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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

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DATE: DEC 29 2011 Office: CALIFORNIA SERVICE CENTER



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, California Service Center, initially approved the employment-based immigrant visa petition. On further review, the director determined that the petition had been approved in error. Accordingly, the director properly 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 January 28, 2010. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Buddhist temple. 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 petitioner had not established that it offers the beneficiary full time employment. The director also determined that the beneficiary had worked for different employers in the United States without U.S. Citizenship and Immigration Services (USCIS) authorization.

On November 26, 2008, USCIS issued 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 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).

As the instant petition was not pending on November 26, 2008, it is not subject to the evidentiary requirements of the new regulation. Accordingly, the petition must be adjudicated based on the regulations in effect at the time the petition was filed. The director therefore erred in applying the new regulations to the instant petition. The petitioner, however, does not allege, and the record does not establish, that it has been prejudiced by the director's error. Furthermore, as the AAO conducts appellate review on a *de novo* basis, all of the evidence of record will be considered. 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 petitioner submits 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 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 first issue presented is whether the petitioner has established that it offers the beneficiary full time employment.

The regulation in effect at the time the petition was filed provided at 8 C.F.R. § 204.5(m)(4) that:

The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or 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.

Additionally, the regulation in at 8 C.F.R. § 204.5(m)(4) provided that:

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.

With the petition, filed on September 21, 2004, the petitioner stated that the beneficiary had served as its resident monk since August 15, 2003. The petitioner stated that it does not provide “financial remuneration” to the beneficiary or to any of its monks; however, the congregation provides the temple with funds that pay for the food, shelter, utilities, and transportation for the monks. The petitioner submitted photographs depicting what it states are of the religious activity of the temple. The petitioner, however, submitted no documentation to establish the beneficiary’s qualifying work history. Nonetheless, the director approved the petition on April 5, 2005 without requesting additional documentation.

On May 31, 2007, an immigration officer (IO) visited the petitioner’s premises for the purpose of verifying the petitioner’s claims in a petition filed on behalf of another beneficiary. During the course of the inspection, the Venerable Bunkam Thanjai, the abbot and chief executive officer of the petitioning organization, stated that he “regularly sends” the beneficiary “to assist affiliated Thai Buddhist temples in Southern California.” In her NOIR of July 24, 2009, the director advised the petitioner that:

If a work condition changes, different sets of requirement and qualification might be required for both the petitioner and the beneficiary. And USCIS should be notified and given an opportunity to review the change in order to administer the beneficiary’s visa classification before the admission

Although Buddhist monks can travel to other temples to cooperate work on shared projects among temples, the occurrence of regular relocation of the beneficiary to other temples to work for other temples’ projects has raised doubt on sufficient work

for the beneficiary and on an employer-employee relationship at the petitioning organization. . . .

[I]t has been considered that beneficiary has been an employee of the petitioning organization. However, it is unknown what task, time schedule, and under supervision the beneficiary has worked at other temples. There was no evidence describing or supporting an employer-employee relationship between the petitioner and the beneficiary while the beneficiary was working at other temples. It is noted that each Buddhist temple is independently managed and supported by its own congregation and devotees. . . .

Finally, there was no evidence showing the beneficiary's work at Wat Dhamagunaram [sic] in Layton, Utah as he had been admitted (as shown on I-94 card) with an R-1 religious worker visa.

In response, the petitioner, through [REDACTED] stated in a July 31, 2009 letter, that:

[The beneficiary] had been serving as an ordained minister at the Temple in Thailand until he came to United State[s] to serve as a minister at [REDACTED] of Utah, in Layton, Utah on July 11, 2003. That Wat [REDACTED] of Utah sent him to us temporarily to help us with some religious needs that had arisen. They could do this because our Temples or Monasteries are sister organizations under the Council of Thai Bhikkus in The U.S.A. Inc. Thus, while he is officially assigned to the Layton, Utah organization, he has lent his services to us in our time of need. Our religion allows the temporary transfer of monks to sister temples when one of them has a shortage of monks at a particular location.

The director determined that the petitioner had failed to submit sufficient documentation to overcome the grounds stated for the proposed revocation and revoked approval of the petition on January 28, 2010. On appeal, the petitioner submitted a statement from the beneficiary, who stated that he was invited by the Buddhist community to bless an organization in Wildomar, California, and for this reason he was not present during the IO's visit. The petitioner also submitted a statement from Abbot Thanjai, who confirmed the beneficiary's visit to Wildomar. He also stated that they are often called upon to bless other temples, and he never intended to give the impression that the beneficiary had changed his place of employment.

The statements, however, do not overcome the grounds on which the director denied the petition. While [REDACTED] acknowledges that the beneficiary was absent on the day the IO visited, he does not address the director's questions and concerns regarding the employer-employee relationship between the beneficiary and the petitioner when he is absent from the petitioning organization. Considering the nature of the compensation and the independence of each temple, the director's concern is centered on the lack of evidence of compensation from the petitioner during his

absence from the petitioning organization. The director's concerns are well placed when one considers that the beneficiary was allegedly loaned to the petitioner by [REDACTED]

The petitioner has failed to establish that it has and will offer the beneficiary full time employment.

The director also denied the petition because the beneficiary's stated work in the United States had not been done with prior authorization under U.S. immigration laws. While the current regulations require the qualifying work experience to be in a lawful immigration status, the regulations in effect at the time the petition was approved imposed no such requirement. Accordingly, the AAO withdraws the director's decision to the extent that it implies that the qualifying work experience must be in a legal immigration status.

Nonetheless, the petitioner has failed to establish that the beneficiary worked in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the 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. Such a petition 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." The regulation indicates 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 September 21, 2004. Therefore, the petitioner must establish that the beneficiary worked continuously as a minister throughout the two-year period immediately preceding that date.

The petitioner provided a copy of the beneficiary's visa indicating that he was approved for R-1 status to work for the [REDACTED] in Layton, Utah and that he entered pursuant to that status on July 11, 2003. [REDACTED] stated in his July 31, 2009 letter that the beneficiary entered the United States to work for the [REDACTED] however, it submitted no documentation to

establish the work performed by the beneficiary prior to his entry into the United States or the work he performed with the [REDACTED] before working with the petitioner. Further, although the petitioner provided a work schedule for the beneficiary, it provided no documentation to establish that he performed work according to that schedule.

The petitioner has therefore failed to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the petition on September 21, 2004.

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.