

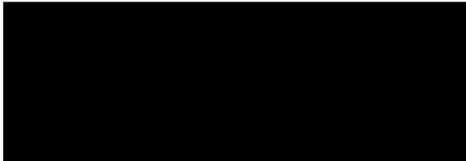
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



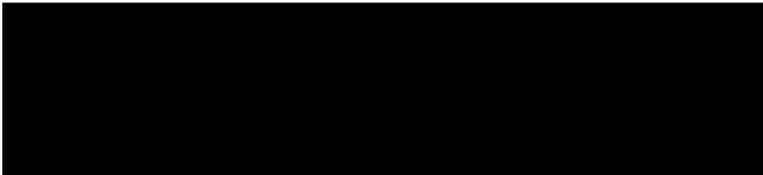
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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: FEB 04 2011

IN RE: Petitioner: [Redacted]
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:



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 petitioner was not eligible for the visa preference classification. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke (NOIR) the approval of the preference visa petition and her reasons therefore, and subsequently exercised her discretion to revoke the approval of the petition on February 27, 2009. The petition 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 its religious education director. The director denied the petition because the petitioner failed to respond to the NOIR.

Counsel asserts on appeal that neither the petitioner nor prior counsel received a copy of the NOIR.¹

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 [REDACTED] . . . 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:

¹ Different counsel represented the petitioner during the earlier stages of this petition and is referred to as “prior counsel” in this decision.

(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 petitioner was filed on May 11, 2005 and approved on October 11, 2005. On March 20, 2008, an immigration officer (IO) visited the petitioner's premises at the address listed on the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, for the purpose of conducting a compliance review to verify the petitioner's claims in the petition. The IO found the building locked and gated and was told by an individual who identified himself as the caretaker that an investment company had bought the business two years previously. On May 21, 2008, the IO interviewed [REDACTED] the individual who signed the petition on behalf of the petitioner, at his home address. The IO reported that [REDACTED] told her that the petitioning organization no longer existed and that the remaining 11 members "gather at friends' apartments or another church to pray and worship."

On January 17, 2009, the director notified the petitioner of the results of the compliance review and of her intent to revoke the petition as there did not appear to be a need for the beneficiary's services. The record reflects that the director mailed the NOIR to prior counsel, the petitioner's counsel of record at that time, at his address of record. The NOIR advised the petitioner that it had 30 days in which to submit evidence to overcome the grounds for revocation and that failure to timely respond to the NOIR would result in revocation of the petition. The petitioner did not respond to the NOIR, and on February 27, 2009, the director revoked her approval of the petition.

On appeal, counsel asserts that neither the petitioner nor prior counsel received a copy of the NOIR, and therefore, the petition should not have been revoked for a failure to respond. In an April 7, 2009 statement, [REDACTED] states that the petitioner moved from the site listed on the Form I-360 in

July 2007 and has moved several times since then. [REDACTED] states that the petitioner has been at its current address since August 2008. However, [REDACTED] does not state and USCIS records do not reflect that the petitioner notified USCIS of any address changes. In a March 27, 2009 statement, prior counsel denies that he had received a copy of the NOIR. We note that prior counsel does not report a change of address and the record reflects that the NOIR was mailed to prior counsel at his current address.

The regulation at 8 C.F.R. § 103.5a(c) provides:

In any proceeding which is initiated by the Service, with proposed adverse effect, service of the initiating notice and of notice of any decision by a Service officer shall be accomplished by personal service.

Pursuant to 8 C.F.R. § 103.5a(a)(2), personal service may be effected by any of the following:

- (i) Delivery of a copy personally;
- (ii) Delivery of a copy at a person's dwelling house or usual place of abode by leaving it with some person of suitable age and discretion;
- (iii) Delivery of a copy at the office of an attorney or other person including a corporation, by leaving it with a person in charge;
- (iv) Mailing a copy by certified or registered mail, return receipt requested, addressed to a person at his last known address.

The evidence establishes that the director's NOIR was mailed to prior counsel at his address of record. Therefore, the record establishes that the NOIR was properly served on the petitioner. The director properly revoked approval of the petition after the petitioner failed to respond to the NOIR.

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.