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FILE:

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Office: CALIFORNIA SERVICE CENTER

Date:

**MAR 18 2010**

IN RE:

Petitioner:

Beneficiary:

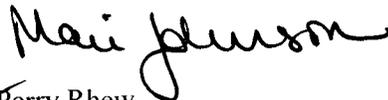
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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. Upon further review, the director determined that the petition had been approved in error. The director issued a notice of intent to revoke, and subsequently revoked the approval of the petition. The Administrative Appeals Office (AAO) subsequently remanded the petition to the director for a new decision based on revised regulations. The director again revoked the approval of the petition and certified the decision to the AAO for review. The AAO will withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, the AAO will once again remand the petition for further action and consideration.

The alien beneficiary seeks classification 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 the pastor of Riverside Church of the Nazarene. The director determined that the petition had not been properly filed.

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).

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)).

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.

In the February 9, 2009 revocation notice, the director stated:

A site check was conducted at the petitioner’s location. The Western Latin American District, Church of the Nazarene is an administrative body responsible for overseeing thirty Spanish speaking Nazarene churches in Southern California. The petitioner does not hold worship services and does not have a congregation.

The petitioner failed verification because the petitioner does not employ anyone other than the District Superintendent and beneficiary is not employed by the petitioner but rather is a self-employed independent contractor. . . .

On December 30, 2008, the petitioner responded to USCIS’s notice of intent to revoke. They state that the actual petitioner was the Spanish Church of the Nazarene . . . in Riverside, CA. While the petitioner stated that the beneficiary would be assigned to the Riverside address, it was the district that filed the petition. The petitioner has not established that the petition was properly filed.

In response to the certified decision, the attorney for the district repeats the assertion that the true petitioner is the local church, not the district.

The identity of the petitioner is a key issue because, under the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(6), only “the alien or . . . his or her prospective

United States employer” may file the petition. Under this regulation, an administrative body that does not, itself, seek to employ the alien, and whose funds do not finance that employment, cannot file the petition.<sup>1</sup>

To answer the vital question of the petitioner’s identity, we must examine the Form I-360 petition. Part 1 of the petition form, “Information about person or organization filing this petition,” identifies the petitioner as the Spanish Church of the Nazarene, Western Latin American District, based in Santa Fe Springs, California. This information, taken alone, would appear to contradict the claim that the local church, not the district, is the true petitioner. But we cannot look at this information outside the context of the rest of the petition form.

An applicant or petitioner must sign his or her application or petition. 8 C.F.R. § 103.2(a)(2). In this instance, Part 9 of the Form I-360, “Signature,” has been signed not by any district official, but by the alien beneficiary himself. Thus, the alien, and not the district, has taken responsibility for the content of the petition. It can be argued, under some circumstances, that the pastor of a church has the authority to sign the petition on behalf of the church, making the church the petitioner. There is, however, nothing to suggest that the alien beneficiary had the authority to sign the petition on behalf of an entire district, whose jurisdiction encompassed several other churches in addition to the beneficiary’s church.

We must find, therefore, that the beneficiary is effectively the petitioner in this proceeding. The district did not, in fact, file the petition (even if the district was under the impression that it did). Because the revocation rested entirely on the finding that the district had no authority to file the petition, the sole stated basis for revocation is now moot.

Although the only stated basis for denial cannot stand, we find nevertheless that the record does not yet contain sufficient evidence to permit approval of the petition.

The petitioner filed the petition on May 16, 2005. The director approved the petition on January 24, 2006, but on February 25, 2008, issued a notice of intent to revoke the approval, based on the finding that the Western Latin American District of the Spanish Church of the Nazarene did not employ the beneficiary. The director issued a notice of revocation on April 4, 2008, and the district (to whom the director addressed the revocation notice) appealed the decision on April 21, 2008.<sup>2</sup>

On November 26, 2008, USCIS published new regulations for special immigrant religious worker petitions. Supplementary information published with the new rule specified: “All cases pending on the rule’s effective date . . . will be adjudicated under the standards of this rule. If documentation is

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<sup>1</sup> We would consider any exchange of compensation for services to be “employment,” whether or not the alien is nominally a “contractor.” The Board of Immigration Appeals ruled that an alien who “receives compensation in return for his efforts on behalf of the Church” is “employed” for immigration purposes. *See Matter of Hall*, 18 I&N Dec. 203, 205 (BIA 1982).

<sup>2</sup> It is now evident that the district had no standing to file the appeal, because the district was not the petitioner. This issue is now moot, however, because the AAO has already withdrawn the appealed decision, and the matter now before the AAO is a certification by the director, rather than an appeal.

required under this rule that was not required before, the petition will not be denied. Instead the petitioner will be allowed a reasonable period of time to provide the required evidence or information.” 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008).

On December 15, 2008, the AAO remanded the petition to the director so that the director could request the newly-required evidence, in keeping with the above instructions. The director, however, did not advise the petitioner of the new documentary requirements. Instead, the director issued a new notice of intent to revoke that essentially repeated the February 2008 notice. Therefore, the petitioner still has not had an opportunity to submit the newly-required evidence according to the above instructions in the Federal Register.

Review of the record indicates that the petitioner has not yet submitted sufficient evidence to meet the following regulatory requirements in 8 C.F.R. § 204.5(m):

(7) *Attestation.* An authorized official of the prospective employer of an alien seeking religious worker status must complete, sign and date an attestation prescribed by USCIS and submit it along with the petition. If the alien is a self-petitioner and is also an authorized official of the prospective employer, the self-petitioner may sign the attestation. The prospective employer must specifically attest to all of the following:

(i) That the prospective employer is a bona fide non-profit religious organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation;

(ii) The number of members of the prospective employer’s organization;

(iii) The number of employees who work at the same location where the beneficiary will be employed and a summary of the type of responsibilities of those employees. USCIS may request a list of all employees, their titles, and a brief description of their duties at its discretion;

(iv) The number of aliens holding special immigrant or nonimmigrant religious worker status currently employed or employed within the past five years by the prospective employer’s organization;

(v) The number of special immigrant religious worker and nonimmigrant religious worker petitions and applications filed by or on behalf of any aliens for employment by the prospective employer in the past five years;

(vi) The title of the position offered to the alien, the complete package of salaried or non-salaried compensation being offered, and a detailed description of the alien’s proposed daily duties;

- (vii) That the alien will be employed at least 35 hours per week;
- (viii) The specific location(s) of the proposed employment;
- (ix) That the alien has worked as a religious worker for the two years immediately preceding the filing of the application and is otherwise qualified for the position offered;
- (x) That the alien has been a member of the denomination for at least two years immediately preceding the filing of the application;
- (xi) That the alien will not be engaged in secular employment, and any salaried or non-salaried compensation for the work will be paid to the alien by the attesting employer; and
- (xii) That the prospective employer has the ability and intention to compensate the alien at a level at which the alien and accompanying family members will not become public charges, and that funds to pay the alien's compensation do not include any monies obtained from the alien, excluding reasonable donations or tithing to the religious organization.

(10) *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 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.

(11) *Evidence relating to the alien's prior employment.* Qualifying prior experience during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work, must have occurred after the age of 14, and if acquired in the United States, must have been authorized under United States immigration law. If the alien was employed in the United States during the two years immediately preceding the filing of the application and:

- (i) Received salaried compensation, the petitioner must submit IRS documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of income tax returns.

(ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.

(iii) Received no salary but provided for his or her own support, and provided support for any dependents, the petitioner must show how support was maintained by submitting with the petition additional documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS.

If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

We note that the self-petitioning alien is said to have worked in both Guatemala and the United States during the two years immediately preceding the filing of the petition. Therefore, the above regulations require IRS documentation or comparable evidence of qualifying employment in both countries. We note the petitioner's prior submission of photocopied income tax returns, but these copies are not IRS-certified as 8 C.F.R. § 204.5(m)(11)(i) requires.

Because the director has not yet requested this evidence as instructed in the Federal Register, the director must now provide the petitioner with this required opportunity. If, after proper notice, the petitioner fails to submit the required documentation, then that failure can properly form the basis for revocation of the approval of the petition.

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 its position 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 Administrative Appeals Office for review.