

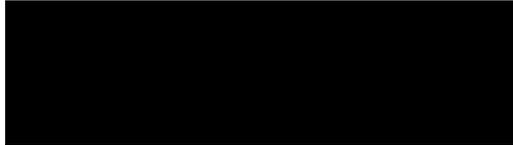
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



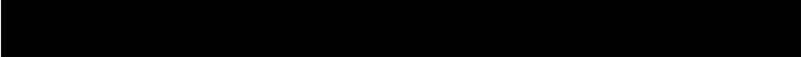
U.S. Citizenship  
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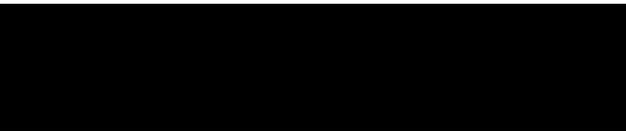


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Date: DEC 02 2011 Office: CALIFORNIA SERVICE CENTER FILE: 

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:  


**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 \$630. 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, Vermont Service Center (VSC), approved the employment-based immigrant visa petition on June 17, 2003. On further review, the Director, California Service Center (director) determined that the beneficiary was not eligible for the visa preference classification. Accordingly, the director served the petitioner with a Notice of Intent to Revoke (NOIR) approval of the petition and her reasons for doing so, and subsequently exercised her discretion to revoke approval of the petition on June 23, 2010. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 a minister. The director determined that the beneficiary is not working for the petitioning organization and thus the petitioner has not extended a qualifying job offer to the beneficiary.

On appeal, counsel asserts that the organization at which the beneficiary is working is affiliated with the petitioning organization and that too much time has passed for U.S. Citizenship and Immigration Services (USCIS) to revoke approval of the petition. Counsel submits a brief and additional documentation in support of the appeal.

Counsel's assertion that the passage of time prevents USCIS from revoking approval of the petition is without merit. 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." [Emphasis added.] Counsel's arguments, however, will be addressed further below.

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.*

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 issue presented is whether the petitioner has established that the beneficiary is working in the capacity claimed in the petition and therefore whether the petitioner has extended a qualifying job offer.

The regulation in effect at the time the petition was filed, provided, at 8 C.F.R. § 204.5(m)(1), that the alien must be coming to the United States at the request of the religious organization to work as a religious worker. Additionally, the regulation at 8 C.F.R. § 204.5(m)(4) stated, in pertinent part:

*Job offer.* The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

The regulation at 8 C.F.R. § 204.5(m)(1) provided that a petition for “classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker . . . may be filed

by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States,” and 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 applicable 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.

In an undated letter submitted in support of the petition filed on April 16, 2001, the petitioner, through its president, [REDACTED], stated that the beneficiary was a volunteer at the petitioning organization, and that it sought to employ him to work for at least a minimum of 30 hours per week with the petitioner in [REDACTED]. The petitioner stated that the beneficiary’s duties would consist of preaching, teaching the word of God, pastoral visitations, conducting marriages, baby dedications, counseling, conducting funerals, and overseeing mission outreaches. The petitioner stated that the beneficiary would receive an annual compensation package that included a salary of \$14,400, a housing allowance of \$7,200, a travel allowance of \$3,000 and a medical allowance of \$2,000. The petitioner submitted a copy of a June 21, 1998 certificate of ordination for the beneficiary from the petitioning organization and an undated permit to preach in the [REDACTED]. The permit indicated that it was valid when accompanied by an annual membership card.

In a December 26, 2001 request for evidence (RFE), the Director, VSC, instructed the petitioner to submit evidence of the beneficiary’s continuous work experience, evidence of the beneficiary’s primary duties, a statement that the beneficiary would be employed full time, and a breakdown of the beneficiary’s proposed duties. The petitioner was informed that it had until March 23, 2002 to respond to the RFE. In a letter dated March 6, 2002, the petitioner again stated that the beneficiary had performed in a voluntary capacity for the petitioner for the past four years, but stated that he would now be required to work at least 35 hours per week.

The approval of the petition is part of an irregular procedural history:

- The petitioner filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on behalf of the beneficiary on April 13, 2001, to which the VSC assigned USCIS receipt number [REDACTED]

- Another Form I-360 petition for religious worker from the petitioner on behalf of the beneficiary was received by the VSC on April 16, 2001 (the petition that is the subject of this appeal).
- On December 20, 2001, the director issued the petitioner an RFE in connection with the petition receipt number [REDACTED].
- On December 26, 2001, the director issued an RFE in connection with the instant petition.
- On March 16, 2002, the petitioner responded to the RFE for the instant petition.
- On July 4, 2002, the Director, VSC, denied the petition with receipt number [REDACTED] for abandonment, finding that the petitioner had not timely responded to the RFE.
- In a decision dated August 12, 2002, the Director, VSC, denied the instant petition on the ground that the petitioner had not established that the proffered position was a religious occupation. The director advised the petitioner that it must appeal the decision no later than September 20, 2002.
- On September 20, 2002, the petitioner appealed the August 12, 2002 denial.
- The director considered the petitioner's September 20, 2002 appeal of the instant petition as a motion to reopen the July 4, 2002 denial. On February 27, 2003, the Director, VSC, "granted" the motion and reopened his July 4, 2002 decision and again denied the petition.
- On March 31, 2003, the petitioner filed a motion to reconsider, arguing that the appeal was timely filed and that the February 27, 2003 decision was erroneous.
- On June 17, 2003, the Director, VSC, approved the instant petition. The director notified the petitioner of the approved petition in a June 18, 2003 Notice of Action.

On September 4, 2003, the beneficiary filed a Form I-485, Application to Register Permanent Resident or Adjust Status, based on the approved immigrant petition. The beneficiary appeared before a service officer (SO) at the [REDACTED] 2003 for an interview in connection with his Form I-485 application. The SO was unable to verify the phone number or any other contact information for the petitioning organization. On February 2, 2006, the beneficiary appeared at the USCIS Information Center in [REDACTED] inquiring into the status of his Form I-485 application. The beneficiary informed the information officer that the petitioning organization had relocated to [REDACTED] and was operating from the YMCA building. Immigration officers were again unable to verify the petitioner's information.

In an April 12, 2008 compliance review, an immigration officer (IO) stated that the beneficiary and his attorney appeared at the [REDACTED] March 27, 2006 and stated that the petitioning organization had moved to [REDACTED]. The IO reported that the beneficiary failed to provide the new contact information for the petitioning organization despite three requests, two of which were written requests in 2008. The IO also reported that the beneficiary had begun his own church, [REDACTED] 2000, and currently held services in the YMCA building in [REDACTED]. Documentation provided to the IO reveals that [REDACTED] was incorporated with the State of [REDACTED] and that it received an Internal Revenue Service (IRS) certification of exemption as a church dated November 29, 2001. The IO reported that the beneficiary was not currently working for the petitioning organization and had no plans to do so. The beneficiary also reported that he worked 30 hours per week as a counselor with the [REDACTED].

In her May 4, 2010 NOIR, the director notified the petitioner of her intent to revoke approval of the petition based on the report of the compliance review. The director stated that the identity of the signatory could not be verified. In response, [REDACTED] on behalf of the petitioner, stated that [REDACTED] is an affiliate of the petitioning organization and therefore meets the requirement of the statute and regulation. He stated that [REDACTED] was organized to accommodate members in the [REDACTED] so that they would not have to travel the distance to [REDACTED] to attend church. He further stated that the two organizations are financially linked as a member of the petitioner's board sits on the board of [REDACTED] provided his current information and stated that his "identities are verifiable at all times." He also stated that "it is beyond reasonable understanding" for the petition to be revoked after seven years "when so many events have taken place, including [his] relocation to Texas, and genuine events are not taken into account."

The director revoked approval of the petition, stating that the petitioner had not overcome the grounds for denial outlined in the NOIR. On appeal, counsel asserts that although [REDACTED] "relocated to Texas in 2007, while the beneficiary remained in [REDACTED] an affiliated connection still existed between the two," that "it is wrong to revoke the petition, and that in fact, the beneficiary serves [as] a minister in an affiliated ministry." Counsel cites to provisions of the current regulation at 8 C.F.R. § 204.5(m)(3), which requires that the alien must "[b]e coming to work for a bona fide non-profit religious organization in the United States, or a bona fide organization which is affiliated with the religious denomination in the United States," and to the regulation at 8 C.F.R. § 204.5(m)(5), which provides that a:

Bona fide organization which is affiliated with the religious denomination means an organization which is closely associated with the religious denomination and which is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code and possessing a currently valid determination letter from the IRS confirming such exemption.

Counsel cites to the current regulations; however, the regulations in effect at the time the petition was filed contained similar requirements. Nonetheless, counsel misapplies the regulation. While

an alien may work for an affiliated organization of a denomination, the regulation requires that the affiliated organization must also be the prospective employer who petitions for the alien's services. *See* the prior regulation at 8 C.F.R. § 204.5(m)(1). *See also* the current regulation at 8 C.F.R. § 204.5(m)(3). The record indicates that PEFA is a separate entity from the petitioning organization and is responsible for providing the beneficiary with employment and compensation. However, PEFA has provided no information to USCIS that would permit an evaluation of its status as an employer under the regulation at 8 C.F.R. § 204.5(m) as it existed at the time the petition was filed or under the current provisions. 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), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971).

Counsel argues that the director "has erred in interpreting 8 C.F.R. § 204.5(m)(12) as to authorize review of the petition some 7 years after the approval. USCIS is estopped by the passage of time from reviewing the petition." Counsel's argument is without merit. First, counsel provides no statutory or regulatory authority to support any of his assertions; particularly, counsel cites to no authority that would prevent USCIS from reviewing its approval of a petition. As previously stated, section 205 of the Act, 8 U.S.C. § 1155, authorizes the Secretary of the Department of Homeland Security to revoke the approval of any petition approved by him under section 204 at any time for good and sufficient cause. When a job offer is the basis for immigration, there must be a high degree of certainty that the employment will not end or be modified because the employer is no longer able to meet the terms agreed upon in the job offer. It must be established, with some degree of certainty that the petitioner is viable to the point where the beneficiary's employment will not end or change because the petitioner is unable to meet the terms. In the instant case, the petitioner has not satisfactorily demonstrated that it has and will extend an offer of a full-time, permanent position to the beneficiary. Further, the PEFA, the organization for which the beneficiary is currently working, did not properly petition for the beneficiary. Furthermore, USCIS has always had the discretion, and has often exercised that discretion, to conduct compliance reviews and onsite visits of a petitioner's premises.

Second, the AAO, like the Board of Immigration Appeals, is without authority to apply the doctrine of equitable estoppel so as to preclude a component part of USCIS from undertaking a lawful course of action that it is empowered to pursue by statute or regulation. *See Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338 (BIA 1991). Estoppel is an equitable form of relief that is available only through the courts. The jurisdiction of the Administrative Appeals Office is limited to that authority specifically granted to it by the Secretary of the United States Department of Homeland Security. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2004). The jurisdiction of the AAO is limited to those matters described at 8 C.F.R. § 103.1(f)(3)(E)(iii) (as in effect on February 28, 2003). Accordingly, the AAO has no authority to address the petitioner's equitable estoppel claim.

Moreover, the record reflects that the beneficiary has not worked solely as a minister following approval of the petition as required by the applicable regulation at 8 C.F.R. § 204.5(m)(4). The evidence indicates that the beneficiary engaged in secular employment prior to the approval of the

petition and continued to do so following the petition's approval. Additionally, the record does not reflect that the petitioner provided sufficient documentation at the time the petition was approved to establish the beneficiary's eligibility for the proffered position. The record does not reflect that the petitioner established the beneficiary's qualifying work experience pursuant to the regulation at 8 C.F.R. § 204.5(m)(3) or its ability to pay the beneficiary the proffered wage as required by the regulation at 8 C.F.R. § 204.5(g)(2). 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. at 590.

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 (9<sup>th</sup> 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.