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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **JAN 19 2011**

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.

Thank you,

2 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 revoked the approval of the petition on notice. The matter is now before the Administrative Appeals Office (AAO) on appeal. 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 petitioner is an Islamic community center including a mosque and a school. It previously sought 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 an imam. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as an imam immediately preceding the filing date of the petition. The director also noted discrepancies that came to light during site inspections of the petitioning entity and another Islamic community center.

On appeal, the petitioner submits a brief from counsel, new witness statements, and copies of supporting documents.

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 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 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 October 2, 2003. The petition included documentation of the beneficiary's credentials as an imam with authority to officiate at weddings, funerals, and other ceremonies. At the time, the beneficiary held R-1 nonimmigrant religious worker status, permitting him to work for the petitioner.

At the time the petitioner filed the petition, the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(3)(ii)(A) required the petitioner to demonstrate that, immediately prior to the filing of the petition, the beneficiary had the required two years of experience in a qualifying religious capacity. The petitioner submitted evidence of this experience, including Internal Revenue Service Form W-2 Wage and Tax Statements.

The director, Nebraska Service Center, approved the petition on June 22, 2004. The petitioner filed a Form I-485 application to adjust status, with receipt number LIN 04 228 51408, on August 9, 2004. While the adjustment application was pending, a USCIS officer visited the petitioning center in May 2007. [REDACTED] president of the petitioning center, told the officer that the beneficiary left his job with the petitioner in December 2006 and began working full time for another center (which had also filed a petition on the beneficiary's behalf in 2007.)<sup>2</sup>

The USCIS officer visited the other center, [REDACTED] in August 2007. An ATIS official told the officer that the beneficiary had officiated at five weddings. The beneficiary then entered the room, and stated that "he had not been permitted to perform the ceremonies yet."

On February 14, 2009, the director issued a notice of intent to revoke the approval of the petition. The director stated that, based on the contradictory claims during the August 2007 [REDACTED] site inspection, "the

<sup>1</sup> The spelling of "Farooqui" varies in the record. For consistency, we use the spelling shown on Form I-360.

<sup>2</sup> The director denied that petition, receipt number WAC 07 168 50472, on April 30, 2009. There is no record of any appeal from that decision.

beneficiary does not have the two-year experience period immediately preceding the filing of the petition.”

In response to the notice, [REDACTED] stated: “We have no personal knowledge of the statements that you claim [the beneficiary] made in regard to his qualifications. We can, however, verify that [the beneficiary] **officiated at weddings and funerals while working for our organization as a religious minister between 1999 and 2007**” (emphasis in original). An official of [REDACTED] speculated that the beneficiary, who “still struggles on occasion with English comprehension,” may have misunderstood the USCIS officer’s question. Several local religious figures attested to the beneficiary’s longstanding involvement in Muslim religious activities in the area.

The director revoked the approval of the petition on April 30, 2009, stating that the petitioner had not adequately overcome the discrepancy between the petitioner’s claims and the beneficiary’s own statement during the August 2007 site inspection. On appeal, the petitioner maintains that the beneficiary was a fully authorized imam (minister) throughout his time at the petitioner’s mosque.

It is not clear that the beneficiary’s statement during the August 2007 site inspection is sufficient grounds for revocation of an approved petition. The paraphrased description of the beneficiary’s comment appears to refer not to the beneficiary’s entire career as an imam, but to his full-time employment at ATIS, which began only a few months before the site inspection. No one, including the beneficiary, has categorically claimed that the beneficiary lacked authority to perform weddings and other religious rites before 2007, or that the beneficiary never performed such functions at the petitioner’s mosque between October 2001 and October 2003 (the two-year qualifying period). The preponderance of available evidence favors the petitioner’s version of events.

The director also cited new USCIS regulations at 8 C.F.R. §§ 204.5(m)(3) and (11). These regulations took effect on November 26, 2008, more than three years after the approval of the present petition. The petition, therefore, was not pending on the effective date of the new regulations. While the regulations applied to all petitions pending on the effective date, there was no provision made for the regulations to apply retroactively to petitions approved before that date. *See* 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008). The director, therefore, incorrectly applied the new regulations to the present proceeding.

Furthermore, the regulation at 8 C.F.R. § 205.2(b) 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. 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). By citing the new regulations, the director impermissibly introduced new grounds for revocation that did not appear previously in the notice of intent to revoke the approval of the petition.

Above, we have explained that the revocation order cannot stand. Nevertheless, a major issue remains to be addressed. For the classification sought, it cannot suffice to show that the beneficiary holds the necessary qualifications to serve as a religious worker. Under both the old and the new versions of the

regulations, a petition for classification as a special immigrant religious worker requires a specific job offer from a specific employer. In this instance, the 2003 petition now on appeal rested on an offer to serve as an imam at the petitioner's mosque. The beneficiary, however, left that position in December 2006. According to the May 2007 site visit report, Ghulam Farooqui explained "there wasn't enough membership to support a second imam."

No one contests that the beneficiary left his job with the petitioner, and no one has claimed that the beneficiary intends to return, or that the petitioner intends to re-hire him. Instead, the beneficiary has found a new position with a different employer. Therefore, the petitioner's 2003 job offer appears no longer to exist, which would eliminate any justification for approving that petition. If the beneficiary seeks to work for ATIS, or any other employer, a new petition must reflect that new job offer.

We note that section 204(j) of the Act permits certain aliens to adjust status based on approved employment-based petitions, even after the alien has changed jobs. That provision, however, does not apply to special immigrant religious worker petitions, and Congress has created no parallel provision for such petitions. Therefore, we conclude, based on the construction of the statute, that the termination of the job offer also terminates the beneficiary's eligibility for immigration benefits based on that offer. Any future action by the director, relating to this proceeding, must take this into account.

We further note that the regulation at 8 C.F.R. § 204.5(g)(2) states:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by the Service.

The above regulation applied to special immigrant religious worker petitions at the time of filing in 2003, and the time of approval in 2004. New regulations, found at 8 C.F.R. § 204.5(m)(10), have applied to all petitions pending on November 26, 2008 or filed on or after that date, but this petition was not pending on November 26, 2008. Therefore the older regulations apply. *See* 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008).

If the petitioner intends to show that the job offer remains valid, then the petitioner must show that it has consistently been able to pay the beneficiary his intended compensation from the petition's 2003

filing date onward. In this context, it is significant that [REDACTED] told a USCIS officer that the beneficiary's employment ended because the petitioner could not "support a second imam."

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