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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  
and Immigration  
Services

**PUBLIC COPY**

[REDACTED]

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FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date:

JAN 05 2010

WAC 97 121 50112

IN RE:

Petitioner:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California 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) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The AAO will dismiss the motion.

The petitioner is a church. It sought 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 youth and outreach missionary. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous, qualifying work experience immediately preceding the filing date of the petition. In addition, the director determined that the beneficiary did not provide credible answers during an interview regarding her religious work.

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.

The petitioner filed the petition on March 27, 1997, and the director approved the petition on June 19, 1997. Subsequently, the director revoked the approval of the petition on June 25, 1999. The AAO dismissed the petitioner’s appeal on June 21, 2002, and properly issued its decision to the petitioner’s address as shown on the Form I-360 petition. *See* 8 C.F.R. § 103.5a(a)(1)(service of notices and decisions consists of mailing copies to a petitioner’s last known address). The AAO’s reliance on the petitioner’s unrevoked address of record furnished by the petitioner on the Form I-360 was proper. *See e.g.; Tobeth-Tangang v. Gonzales*, 440 F.3d 537, 540 (1<sup>st</sup> Cir. 2006); *Radkov v. Ashcroft*, 375 F.3d 96,

99 (1<sup>st</sup> Cir. 2004). The United States Postal Service returned the dismissal notice as undeliverable, marked “forwarding time expired.” The record contains no more recent address.

On February 4, 2004, [REDACTED] filed a Freedom of Information Act/Privacy Act request on behalf of the beneficiary, seeking a copy of the record of proceeding. USCIS responded to this request nine days later, on February 13, 2004. On June 18, 2004, [REDACTED] filed the present motion, stating that he was acting on the beneficiary’s behalf.

8 C.F.R. § 103.5(a)(1)(iii)(A) requires the motion to be signed by the affected party or the attorney or representative of record, if any. 8 C.F.R. § 103.3(a)(1)(iii)(B) states that, for purposes of appeals, certifications, and reopening or reconsideration, *affected party* (in addition to USCIS) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition. 8 C.F.R. § 103.5(a)(4) requires that a motion that does not meet applicable requirements shall be dismissed.

Because the beneficiary is not an affected party, the beneficiary has no standing to file an appeal or motion in this proceeding. (The beneficiary is an affected party in her adjustment of status proceeding, but that is a separate proceeding over which the AAO has no appellate authority.) [REDACTED] does not claim to represent the petitioning church, and the record contains no Form G-28, Notice of Entry of Appearance as Attorney or Representative, to show that he represents the church.

Because the record contains no evidence of [REDACTED] standing to file a motion to reopen, we must dismiss the motion under 8 C.F.R. § 103.5(a)(4). Although the affected party did not file this motion, 8 C.F.R. § 103.5(a)(7) requires us to serve this motion on the affected party.

Even if the beneficiary had standing to file the motion, or if [REDACTED] had standing to file the motion on the beneficiary’s behalf, the motion would still be untimely. Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner. 8 C.F.R. § 103.5(a)(1)(i).

The beneficiary protests that she did not receive a copy of the dismissal notice at the time of issuance. The AAO did not serve the dismissal notice on the beneficiary because it was under no obligation to do so. The beneficiary therefore first saw the dismissal notice in February 2004, as part of the materials provided with the copy of the record. The beneficiary did not file the motion within 30 days of receiving the copy of the record. Rather, the beneficiary, through her attorney, filed the motion four months later, in June 2004. Even if we were to disregard the issue of standing, and also consider February 13, 2004 as the date of service, the motion was untimely filed. Neither the beneficiary nor [REDACTED] demonstrated that this delay of three additional months was reasonable and beyond the beneficiary’s control. [REDACTED] discusses the delay between the 2002 AAO decision and the 2004 motion filing, but he does not explain why it took four months to file the motion after the beneficiary

received a copy of the AAO decision. Therefore, even if the beneficiary was an affected party, which she is not, the motion would have been dismissed as untimely filed.

**ORDER:** The motion is dismissed as improperly filed.