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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

C1

[redacted]

DATE: DEC 0 2 2011 OFFICE: CALIFORNIA SERVICE CENTER [redacted]

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:

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.

Thank you,

Mari Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (VSC director), initially approved the employment-based immigrant visa petition. After an investigation called the petitioner's claims into question, the Director, California Service Center (hereafter "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) rejected the petitioner's untimely appeal and instructed the director to consider the untimely appeal as a motion to reopen. The director dismissed the motion, and the petitioner again appealed the matter to the AAO. 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 remand the petition for further action and consideration.

The alien beneficiary, who filed the petition on his own behalf and is therefore the petitioner, 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). The petitioner initially sought employment as a Hindu priest at Sri (sometimes spelled "Sree") in The director determined that the petitioner had not established that he had the requisite two years of continuous work experience immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had submitted false documentation.

In the May 5, 2009 revocation notice, the director incorrectly stated that the petitioner could file an appeal "within 30 calendar days." The petitioner filed his appeal on the 29th day. The AAO rejected the appeal on April 16, 2010, because the USCIS regulation at 8 C.F.R. § 205.2(d) limits the appeal period for a revocation to 15 days.

The AAO cited the USCIS regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2), which states that, if an untimely appeal meets the requirements of a motion to reopen or to reconsider, then the appeal must be treated as a motion and a decision must be made on the merits of the case.

The AAO concluded that "the untimely appeal meets the requirements of a motion. . . . Therefore, the director must consider the untimely appeal on motion and render a new decision accordingly."

Although the AAO had already advised that the appeal "meets the requirements of a motion," the director dismissed the motion, stating that the filing did not qualify as a motion because the petitioner had not submitted new evidence. The petitioner has timely appealed the dismissal of the motion.

On appeal from the latest decision, the petitioner submits a brief from counsel and supporting documentation.

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.

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 . . . ; 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 petitioner filed the Form I-360 petition on July 22, 2005. At the time the petitioner filed the petition, the U.S. Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. §§ 204.5(m)(1) and (3)(ii)(A) required the petitioner to establish that the beneficiary continuously engaged in qualifying religious work throughout the two years immediately preceding the petition's filing date.

The initial filing of the petition included various materials from [redacted] including letters from temple officials, devotees, and other witnesses. The materials attested to the petitioner's past work at that temple, but also made it clear that the petitioner did not intend to work there in the future. For example, [redacted]

and board member of the temple, stated: "I am greatly saddened that [the petitioner] will be leaving our temple." A certificate issued by the temple stated that the petitioner had served "[a]s an Honored Priest from June 30, 2003 to July 02, 2005."

The petitioner's initial submission included copies of Internal Revenue Service (IRS) Form W-2 Wage and Tax Statements indicating that paid the petitioner $7,587.36 in 2003 and $20,024.25 in 2004. The payment for 2003 was less than 38% of what the petitioner received in 2004, which conflicts with the claim that the temple employed him for fully half of 2003.

In this respect, the AAO notes that several devotees at the temple signed virtually identical letters, all clearly based on a template provided by an unidentified author. stated, in a March 10, 2005 letter, that the petitioner began working for the temple "2 years ago." Two other letters, however, offer the more specific assertion that the petitioner began working for the temple "1 year and 6 months ago." The latter assertion appears in letters from (April 3, 2005) and (April 5, 2005). One year and six months before early April 2005 would have been early October 2003. Either the petitioner began working at the temple after July 2003, or else the letters are inaccurate and therefore unreliable.

The Form I-360 petition indicated that the petitioner resided in , at the time he filed the petition. Therefore, the petitioner had already left the temple in Michigan when counsel prepared the petition form on July 19, 2005. The initial submission was silent with regard to the petitioner's employment after July 2, 2005. The materials from did not identify the petitioner's intended new employer.

On November 10, 2005, the VSC director instructed the petitioner to submit additional evidence of two years of continuous employment up to the petition's July 22, 2005 filing date. The VSC director also requested information and evidence relating to the petitioner's proposed future employment.

In response to the notice, the petitioner stated that he . . on [J]uly 1st 2003 and served until [J]une 30th June [*sic*] 2005." The petitioner also stated that he was "[c]urrently working in

The petitioner submitted a December 11, 2005 letter attributed to SRGT founder The letter indicated that the petitioner "is successfully completing his probation period of services as a Hindu Priest. . . . The temple . . . will continue to hire [the petitioner] once he is granted Permanent resident status." The letter contains two different hiring dates, indicating at one point that the petitioner began working for on "July 3rd of 2005," but stating elsewhere that the petitioner "has been working as a priest for our temple since July 1st 2005."

Similarly, follow-up letters from officials slightly disagree on when the petitioner left that temple. stated that the petitioner worked there "from July 1, 2003 until July 3, 2005," whereas stated that the petitioner "joined our . . . Temple on June 30th – 2003 and served our temple till July 02nd-2005 [*sic*].)

The petitioner submitted documentation relating to the the record contains variations of the name) in . A copy of an IRS Form 990 Return of Organization Exempt from Income Tax identified . The petitioner did not explain the exact connection between but materials in the record indicate that the two entities share the same Employer Identification Number.

The petitioner resubmitted copies of several letters from devotees and officials at One of those letters, dated March 10, 2005, stated that the petitioner "began performing ministerial duties" at the temple "one and [a] half years ago." The letter is attributed to When the petitioner previously submitted what purported to be the same letter, with the same date and the same signature, the letter indicated that the petitioner's work began "2 years ago." The petitioner did not explain why two copies of purportedly the same letter do not match. Doubt cast on any aspect of the petitioner's proof may 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. 591.

The VSC director approved the petition on May 15, 2006. The petitioner filed a Form I-485 adjustment application on June 15, 2006, including a Form G-325A Biographic Information sheet. On Form G-325A, the petitioner stated that he had worked for from July 2003 to July 2005; for from July 2005 to February 2006; and for in from March 2006 onward.

Subsequently, a USCIS officer investigated the petitioner's claims. On May 24, 2007, the officer visited and spoke to who acknowledged the petitioner's past association with but who asserted "there was never a job offer for his organization to employ the [petitioner]." also stated that he "never authorized any petitions to be filed for the [petitioner]."

On April 4, 2008, the director issued a notice of intent to revoke (ITR) the approval of the petition. The director asserted that the approval of the Form I-360 petition was contingent on a purported job offer from SRGT, which had repudiated. The director asserted that the petitioner had not established authorization to change employers and work for The director requested further evidence of the petitioner's employment in 2006 and 2007.

In response, the petitioner submitted copies of filing receipts for Form I-129 nonimmigrant petitions, showing approved filings on the petitioner's behalf by SVAS in 2005 and by in 2006. The petitioner also submitted copies of several letters from 2005, purportedly signed by and discussing various temporary or permanent job offers.

The petitioner submitted copies of IRS Forms W-2 from for 2003 through 2005, from SVAS for 2005, and from in The petitioner also submitted photocopies of three paychecks from SVAS dated between September 1 and November 30, 2005. The copied checks show no evidence of processing for payment.

The 2006 IRS Form W-2 from reported paid to the petitioner. The petitioner submitted an original IRS Form 1040 income tax return for 2006, reporting the beneficiary's total wages and salaries as This amount matches the Form W-2 from , meaning that the petitioner did not report any wages or salaries from for 2006. The petitioner signed the 2006 tax return on April 17, 2008, a year after its filing deadline of April 15, 2007. The petitioner did not explain why this tax return did not exist until shortly after the director issued the April 4, 2008 ITR.

The petitioner purportedly signed his 2007 income tax return on March 14, 2008, but that return shows a preparation date of April 17, 2008 (the same day that the preparer prepared the untimely 2006 return). Either the signature date or the preparation date is mistaken; they cannot both be correct, because the petitioner cannot have signed the return before its preparation.

After the director issued the ITR, USCIS published a rule setting forth new regulations for special immigrant religious worker petitions. Supplementary information published with the rule specified: "All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008).

The revised USCIS regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the beneficiary has been working as a minister or in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States, continuously for at least the two-year period immediately preceding the filing of the petition. The USCIS regulation at 8 C.F.R. § 204.5(m)(11) requires that qualifying prior experience, if acquired in the United States, must have been authorized under United States immigration law.

The director revoked the approval of the petition on May 5, 2009, stating that a USCIS investigation "revealed that the . . . Beneficiary never worked for " The director acknowledged the petitioner's submission of copies of paychecks and IRS Forms W-2 attributed to SVAS, but the director concluded that the petitioner "has failed to substantiate these pay checks" and that the Form W-2 "lacks all the elements of a genuine W2 document." Therefore, the director concluded that the petitioner had failed to provide sufficient evidence of continuous employment throughout the two-year qualifying period.

The director also cited the new USCIS regulations at 8 C.F.R. §§ 204.5(m)(4) and (11) and concluded that the petitioner "lost immigration status on 06/30/2005, the date when [he] stopped working for the Para Shakti Temple."

As noted previously, the revised regulations apply only to new petitions and to petitions pending on the rule's effective date, November 26, 2008. In the present proceeding, the VSC director had approved the petition in 2006. The issuance of the ITR did not return the petition to "pending" status. Rather, the ITR notified the petitioner of a possible future adverse action. Therefore, the petition was not pending on the rule's effective date of November 26, 2008, and thus the new regulations in that rule do not apply to the present petition. The lawful employment requirement at 8 C.F.R. §§ 204.5(m)(4) and (11) is not a valid basis to revoke the petition in this proceeding.

More broadly, the director did not cite the new regulations in the ITR (and could not do so, having issued the ITR before the new regulations appeared). A decision to revoke approval of a visa petition can only be grounded upon, and the petitioner is only obliged to respond to, the factual allegations specified in the notice of intention to revoke. *Matter of Arias*, 19 I&N Dec. 568, 570 (BIA 1988). This is in keeping with the USCIS regulation at 8 C.F.R. § 205.2(b), which requires USCIS to give the petitioner the opportunity to offer evidence in support of the petition and in opposition to the grounds alleged for revocation of the approval.

With respect to the evidence showing that the petitioner was authorized to work for SVAS starting on May 1, 2005, the director did not even acknowledge that evidence, let alone explain why it was deficient. The record, on its face, documents the approval of a nonimmigrant petition attributed to SVAS. statement that he did not file "the petition" is ambiguous; it is not clear whether he referred to the Form I-360 immigrant petition or the Form I-129 nonimmigrant petition.

The USCIS officer's inquiries were specifically in regard to the immigrant petition, and therefore generic references to "the petition" presumably refer to the immigrant petition. Because the petitioner filed the immigrant petition on his own behalf, it is a matter of undisputed fact that and SVAS did not file that petition. The regulation at 8 C.F.R. § 204.5(m)(6) permits an alien to self-petition for classification as a special immigrant religious worker. Therefore, the petitioner did not need "authorization" to do so.

On appeal from the notice of revocation, the petitioner submitted letters from various religious officials, attesting to the petitioner's religious work. These letters are of limited value, because the petitioner had previously submitted questionable witness letters, including two different, conflicting versions of what was supposedly a single letter, and several letters, all based on a common template of unknown origin, that appeared to contradict the claim that the petitioner's employment at began in late June/early July 2003.

The petitioner submitted a forensic analysis of the letters attributed to . The analyst concluded that every document attributed to in the record was "written by the same person" who signed SVAS's IRS Form 990 return for 2007 and a "four page Site Plan Review Application [filed with the] Township of Logan Planning Board, ." The document evaluator did not receive the Logan document directly from the township. Rather, the record identifies as the party who requested the plan review documents from the Township of Logan. is the spouse of founder of and the record contains several supporting letters from

The petitioner also submitted transcripts from the IRS and the Social Security Administration (SSA), showing that SVAS had reported the petitioner's 2005 earnings to both agencies.

The director, in dismissing the motion, concluded that none of the above evidence was newly available, and that the evidence "blatantly fails to address" the statements attributed to . On appeal, the

petitioner resubmits the evidence and asserts: "it is clear that was incorrect in his statements to the Service since the IRS transcripts and the Form W-2s are indisputably genuine."

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92. Under *Ho*, discrepancies or inconsistencies raise broader questions of credibility, but the petitioner can overcome those questions with "competent objective evidence." In this instance, the petitioner has submitted questionable and at times contradictory witness letters, but those issues do not automatically or irretrievably undermine the validity of the IRS Forms W-2, which come from a completely different source than the witness letters. IRS and SSA documentation that confirms the information on the 2005 Form W-2 amounts to objective evidence that establishes the authenticity of the Form W-2, notwithstanding general doubts about the credibility of unrelated evidence.

The petitioner first submitted the 2005 IRS Form W-2 from SVAS in response to the ITR. Before that time, no USCIS office had requested that document. The director, therefore, never discussed the Form W-2 until the revocation notice, at which time the director disputed its authenticity but did not explain that conclusion. The appeal from that decision (treated as a motion) was, therefore, the petitioner's first opportunity to dispute the director's finding that the Form W-2 is not authentic. The IRS and SSA documentation, therefore, amounted to new evidence that the petitioner had no prior reason to submit. The petitioner could, hypothetically, have obtained the printouts at an earlier time, but the director never asked for them and the petitioner had no reasonable basis to believe that the director would dispute the authenticity of the Form W-2.

The director should have accepted the untimely appeal as a motion to reopen, and should have considered the evidence that strongly suggests that the petitioner did work for SVAS in 2005. The director's dismissal of the motion, after the AAO had stated that the late appeal qualified as a motion, was in error.

The petitioner has submitted credible IRS documentation of employment in 2004 and 2005, including documentation that contradicts the director's finding that the petitioner "never worked for the ." The record also contradicts the finding that the petitioner lacked lawful status after leaving , and such a finding is in any case irrelevant under the pre-2008 regulations that apply to the present proceeding. Therefore, the AAO must withdraw the director's decision.

At the same time, there is another reason why USCIS cannot approve the petition. The pre-2008 regulation at 8 C.F.R. § 204.5(m)(4) called for details about the job offer underlying the petition. The former regulation at 8 C.F.R. § 204.5(m)(3)(i) required evidence of the employer's tax-exempt status. Clearly, it has never been sufficient for an alien to declare a general intention to perform religious work in the United States. The former regulations, like their successor regulations, demanded a specific job offer from a specific, identified employer.

When the petitioner filed the petition, the job offer was with . That employment ended in February 2006, while the petition was still pending at the VSC. When the job offer at disappeared, the basis for the petition disappeared with it. Nothing in the statute or regulations relating to special immigrant religious workers permits the substitution of one employer for another while the petition is pending. The petitioner's February/March 2006 change of employers did not come to light until after the VSC director approved the petition in May 2006. If the VSC director had been aware of the change of employment, the VSC director would likely have denied the petition.

An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. 8 C.F.R. § 103.2(b)(1). USCIS cannot properly approve the petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Once the petitioner's original job offer disappeared, the petitioner could not remedy that defect within the same proceeding by obtaining new employment. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998).

For the above reasons, the petitioner's change of employment while the petition was pending is a disqualifying circumstance. The director, however, did not specifically cite that issue in the ITR. Because *Matter of Arias* does not permit the introduction of new grounds for revocation after the ITR stage, the proper course of action at this time is for the director to issue a new, superseding ITR that takes the above information into account.

Therefore, the AAO will remand this matter for a new decision. 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.