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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, 1

DATE: **AUG 06 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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO subsequently remanded the petition to the director for a new decision based on revised regulations. The director issued a notice of approval on September 1, 2009. The director subsequently issued a notice of automatic revocation and then certified a denial decision to the AAO. The AAO remanded the petition to the director. The director has again certified a denial decision to the AAO. The AAO will withdraw the director's decision and remand the petition for further action and consideration.

The petitioner is a Baptist 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 English teacher at the petitioner's school. In the certified decision of September 28, 2011, the director determined that the petitioner had not established that the beneficiary has the requisite two years of continuous, qualifying work experience immediately preceding the filing of the petition.

On certification, the petitioner submits a letter from its senior pastor and a brief from counsel.

The Form I-360 petition was initially denied on September 20, 2007. The petitioner appealed the decision and the AAO subsequently remanded the petition for consideration under new regulations which were promulgated on November 26, 2008.

The director approved the Form I-360 petition on September 1, 2009. On September 30, 2009, the director issued a notice which stated, in pertinent part:

In accordance with 8 C.F.R. 204.9(f), the approval of the petition is automatically revoked as of the date of its approval because the petitioner is no longer qualified for classification as special immigrant as defined by section 101(a)(27)(C) of the Act.

On October 13, 2009, the director issued a full decision stating that the petition was denied because the petitioner failed to establish that the beneficiary's prospective position qualifies as a religious occupation and that the beneficiary had the requisite two years of continuous, qualifying work experience immediately preceding the filing of the petition. The director certified the October 13, 2009 decision to the AAO for review.

In its decision of March 17, 2011, the AAO noted that the regulation at 8 C.F.R. 204.9(f), cited by the director as the basis for automatic revocation, relates to Armed Forces special immigrants and is not applicable to special immigrant religious workers. The AAO found that, although the regulation at 8 C.F.R. § 205.1(a)(3)(iii) sets forth limited circumstances that permit the automatic revocation of the approval of a petition filed under section 203(b) of the Act, the director had not shown the existence of such circumstances in the instant matter. The AAO stated:

If the director believes that USCIS approved the petition in error, then the director must first issue a notice of intent to revoke the approval, following the procedures outlined in the regulations at 8 C.F.R. § 205.2. The director cannot simply issue a notice of automatic revocation (citing inapplicable regulations) followed by a certified denial.

Accordingly, the AAO remanded the petition for further action and consideration.

The director issued a Request for Evidence on April 11, 2011, and subsequently issued a Notice of Certification on September 28, 2011, informing the petitioner of the denial of the petition.

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).

The instant petition was approved on September 1, 2009. Therefore, if the director believes that USCIS approved the petition in error, she must follow the appropriate procedures for **revocation** of the petition, set forth at 8 C.F.R. § 205.2, including the issuance of a notice of intent to revoke setting forth the grounds alleged for revocation and providing an opportunity for the petitioner to offer evidence in support of the petition and in opposition to the revocation.

Accordingly, the AAO will remand this matter for further action and consideration. 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. A new decision, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.