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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
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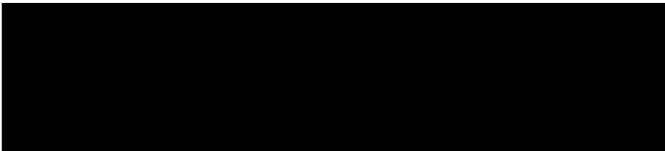
DATE: **MAY 02 2012** OFFICE: CALIFORNIA SERVICE CENTER

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, (“the director”) revoked the employment-based immigrant visa petition. The petitioner timely filed an appeal to the revoked petition. The matter is now before the Administrative Appeals Office (“AAO”) on appeal. The AAO will dismiss the appeal.

The petitioner is described as an independently managed congregation of baptized members of the Seventh Day Adventist 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 pastor. The petitioner filed the Form I-360 petition on November 22, 2004. The director initially approved the petition on September 6, 2005. On June 28, 2010, the director issued a Notice of Intent to Revoke, to which the petitioner timely responded. On August 25, 2010, the director revoked the petition. The director found that the petitioner was not a bona fide religious organization, and that the beneficiary was involved in assisting others in filing fraudulent applications.

On appeal, the petitioner submits a brief and further evidence.

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,

(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 is whether the petitioner is a bona fide religious organization. The regulation in effect on the date of the petition's approval, at 8 C.F.R. §204.5(m)(1) stated in pertinent part that:

The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or 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.

The prior regulation at 8 C.F.R. § 204.5(m)(2) defined these terms as:

Bona fide nonprofit religious organization in the United States means an organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations, or one that has never sought such exemption but establishes to the satisfaction of the Service that it'd be eligible therefore if it had applied for tax exempt status.

Bona fide organization which is affiliated with the religious denomination means an organization which is closely associated with the religious denomination and which is

- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

In this case, the petitioner has not submitted a properly completed IRS Form 1023. The record contains a completed Schedule A supplement to the IRS Form 1023. Further, the AAO finds that the petitioner did not submit a copy of the organizing instrument of the organization. While the petitioner submitted a copy of its constitution, it did not submit the articles of incorporation. Therefore, the AAO finds that the petitioner has not met its burden of showing that it is a bona fide organization under the regulations above, and will uphold the decision of the director.

The second issue is whether the beneficiary assisted in the filing of fraudulent immigration applications. The director supported her revocation finding by stating:

On October 20, 2007, USCIS has received the following information regarding eligibility for the classification sought. A site visit was conducted to the address listed on I-360 and supporting documents as [REDACTED]. The I-360 religious worker petitions that were filed on behalf of the beneficiary [REDACTED] directs and/or participates in a network of organizations which appear to be designed to sponsor immigrants and non-immigrants into the U.S. purportedly to be employed as religious workers, when in fact it appears that the workers are employed as caregivers in the health industry. Furthermore, during an "Administrative Inquiry" by FDNS (Fraud Detection and National Security) [REDACTED] identified the beneficiary [REDACTED] as facilitators who assisted [REDACTED] in filing fraudulent Form I-687, in return for \$4,000 cash at time of filing and an additional \$1,000 to be paid at the time an EAD card was received. [REDACTED] notarized several affidavits on behalf of affiants who testified that [REDACTED] resided in the United States during the 1980's.

According to the director, [REDACTED] identified the beneficiary as one of the facilitators who assisted [REDACTED] in filing a fraudulent Form I-687 application. [REDACTED] submitted an unsworn letter dated July 10, 2010 stating that:

And that, I know of [REDACTED] as a member of the Seventh-Day Adventist Church since I was in the Philippines up to the present;

And that, he has been a pastor for the Seventh-day Adventist congregation of unquestionable character up to the present;

And further, that I have not released any statement that said pastor have assisted any activity that charges me the amount of \$4,000 as payment of a fraudulent activity, nor is he part of any fraud whatsoever that links to the said charges.

Further, the beneficiary submitted an unnotarized declaration dated July 22, 2010 stating:

2. I have not facilitated or assisted [REDACTED] in filing fraudulent forms with the Immigration Services
3. I did notarized [sic] some documents brought to me by [REDACTED]. He indicated to me that the documents were for immigration and I was happy for him, because I thought that he was legalizing his status. He did not say to me that he was filing fraudulent documents.
4. As a notary, pursuant to my duties, I simply verified that the person signing the documents was [REDACTED]. I did not even charge him for my notary services, much less charge him \$4,000 or any other amount for any services.

The AAO is not persuaded by those unsworn, unnotarized claims. The director's FDNS report states that the beneficiary did not notarize one document for just one person, but rather for several affiants. Therefore, these statements do not overcome the director's FDNS finding.

Further, the director also found that the petitioner filed an excessive number of religious worker petitions based on the size of the observed operations. Counsel addressed this on appeal, in which it stated:

A reasonable explanation was given as to the number of petitions filed and the need of such applications as well as evidence demonstrating the growth of the church in the last eight years. Prior petitions were already approved. Each petition should be approved or denied on its own merits. Covina International is a church serving the spiritual needs of a primary Filipino congregation. These needs are better met with a pastoral staff that shares a similar cultural background with the membership as such most of the positions are filled with individuals from the Philippines.

Counsel's statement stems from a portion of the beneficiary's unnotarized declaration, dated July 22, 2010, which states that:

Covina International Seventh-day Adventist Church has filed petitions based on its particular needs and as such the church has grown to a current membership of 250.

These explanations come from the director's allegations that the petitioner is filing an excessive amount of petitions based on its size. On appeal, the beneficiary and counsel both state that the reason why the petitioner is filing an excessive amount of petitions is because its church has grown to 250 members of a Filipino population and they need extra Filipino religious to accommodate their growth. The AAO finds these explanations to be insufficient because they are merely the statements of counsel and the beneficiary and are not supported by any proof in the record. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Further, the assertions of counsel and the beneficiary 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 AAO also notes that in this part of the decision, the director stated, "The petitioner has not established that the beneficiary is working in the capacity claimed on the petition." However, the AAO finds that the evidence in the record sufficiently show that the beneficiary was baptized into the Seventh Day Adventist organization on March 20, 1967 and that he became a pastor for the Seventh Day Adventists on June 13, 1987. Further, the petitioner has submitted evidence showing that the beneficiary is a pastor of this church. Therefore, the AAO will overturn this part of the decision in which the director stated that the petitioner has not established that the beneficiary is working in the capacity claimed on the petition.

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.

ORDER: The appeal is dismissed