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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



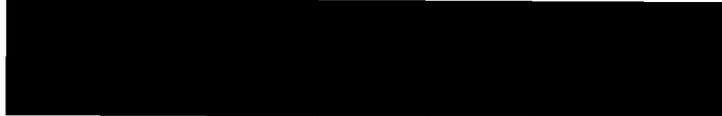
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Date: JUN 03 2011

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, 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) approval of the petition and her reasons for doing so, and subsequently exercised her discretion to revoke approval of the petition on August 18, 2009. 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 the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa petition and that the beneficiary seeks to enter the United States to work solely as a minister.

On appeal, counsel asserts that the director “failed to consider fully the Petitioner’s entire evidence previously provided in the record” and that the “decision was based on information gathered during [an] invalid site visit” to the petitioner’s old address. Counsel submits a brief 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 unrebutted, 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 established that the beneficiary had been continuously employed in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition.

The regulation in effect at the time the petition was filed at 8 C.F.R. § 204.5(m)(1) provided, in pertinent part, 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 could be filed 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 indicated 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) required 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 February 28, 2003. Therefore, the petitioner must establish that the beneficiary worked continuously as a minister throughout the two-year period immediately preceding that date.

In its February 21, 2003 letter submitted in support of the petition, the petitioner stated that the beneficiary had worked for the petitioning organization in an R-1 nonimmigrant religious worker status since January 1, 2001. The petitioner stated that the duties of the Buddhist minister encompass meditation (each dawn and sunset for 1 to 2 hours), conference with missionary workers (morning and evening for 1 hour), and missionary work (25 to 30 hours per week). The petitioner described the missionary work as follows:

The task involved participation in the weekend rituals of spreading the meaning of deeper life to the participants in the ritual. The research on the material discussion and the lectures are brought about by the preparation during research period of looking into old scripts, current publications and conferences. The work involves the monk to be exposed to secular masses in determining their needs and leading them into guidance by participating in the ceremonious events including weddings, births, festive coactions and events of grievances as to strengthen the spirits of the participants of funeral and sickness, and other occasions established by the Buddhist traditions. The religious work not only involves many visits and travels by the worker to the believers and non-believers but also maintaining a positive image of the temple by their virtue. The virtue also transcends into maintaining the temple to be clean of bad vibes for people to inhabit more spiritual calling when they are in the temple.

The petitioner stated that the beneficiary would be compensated with an annual salary of \$18,000 in addition to room and board at the temple. The petitioner submitted a copy of an Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, that it issued to the beneficiary in 2001 indicating that it paid the beneficiary \$18,000. The petitioner also provided uncertified copies of the beneficiary's IRS Form 1040, U.S. Individual Income Tax Return, for the years 2001 and 2003, on which he reported wages of \$18,000. The AAO notes that neither of the documents is dated and that the 2001 form contains the original signatures of the beneficiary and his spouse while the 2003 form, although allegedly a joint return, contains only the beneficiary's signature. Further, as this documentation was submitted at the time of filing, it is not clear how the beneficiary would have already filed his 2003 return reporting wages of \$18,000 prior to the end of the fiscal year.

In response to a November 25, 2003 request for evidence (RFE), the petitioner submitted a copy of the IRS Form W-2 that it issued to the beneficiary in 2002 on which it reported wages of \$18,000 and an uncertified copy of the beneficiary's IRS Form 1040A for the year on which he reported the wages. The Form 1040A is not dated and shows the beneficiary's occupation as "general worker." In another RFE dated February 25, 2004, the director instructed the petitioner to provide, among other documentation, IRS transcripts of the beneficiary's 2001 and 2002 tax returns and additional information about the beneficiary's place of employment, stating:

The petitioning organization is located at [REDACTED]. However, the beneficiary's Form 1040 . . . shows the beneficiary's home address as [REDACTED]. This is not a realistic commute from the petitioner's location in Marina. Please explain and provide corroborating evidence of any special employment arrangements made between the petitioner and the beneficiary.

In response, the petitioner submitted IRS tax transcripts for the beneficiary's federal tax returns for the years 2001 and 2002. The beneficiary also provided a statement in which he stated that he had been receiving \$1,500 per month from the petitioning organization plus room and board at the temple. The beneficiary further stated that he "periodically" visited his family in Cerritos "and use[s] this address for most of my paperwork not related to my employment at the temple." The beneficiary also stated:

The [petitioning organization] moved the place of temple to [REDACTED] on February 19, 2004. It is not far from my family's address, but the employment terms and conditions are not changed. I stay at the temple most of the time and periodically visit my family.

The petitioner provided a copy of the February 19, 2004 business license tax certificate from the [REDACTED].

The director approved the petition on April 29, 2004. On October 14, 2007, an immigration officer (IO) visited the petitioner's premises for the purpose of verifying its claims in the petition. The IO, however, visited [REDACTED] the address listed on the petitioner's Form I-360 rather than the petitioner's new address at [REDACTED] in [REDACTED]. The IO reported that the location revealed a single-family residence with "no evidence it had ever functioned as a temple." After speaking with counsel, who informed him that the petitioner had moved several years earlier, the IO called and spoke with [REDACTED] the petitioner's current president. Mrs. [REDACTED] confirmed the petitioner's current location and stated that while the beneficiary had lived in the Monterey area for a time, he had moved to the Southern California area four or five years earlier.

The IO conducted a search of business records through [REDACTED] for the address at which the petitioner stated it was currently located and discovered that two businesses were also listed at the address, [REDACTED]. The business records reflected that the beneficiary's wife worked for [REDACTED]. The records check also revealed that the beneficiary had purchased a home [REDACTED] 1999 and another in Fontana, California in 2004. The IO questioned how the beneficiary could afford to purchase two homes with income of \$18,000 per year. The IO reported that [REDACTED] business records reflected that the beneficiary worked for a "Steve Noh" and someone named "Shawn."

In her NOIR of May 30, 2009, the director notified the petitioner of the results of the IO's investigation and advised the petitioner that the evidence indicated that the beneficiary did not work for the petitioning organization as claimed on the Form I-360 petition. The director also advised the

petitioner that the address at which the petitioner stated it was formerly located was not zoned for commercial or religious purposes and that the organization had not submitted "material evidence" of its relocation.

Regarding the petitioner's notification of its relocation, we note that while the petitioner did not submit an official change of address, in response to the RFE of February 25, 2004, the beneficiary provided a statement in which he stated that the petitioner had moved to [REDACTED] in February 2004. Additionally, the petitioner submitted a business license certificate from the [REDACTED] showing the petitioner's address as [REDACTED]. According, the AAO finds that the petitioner notified USCIS of its address change as early as April 2004. However, this does not make the IO's visit to the [REDACTED] "invalid" as argued by counsel on appeal. The petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Thus, it is appropriate for USCIS to consider the petitioner's activities at the location where it stated it existed at the time of filing the petition.

In response to the NOIR, regarding the zoning issue, counsel stated that the petitioner "called the [REDACTED] to find out what the zoning laws were for their previous location at [REDACTED] [REDACTED]" and "was informed that it was located in [REDACTED]." According to counsel, "the agent" was "not aware" of the definition of "[REDACTED] District." Counsel stated that his research revealed "another [REDACTED] . . . is currently located at the same address" and that "as the [REDACTED] permits the use for religious purpose at the said location now as [a] [REDACTED], the city permitted the use of the home for religious purpose when [the petitioner] was occupying the said home." Counsel submitted a June 16, 2009 page from the website of the [REDACTED] of Commerce reflecting that [REDACTED] was located at [REDACTED] [REDACTED]

In denying the petition, the director stated:

Granting that the petitioning organization had relocated prior to the date conducted on the site check, it is noted that there was no evidence that the premises at [REDACTED] [REDACTED] in Marina was ever used as a [REDACTED]. In fact, despite Counsel's assertions that the [REDACTED] is labeled as a [REDACTED] [REDACTED] and therefore as Counsel contends, "the city permitted the use of the home for religious purposes[.]" there is no documentary evidence of the existence of and religious activities conducted at [REDACTED] Marina by the petitioner.

On appeal, counsel asserts:

[T]he previously submitted documents by the Petitioner in support of the I-360 and the R-1 Petitions provide abundance of substantive evidence to show that the Petitioner was using the home for religious purposes, i.e. tax returns weekly bulletin published by the Temple, list of the Buddhist members at the [REDACTED] [REDACTED] and Corporate Records.

As the director found, the fact that documentary records reflect the petitioner used the [REDACTED] address for correspondence purposes is not, by itself, sufficient to establish that the petitioner held religious services and other religious activities at the home. The petitioner submitted copies of what appears to be some type of religious program (counsel refers to them as bulletins) with the petition. However, these documents are not accompanied by English translations. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. The petitioner also submitted a list of 113 individuals that it stated "frequently" attended the temple and another list containing names of 100 individuals that it stated "infrequently" attended the temple. The petitioner submitted no documentation to establish that the home could accommodate this many individuals as well as provide lodging for the beneficiary. It submitted no photographs of the temple as it existed on [REDACTED] no statements from members who attested that they attended services at the address, and no documentation from other disinterested individuals who could attest to the petitioner's activities on [REDACTED]

The AAO notes that the petitioner submitted copies of its financial statements for the year ended December 31, 2002 accompanied by an accountant's compilation report and reviewed these documents as evidence of the petitioner's religious activities. The financial documentation reflects expenses for "operation management," rent, telephone, utilities and office expenses. An attorney's compilation report is based primarily on the representations of management and the accountant expresses no opinion as to whether they fairly present the financial position of the petitioning organization. The AAO further notes that the accountant stated that the petitioner "elected to omit[] substantially all of the disclosures ordinarily included in financial statements prepared on the cash basis of accounting." Accordingly, limited reliance can be placed on any of the information contained within the financial statements. Therefore, the petitioner's statements in the unaudited financial documents do not provide corroborative evidence of its religious activities at the [REDACTED] address.

The petitioner has submitted insufficient documentation to establish that the organization existed as claimed when the petition was filed and therefore that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa petition.

The second issue is whether the petitioner has established that the beneficiary seeks to enter the United States to work solely as a minister of his religious denomination.

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 seeks to enter the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, in order to work for the organization in a professional religious capacity or in a religious vocation or occupation.

The proffered position is that of minister. Therefore, the petitioner must establish that the beneficiary seeks to enter the United States to work solely as a minister in its denomination.

As discussed previously, in her NOIR, the director notified the petitioner that a Lexis-Nexis business search revealed two other businesses located at the same address as that of the petitioner. In response to the NOIR, the petitioner submitted photographs that it states are of the temple at [REDACTED]. Counsel stated that the petitioner had not heard of [REDACTED] but acknowledged that the beneficiary's wife operates [REDACTED] a "logistics business of delivering clothes." Counsel asserts that the beneficiary's wife "uses the Organization's address solely for mailing purpose and there is no business activity associated with her logistics business at the organization's address since the business is mostly done over the phone." The petitioner provided a copy of the [REDACTED] business license for [REDACTED] in the name of [REDACTED] at the [REDACTED] address. The petitioner submitted no other specifics regarding [REDACTED], for example to whom and for whom the clothing is delivered. However, the AAO notes that the beneficiary's 2006, 2007 and 2008 IRS Forms 1040, filed jointly with his wife, indicate that the business is a commercial trucking business with no employees.

The AAO finds the use of the petitioner's address for business correspondence for the beneficiary's wife highly suspect. The petitioner offers no rational explanation as to why she would use the petitioner's address rather than her own as the beneficiary stated that he uses his home address for all correspondence unrelated to the temple. Although the business license is in the name of the beneficiary's wife, the use of the petitioner's premises as a mailing address raise issues as to whether the beneficiary is involved in the business and the extent to which he is involved.

Accordingly, the record does not sufficiently establish that the beneficiary seeks to enter the United States to work solely as a minister of his religious denomination.

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.