

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY



C1

DATE: **MAY 11 2012**

OFFICE: CALIFORNIA SERVICE CENTER

FILE:

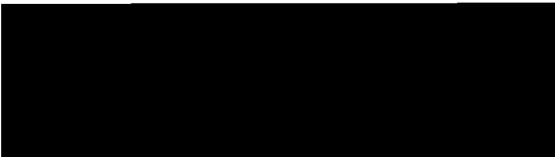
IN RE:

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 December 12, 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 on January 3, 2008. The director granted the petitioner's motion to reopen and reaffirmed her decision on November 19, 2008. The petitioner appealed the decision to the Administrative Appeals Office (AAO). On April 16, 2010, AAO remanded the matter for consideration under new regulations. The Director, California Service Center, again denied the petition and, following the AAO's instructions, certified the decision to the AAO for review. The AAO will affirm the revocation of the petition.

As stated above, the instant petition was previously approved on December 12, 2005 and then subsequently revoked. The AAO's remand for application of the new regulation was in error. Accordingly, for purposes of this certification, the AAO withdraws its previous finding and focuses its review on the director's November 19, 2008 decision, which was correctly based upon the regulations in effect at the time the petition was originally approved. Nonetheless, as the AAO conducts appellate review on a *de novo* basis, all of the evidence of record will be considered. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The petitioner is a church. It seeks classification of 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 religious instructor and religious education director. The director determined that the petitioner did not establish that the beneficiary is coming to the United States to work in a religious occupation.

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 Esteime*, 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 regulation at § 204.5(m)(1) requires that the beneficiary be coming to the United States to work in a religious capacity, such as in a religious vocation or occupation. The issue on appeal is whether the petitioner has established that the beneficiary is coming to the United States to work in a religious occupation.

The regulation at 8 C.F.R. § 204.5(m)(2) (2005) defined “religious occupation” as an:

[A]ctivity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors,

maintenance workers, clerks, fundraisers, or persons solely involved in the solicitation of donations.

The director noted in her November 19, 2008 decision affirming her January 3, 2008 revocation of the petition that a U.S. Citizenship and Immigration Services (USCIS) officer had conducted an unannounced site check of the petitioner's premises on April 13, 2007. The officer had noted that the petitioner's June 22, 2005 letter of intent accompanying the petition had not stated that the beneficiary's duties would include being a pianist or being involved with music, although church congregants stated that she was the church pianist. The letter of intent had instead listed the proffered position as religious instructor and religious education director and her duties as:

- Directing and coordinating activities of a denominational group to meet the religious needs of students;
- Planning, directing, and coordinating church school programs designed to promote religious education among church membership (potentially including providing counseling and guidance relative to marital, health, financial, and religious problems);
- Coordinating activities with religious advisors, councils, and university officials to meet the religious needs of students;
- Assisting and advising groups in promoting interfaith understanding;
- Soliciting support, participation, and interest in religious education programs from congregation members, organizations, officials, and clergy;
- Ordering and distributing school supplies;
- Analyzing revenue and program cost data to determine budget priorities;
- Interpreting religious education to the public through speaking, leading discussions, and writing articles for local and national publications;
- Analyzing member participation and changes in congregation emphasis to determine needs for religious education;
- Planning and conducting conferences dealing with the interpretation of religious ideas and convictions;
- Promoting student participation in extracurricular congregational activities;
- Counseling individuals regarding marital, health, financial, and religious problems;
- Planning congregational activities and projects to encourage participation in religious education programs;
- Supervising instructional staff in the religious education program; and
- Developing, organizing, and directing study courses and religious education programs within the congregation.

During the on-site visit, [REDACTED] the individual who signed the Form I-360 as well as the intention letter, and his wife told the officer that the beneficiary teaches music on Saturdays. [REDACTED] did not indicate that the beneficiary was performing any of the above listed claimed activities. The officer concluded that the beneficiary was not performing any of the duties listed within the petitioner's letter of intent.

The director noted that the petitioner's November 4, 2008 Notice of Intent to Deny (NOID) response had included a statement from church members regarding the beneficiary's duties for the church as well as photos of the beneficiary and students in a classroom setting. The director also noted that the petitioner had claimed that the findings of one unannounced visit on a Friday were not sufficient to establish that the beneficiary would be employed in a religious capacity and that any inconsistencies may have been due to a language barrier between the officer and the interviewees.

The officer additionally highlighted that the petitioner had petitioned for four individuals, but had used three different names for the church within their relative Form I-360 petitions, including [REDACTED] Church. The director noted that the petitioner's NOID response had stated that USCIS's focus on the varying names listed on the petitions was overly sensitive.

The director found that the site investigation brought into question the duties of the proffered position, the duties that the beneficiary was purportedly performing, and whether or not the beneficiary was performing full-time work. The director raised her further concern that the beneficiary's experience was as a religious educator and not as a performer of religious music.

Within the director's June 16, 2010 certification decision, she highlighted that the primary reason for the revocation was that, based upon the findings of the USCIS site visit, the beneficiary was not performing the duties listed on the intention letter included with the petition. The AAO notes that the petitioner did not provide a brief or written statement in response to the director's notice of certification.

On appeal, counsel had claimed that one visit was not enough to provide a proper basis for revoking the petition, that variances in the names used for the church were immaterial, and that the beneficiary's duties as a pianist were secondary to her work as a religious instructor and religious education director. With regard to counsel's claim that the beneficiary was performing her proffered position's duties and those of a pianist, the AAO finds that 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).

The petitioner provided no evidence to counter the finding that the beneficiary was in fact the church pianist rather than the proffered position of religious director. The AAO finds that the petitioner has submitted insufficient documentation to establish that the beneficiary is coming to the United States to work in a religious occupation.

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.

ORDER: The petition is revoked. The appeal is dismissed.