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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



C,

DATE: **APR 05 2012** 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 November 8, 2005. 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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will affirm the director's decision and dismiss the appeal.

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 an education pastor. The director determined that the petitioner did not appear to be operating in the capacity claimed on the petition.

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 issue on appeal is whether the petitioner operates as claimed and therefore whether it has extended a qualifying job offer.

The director noted in her June 28, 2010 decision that a U.S. Citizenship and Immigration Services (USCIS) officer conducted an unannounced site check of the petitioner's premises on September 26, 2007. There was one visible sign containing the petitioner's name, but the building appeared to be a preschool instead of a church. There was a medium sized hall where the officer found that petitioner could hold worship services, but all of the decorations and props appeared to be for a preschool.

The officer spoke with [REDACTED] who is the spouse of the building's lessor and who works at the preschool. She stated that the petitioner's church holds services there once a week on Sundays. However, the director noted that public records do not mention the existence of the church at that address. They only reflect that the [REDACTED] operates there.

The director noted that the petitioner had submitted a lease agreement on May 26, 2010 in response to the director's April 26, 2010 Notice of Intent to Revoke (NOIR). The director found the veracity of this lease agreement, showing that the petitioner's church would be operating there, to be tenuous due to the fact that the petitioner had not submitted it at a scheduled meeting with USCIS on June 12, 2007. The director further stated that the California Wage Report for 2005 did not state that a church existed on those premises.

The director concluded that the petitioner's church does not appear to exist physically, that the petitioner has failed to establish its day-to-day operations there, and that the petitioner has not established that the beneficiary was performing full-time work for its church as originally claimed within its May 30, 2005 letter of intention accompanying the petition. Accordingly, the director revoked approval of the petition.

On appeal, counsel claims that the petitioner's church is a bona fide religious organization, which is fully functional and which holds regular services and other religious activities. Counsel goes on to state that the petitioner's church is housed in a building where there is also a child care center. Counsel claims that these are two separate entities existing separately from each other. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel submits weekly bulletins from 2010. The AAO finds that these bulletins do not demonstrate the full-time operation of the church as claimed from the petition's filing date of June 28, 2005 onward. The petitioner submits no documentary evidence to substantiate it has been operating as claimed since the date of filing.

Counsel resubmits a copy of an affidavit from [REDACTED] the building's owner, from December 15, 2009. Counsel also resubmits a copy of an affidavit from [REDACTED] from December 15, 2009. The AAO notes that the petitioner had previously submitted both of these documents on May 26, 2010 in response to the director's April 26, 2010 NOIR. Neither explains why the lease, which was purportedly in existence on May 30, 2007, was not provided or available during the site visit. The AAO additionally notes that neither document had been notarized. The AAO accordingly does not find these documents to constitute persuasive evidence.

Finally, counsel also contends that the California Wage Report for 2005 is not associated with the petitioner yet offers no other explanation on rebuttal. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner has submitted insufficient documentation to establish that it operates and has operated in the capacity claimed in the petition and therefore has extended a qualifying job offer to the beneficiary.

As the petitioner has not established that it has extended a qualifying job offer to the beneficiary, the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the AAO will dismiss the appeal.

ORDER: The appeal is dismissed.