REDACTED] the petitioner's president, stated in a March 10, 2009 letter, that most of the petitioner's staff "works at the facility of [REDACTED] an affiliated church of our organization" and that the petitioner "has an arrangement with Fielder Road Baptist Church for a number of years now for us to use its facility for our daily operation." The petitioner's 2009 letterhead reflects the [REDACTED] address.

The petitioner submitted a February 23, 2009 statement from Jason Paredes, who identified himself as the pastor of group life/missions with [REDACTED] and confirmed that the petitioner “is utilizing office space located in” the church’s “main church building” and that the church had “been freely providing this office space for [the petitioner] to operate in Arlington, Texas since 2006.” [REDACTED] stated that the beneficiary currently worked in this office space. The petitioner also submitted photographs of what is purported to be the [REDACTED] at [REDACTED] in Arlington, Texas, the beneficiary’s work station and her card to access the building.

The petitioner submitted copies of a May 27, 2008 letter from the State of Texas Office of the Secretary of State and a May 23, 2007 letter from the Internal Revenue Service (IRS) addressed to the petitioner at the [REDACTED] address. A January 13, 2004 letter from the IRS was addressed to the petitioner at [REDACTED]. In a February 21, 2009 letter, [REDACTED] church administrator for [REDACTED] certified that the petitioner was using its fellowship hall to conduct bible and theological training, and that the petitioner had occupied unit [REDACTED] since May 21, 2005. The petitioner provided a copy of an April 27, 2005 agreement with [REDACTED] to use the “middle section of Suite 220” for office space for “operations” to “take place during daily business hours (8:00 AM – 5:00 PM) and possibly one or two evening class sessions during the week.” The petitioner submitted pictures of what it states are of its home office on [REDACTED]. However, there is nothing in these photographs to indicate when they were taken.

The petitioner provided flyers and other documentation written primarily in Chinese and not accompanied by full English translations as required by the regulation at 8 C.F.R. § 103.2(b)(3), which provides:

Translations. Any document containing foreign language submitted to USCIS [U.S. Citizenship and Immigration Services] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.

The documents, however, reflect the petitioner’s address on [REDACTED].
At least one of the flyers also shows the [REDACTED].

On appeal, the petitioner submits additional letters, dated in 2009, attesting to its existence and of the beneficiary’s work for the petitioning organization since 2004. However, these letters are not a substitute for the factual findings by USCIS. The petitioner provided no documentation to explain the IO’s finding of an empty residence for sale at [REDACTED] that it listed as its address on its 2006 letterhead. Further, the petitioner offered no explanation as to the lack of personnel at its [REDACTED] address. The beneficiary claimed that she had worked at the Plano address at the time of the IO’s visit. The record does not reflect which “Plano address” at which she allegedly worked in 2006, as the petitioner now claims to have had two locations in that city. A petitioner must establish eligibility at the time of filing; a

petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1) and (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

The petitioner has failed to establish that it was operating as a bona fide nonprofit religious organization at the time the petition was filed.

Beyond the decision of the director, the petitioner has not established that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa petition.

The regulation in effect at the time the petition was filed provided at 8 C.F.R. § 204.5(m)(1) that “[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker.”¹ The regulation indicated that the “religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.”

The regulation at 8 C.F.R. § 204.5(m)(3) stated, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on March 3, 2006. Therefore, the petitioner must establish that the beneficiary worked continuously in a qualifying religious occupation or vocation throughout the two-year period immediately preceding that date.

In its February 21, 2006 letter, the petitioner stated that the beneficiary had worked as a missionary “under practical training” with the petitioning organization since February 1, 2004 in an R-1 status. However, an April 29, 2004 Form I-797A, Notice of Action, indicates that the petitioner filed a

¹ On November 26, 2008, as required under section 2(b)(1) of the Special Immigrant Nonminister Religious Worker Program Act, Pub. L. No. 110-391, 122 Stat. 4193 (2008), U.S. Citizenship and Immigration Services (USCIS) promulgated a rule setting forth new regulations for special immigrant religious worker petitions. Supplementary information published with the new rule specified that “[a]ll cases pending on the rule’s effective date . . . will be adjudicated under the standards of this rule.” However, as the instant petition was not pending on November 26, 2008, it is subject to the regulations in effect prior to that date.

Form I-129 petition on behalf of the beneficiary for R-1 status on February 17, 2004, which was approved with a validity date of April 29, 2004 to April 29, 2007. Additionally, a Form I-20 A-B, Certificate of Eligibility for Nonimmigrant (F-1) Student, reflects that the beneficiary was approved for optional practical training in her field of studies, information systems, from May 10, 2003 to May 10, 2004. A copy of the beneficiary's visa reflects that she entered the United States on August 11, 2004, with an approved stay from August 11, 2004 to November 10, 2004, pursuant to an R-1 visa.

The petitioner has presented conflicting information regarding the beneficiary's prior work during the qualifying period. The Form I-20 reflects that she was approved through May 20, 2004 for optional practical training in information systems as part of her approved plan for attending school in the United States. The petitioner claimed that the beneficiary began working for the petitioning organization in an R-1 status in February of 2004; however, she was not approved for R-1 status until April 2004. Finally, the record reflects that the beneficiary reentered the United States on August 11, 2004 pursuant to an R-1 visa. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The petitioner has submitted insufficient documentation to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa petition.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.