

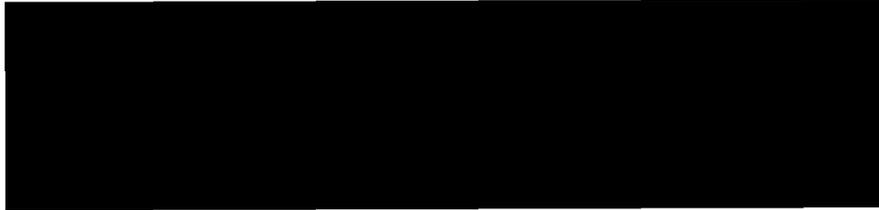
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



C1

DATE: JUN 01 2011 Office: CALIFORNIA SERVICE CENTER

FILE: [Redacted]

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:
[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.

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,

M. D. Rhew
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center (NSC), initially approved the employment-based immigrant visa petition. On further review, the Director, NSC determined that the petitioner was not eligible for the visa preference classification. Accordingly, the Director, NSC properly served the petitioner with a Notice of Intent to Revoke (NOIR) approval of the visa petition and his reasons for doing so. On November 24, 2008, the petitioner was again notified that the petition was approved. However, following another review of the record, the Director, California Service Center (the director), to whom jurisdiction of Forms I-360, Petitions for Amerasian, Widow(er), or Special Immigrant, had been transferred, determined that the petitioner was not eligible for the visa classification and again notified the petitioner of her intent to withdraw approval of the petition. The director subsequently exercised her discretion to revoke approval of the petition on October 23, 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 a church worker. The director determined that the petitioner had failed to respond to the request for evidence (RFE) and had not satisfactorily completed a Fraud Detection and National Security (FDNS) inspection.

Counsel asserts on appeal, "In its notice of revocation the Service is relying on the same September 2007 FDNS site visit while introducing no new facts into this case. The Service has therefore failed to meet the 'good and sufficient cause' standard of 8 USC 1155."

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).

On September 12, 2007, an immigration officer (IO) visited the petitioner's premises for the purpose of verifying the petitioner's claims. The IO visited the address listed on the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, [REDACTED] Missouri. The IO reported that the church had a small congregation of 30 people. The IO interviewed [REDACTED], the petitioner's corporate secretary and the official who signed the petition on behalf of the petitioner. The IO reported that [REDACTED] was located in the petitioner's headquarters in New York, and that she stated that the beneficiary currently worked and lived in New York but that he would be assigned as assistant to the pastor at the Missouri address. The IO also interviewed the pastor of the Missouri church, who stated that he was not aware that the beneficiary would be assigned to him and was unsure what his duties would be. The pastor stated that the beneficiary "could increase fundraising, witnessing, work on the church's lighting and clean up the back yard." The pastor also stated that "headquarters send pastors where they are needed and often does not tell the church." We note that the record does not reflect, and the petitioner does not allege, that the beneficiary is a pastor.

The Director, NSC advised the petitioner of the results of the site inspection in his June 24, 2008 NOIR and questioned whether the petitioner would employ the beneficiary in a religious occupation. Counsel stated in his July 26, 2008 letter accompanying the petitioner's response:

The Service bases its assumption that there is no intent to employ the beneficiary based on a conversation between the petitioners [sic] local pastor in St. Louis, MO and a Service site inspection officer.

As stated in the original petition [the petitioner] in the United States operates as a single Church, which is incorporated in[] the State of California and which is authorized to conduct activities in all fifty states. Therefore the petitioner is not just [in] Missouri but [throughout the] USA.

The petitioner submitted documentation of its ability to pay the beneficiary, including a copy of an audited financial statement for 2005 and 2006, a document with the beneficiary's name apparently showing payments to the beneficiary from 2003 to 2006, and copies of petty cash receipts for the beneficiary for the same period. However, the petitioner provided no other information about the proffered position. Nonetheless, the Director, NSC did not withdraw his approval of the petition at that time.

On July 8, 2009, the director of the California Service Center notified the petitioner of her intent to revoke approval of the petition based on a February 28, 2008 report from FDNS. The record does not contain a February 28, 2008 FDNS report; however, the information provided by the director in the July 2007 NOIR was clearly from the September 2007 inspection. The director

instructed the petitioner to submit additional documentation, including evidence of the petitioner's ability to pay the beneficiary, information regarding its membership, official copies of the beneficiary's federal tax return transcripts for 2006 through 2008, and copies of the beneficiary's last six pay statements.

In response, counsel stated that the petitioner had previously replied to a NOIR and that "[t]here have been no new facts introduced subsequent to the second approval of this case to meet the 'good and sufficient cause' standard of 8 USC 1255 [sic]." The petitioner resubmitted some of the financial documentation previously submitted and submitted a copy of an unaudited profit and loss statement for the petitioner's New York region for February through April 2008 and separate unaudited copies of the monthly statements for the same period.

The director denied the petition, finding that the petitioner had failed to submit any documentation in response to the NOIR and that the petitioner had not satisfactorily completed a compliance review. The director also questioned counsel's reliance on 8 U.S.C. § 1255, noting that the provision applied to adjustment of status rather than to a NOIR issued for the Form I-360.

On appeal, counsel again asserts that there have been no new facts introduced in this case and that USCIS "failed to meet the 'good and sufficient cause' standard of 8 USC 1155." The petitioner submitted no additional documentation on 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.*

The director erred in determining that the petitioner submitted no additional documentation in response to the NOIR. Counsel did, in fact, submit a letter in response to the NOIR. However, the petitioner failed to fully respond to the director's request for additional documentation. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Counsel argues that there have been no new facts introduced in the case that would merit revocation of approval of the petition. However, as previously discussed, the petitioner has not addressed the issue raised by the Director, NSC of whether the beneficiary will be employed in a religious occupation. Also discussed above, the director properly issued the NOIR issued when the director realized that the petition was incorrectly approved. That realization alone constituted "good and sufficient cause." *Matter of Ho*, 19 I&N Dec. at 590. The petitioner has yet to explain or rebut the findings regarding the beneficiary's proposed duties.

The petitioner failed to provide the documentation requested by the director and failed to establish that the beneficiary will be engaged in qualifying religious work.

The petition therefore 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.