

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

[REDACTED]

DATE:

DEC 18 2012

OFFICE: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:
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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (VSC director), initially approved the employment-based immigrant visa petition. After an investigation called the petitioner's claims into question, the Director, California Service Center (hereafter "the director") determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke (ITR), and subsequently revoked the approval of the petition. The Administrative Appeals Office (AAO) rejected the petitioner's untimely appeal and instructed the director to consider the untimely appeal as a motion to reopen. The director dismissed the motion, and the petitioner again appealed the matter to the AAO. The AAO remanded the petition for further action and consideration. The director again revoked the approval of the petition and certified the decision to the AAO for review. The AAO will affirm the director's certified decision.

The alien beneficiary, who filed the petition on his own behalf and is therefore the petitioner, seeks classification 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). The petitioner initially sought employment as a Hindu priest at Sri Raja Ganapathi Temple (SRGT) in Swedesboro, New Jersey. The director determined that the job offer that formed the basis for the petition no longer exists.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.4(a)(2) indicates that the petitioner may submit a brief within 30 days after the director serves notice of a certified decision. The director dated the certified decision April 10, 2012. The AAO received a response from the petitioner on April 23, 2012.

In his response to the certified decision, the petitioner states: "I lost my trust and confidence in any attorneys or other systems. That is why I am writing this letter on my own without depending [on] any body." He does not appear, however, to have formally dismissed his attorney. The record contains an October 11, 2012 letter from counsel to the AAO, in which counsel states: "we have never received a decision from your office on the Certification of April 10, 2012 (see attached) nor a Notice of Revocation from the California Service Center, supposedly sent to us on May 14, 2012." The letter included a copy of the director's notice of certification, dated April 10, 2012. That notice included the director's decision, with the concluding sentence: "Therefore, the petition is revoked as of the date of approval." The April 10, 2012 notice of certification is, itself, the "Notice of Revocation." Correspondence from the California Service Center's Congressional Liaison Unit to the office of U.S. Representative David Price stated: "On 5/14/2012 a Revocation Notice was mailed to your constituent's attorney of record and was not returned as undeliverable." Counsel's inclusion of a copy of the director's decision, dated April 10, 2012, proves that counsel is in possession of the notice.

From the available materials, it is not clear whether the director mailed the notice to counsel on April 10 or May 14, 2012, but well over 30 days have passed since both of those dates. The permitted response period has elapsed, and the AAO has received no substantive response to the certified denial from counsel, to supplement the petitioner's own timely response that the AAO received on April 23, 2012. The AAO therefore considers the record to be complete as it now stands.

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 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 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).

A capsule history of the relevant procedural information follows below. Additional details regarding the previous procedural history of this petition appear in the AAO’s remand order dated December 2, 2011, which the AAO incorporates here by reference.

The petitioner filed the Form I-360 petition on July 22, 2005. The initial filing of the petition included documentation of the beneficiary's past work at Parashakthi Temple (also called [REDACTED] in Pontiac, Michigan, but that evidence indicated that the petitioner had already left that temple prior to the petition's filing, and there was no offer of future employment there.

On November 10, 2005, the VSC director instructed the petitioner to submit information and evidence relating to the petitioner's proposed future employment. In response to the notice, the petitioner stated that he was "[c]urrently working [REDACTED]". The petitioner submitted a December 11, 2005 letter attributed to [REDACTED] founder [REDACTED]. The letter indicated that the petitioner "is successfully completing his probation period of services as a Hindu Priest. . . . The temple . . . will continue to hire [the petitioner] once he is granted Permanent resident status." The petitioner also submitted evidence relating to [REDACTED]-affiliated entity in Loudonville, New York. By submitting these materials, the petitioner specifically and permanently linked his petition to SRGT's job offer.

The VSC director approved the petition on May 15, 2006. The petitioner filed a Form I-485 adjustment application on June 15, 2006, including a Form G-325A Biographic Information sheet. On Form G-325A, the petitioner stated that he had worked for Parashakthi Temple from July 2003 to July 2005; for [REDACTED] from July 2005 to February 2006; and for [REDACTED] from March 2006 onward. According to this chronology, provided by the petitioner himself, the petitioner left [REDACTED] while his petition was still pending.

On May 24, 2007, a USCIS officer visited [REDACTED] who acknowledged the petitioner's past association with [REDACTED], but who asserted "there was never a job offer for his organization to employ the [petitioner]." On April 4, 2008, the director issued an ITR, asserting that [REDACTED] had repudiated the job offer on which the approval of the petition rested.

The petitioner's response included copies of IRS Forms W-2 from [REDACTED] for 2003 through 2005, from [REDACTED] for 2005, and from [REDACTED] in 2006 and 2007.

The director revoked the approval of the petition on May 5, 2009, citing credibility concerns as well as newly revised regulations concerning lawful immigration status. The petitioner appealed the decision, and the AAO withdrew the director's decision and remanded the petition for a new decision. The AAO found that the revised regulations do not apply to the present petition, and that the director drew conclusions that the inspecting USCIS officer's report did not warrant. The AAO also stated that, while the stated grounds for revocation could not stand,

there is another reason why USCIS cannot approve the petition. The pre-2008 regulation at 8 C.F.R. § 204.5(m)(4) called for details about the job offer underlying the petition. The former regulation at 8 C.F.R. § 204.5(m)(3)(i) required evidence of the employer's tax-exempt status. Clearly, it has never been sufficient for an alien to declare a general intention to perform religious work in the United States. The former

regulations, like their successor regulations, demanded a specific job offer from a specific, identified employer.

When the petitioner filed the petition, the job offer was with [REDACTED]. That employment ended in February 2006, while the petition was still pending at the VSC. When the job offer at [REDACTED] disappeared, the basis for the petition disappeared with it. Nothing in the statute or regulations relating to special immigrant religious workers permits the substitution of one employer for another while the petition is pending. The petitioner's February/March 2006 change of employers did not come to light until after the VSC director approved the petition in May 2006. If the VSC director had been aware of the change of employment, the VSC director would likely have denied the petition.

An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. 8 C.F.R. § 103.2(b)(1). USCIS cannot properly approve the petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Once the petitioner's original job offer disappeared, the petitioner could not remedy that defect within the same proceeding by obtaining new employment. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998).

For the above reasons, the petitioner's change of employment while the petition was pending is a disqualifying circumstance. The director, however, did not specifically cite that issue in the ITR. Because *Matter of Arias* does not permit the introduction of new grounds for revocation after the ITR stage, the proper course of action at this time is for the director to issue a new, superseding ITR that takes the above information into account.

The director issued a new ITR on February 15, 2012, stating that the VSC director approved the petition in error because the job offer at [REDACTED] no longer existed at the time of the approval. In response, the petitioner does not dispute the change of employers. Indeed, the petitioner submits a copy of a March 23, 2011 job offer letter from yet another employer, [REDACTED].

Counsel stated "the District Director [*sic*] has not provided any statute or regulation that prevents this substitution." Several regulations in effect at the time of filing in 2005, and at the time of approval in 2006, clearly tied eligibility to a specific employer. The regulation at 8 C.F.R. § 204.5(m)(3)(i) required "evidence that the [employing] organization qualifies as a non-profit organization." The regulation at 8 C.F.R. § 204.5(m)(3)(ii) required the submission of "a letter from an authorized official of the religious organization in the United States." The regulation at 8 C.F.R. § 204.5(m)(4) instructed the intending employer to specify "how the alien will be paid or remunerated," and added that "additional evidence such as bank letters, recent audits, church membership figures, and/or the number of

individuals currently receiving compensation may be requested.” All of these requirements relate not to the alien seeking immigration benefits, but to the organization seeking to employ that alien. If the employer failed to meet any one of these requirements, then USCIS could not properly approve the petition. It is clear, therefore, that the petitioner could not begin the petition process with an employer that met all of the above requirements and then, while the petition was pending, substitute a new employer that might not meet all (or any) of them. The employer-specific requirements are an essential safeguard on the integrity of the immigration process, and a self-petitioning alien cannot sidestep those requirements (whether or not it is the petitioner’s intention to do so) by changing employers in the middle of the adjudication process.

In its 2011 remand order, the AAO cited the USCIS regulation at 8 C.F.R. § 103.2(b)(1), and the precedent decisions *Matter of Katigbak* and *Matter of Izummi* (full citations appear further above). Taken together, these decisions and regulations – which are binding on all USCIS and AAO employees – indicate that the petition must be approvable at the time of filing and must continue to be approvable, under essentially the same conditions, at the time of adjudication. The petitioner cannot file the petition under one set of circumstances (such as employment at [REDACTED] and expect approval under different circumstances (such as employment at [REDACTED]). At the time of filing the petition, there was no job offer from [REDACTED] and therefore USCIS could not properly approve the petition based on the later appearance of such an offer. The change of circumstances would warrant the filing of a new petition, not the after-the-fact alteration of the first petition.

The petitioner submitted a copy of a May 13, 1994 letter from [REDACTED] Immigration Branch for Adjudications at the Immigration and Naturalization Service. [REDACTED] discussed the matter of a minister who “transferred . . . to a different congregation,” and addressed the question of “whether the approved petition remains valid in light of the change” of employment. Counsel quoted part of the letter: “As long as the same religious denomination which filed the initial petition continues to offer the alien a job as a minister, it appears that the petition remains valid.”

Unlike statutes, regulations and precedent decisions, letters and correspondence issued by the Office of Adjudications are not binding on the AAO. Letters written by the Office of Adjudications do not constitute official USCIS policy and will not be considered as such in the adjudication of petitions or applications. Although the letter may be useful as an aid in interpreting the law, such letters are not binding on any USCIS officer as they merely indicate the writer’s analysis of an issue. See Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, *Significance of Letters Drafted by the Office of Adjudications* (December 7, 2000).

Even then, counsel did not address a crucial passage in the letter. [REDACTED] stated: “*Subsequent to the approval of the petition, the religious denomination transferred the minister to a different congregation. . . . You ask whether the petitioner must submit a new petition if the location of the proposed place of employment for the beneficiary changes after an initial petition has been approved*” (emphasis added). In the matter now at hand, the petitioner changed jobs before the petition was approved, not after. This is a critical distinction because it directly affects the facts that exist at the time of adjudication. In the proceeding now at hand, the petitioner changed jobs while the petition was

pending. The VSC director, in turn, inadvertently approved the petition based on information that was already outdated and did not reflect the circumstances of the petitioner's intended future employment. The VSC director based the approval of the petition on conditions that no longer applied, and thus no longer justified approval of the petition.

The director issued a new revocation notice on April 10, 2012, and certified it to the AAO. In that notice, the director acknowledged counsel's response to the ITD, and stated: "the burden of proof to present evidence authorizing the substitution of employers in fact falls on the petitioner." The director also noted that [REDACTED] 1994 letter, obtained from a third-party organization of immigration attorneys, has no "precedential value," and that the letter referred to a change of employment after, not before, the approval of the petition. The director repeated the finding that "the petitioner's change of employment while the instant petition was pending is a disqualifying circumstance."

In response to the director's latest notice, the petitioner claims that "[REDACTED] lied to the USCIS officials" who interviewed him in 2007. The petitioner claims that [REDACTED] created intolerable conditions for the petitioner at [REDACTED] which compelled him to change employers. The petitioner's unsubstantiated claims offer a purported reason for his change of employment, but the director did not base the revocation on a lack of an explanation for that change. Rather, the director found that the change itself "is a disqualifying circumstance," regardless of why it occurred.

The petitioner observes that [REDACTED] properly filed a Form I-129 nonimmigrant petition on his behalf, and that USCIS, by approving that petition, authorized the change of employment. The approval of that petition, however, only authorized the petitioner to work for [REDACTED] from March 2006 to March 2008. The approval was not a formal substitution of employers in the context of the previously filed Form I-360 special immigrant petition.

The petitioner asserts that, because the VSC director approved both of the above petitions, "the VSC Director is fully aware of the beneficiary's change of employment" and "cannot state that he approved the I-360 petition only because he is unaware of the change of employment. . . . [T]he VSC Director is fully aware of the beneficiary's change of employment and he approved the I-360 petition only because the beneficiary's change of employment is not a disqualifying circumstance." No Service Center director personally reviews and adjudicates every petition. The volume of filings makes such a task impossible. Rather, several individual adjudicators adjudicate the petitions, with the delegated authority to approve or deny them. The petitioner's claim that the same person reviewed both petitions and was fully aware of the change of employers is unsupported and unfounded speculation. The AAO notes that the April 4, 2008 ITD shows the petitioner's old Swedesboro, New Jersey address. This proves that the petitioner's relocation to Virginia in early 2006 was not universal knowledge throughout USCIS, even two years after the approval of the Form I-129 petition.

Even if the same adjudicator did review both petitions, and was fully aware of the change of employers, there simply exists no provision that would allow a substitution of employers in a special immigrant religious worker petition. As noted previously, the regulation at 8 C.F.R. § 103.2(b)(1) states that the

petition must be approvable at the time of filing, and a job offer that appears months after the filing date cannot retroactively cause eligibility as of the filing date.

The remainder of the petitioner's latest submission concerns his current employment and medical issues relating to his spouse. These issues, while surely important to the petitioner, his family, and his employer, do not show that the director erred in revoking the approval of the petition.

The 2005 petition rested, fundamentally and unalterably, on an offer of employment with [REDACTED]. When that job offer ended, the justification for approving the petition disappeared with it. The early 2006 job offer from [REDACTED] cannot justify approval of a petition with a mid-2005 priority date. The petitioner's reasons for changing jobs, and for wishing to remain in the United States (with yet another employer) now, are irrelevant; the petitioner seeks a form of relief that the statute, regulations and case law simply do not provide.

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 affirm the director's certified decision.

ORDER: The director's decision of April 10, 2012, is affirmed. The approval of the petition is revoked as of the date of filing, July 22, 2005.