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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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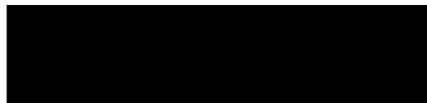


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Date: **MAY 11 2012** Office: CALIFORNIA SERVICE CENTER



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 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 with the field office or service center that originally decided your case by filing a 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based immigrant visa petition. 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 preference visa petition and her reasons for doing so, and subsequently exercised her discretion to revoke approval of the petition on October 9, 2008. The director granted a subsequent motion to reopen and reconsider and again denied the petition. The director erroneously treated the petitioner's appeal of that decision as another motion and again denied the petition. On appeal, the AAO affirmed the director's November 28, 2008 decision. The matter is now before the AAO on a motion to reopen and to reconsider. The motions will be dismissed.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On appeal, the AAO affirmed the director's decision that the petitioner had failed to establish that it had extended a qualifying job offer to the beneficiary and that the beneficiary worked continuously throughout the two-year period immediately preceding the filing of the petition.

On motion, the petitioner, stating that "[e]x post facto laws were considered to be contrary to the principles of republican government," appears to argue that the petition was adjudicated under a set of rules that became effective after the filing date and previous approval of the petition. However, the petitioner cites to nothing in the AAO's decision that applies a statute or regulation that was not in effect at the time the petition was filed. The petitioner also asserts that as the petition was previously approved and none of the facts have changed, the petition should remain approved.

As discussed in the AAO's previous decision, 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. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988). Furthermore, the AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

The petitioner states that USCIS "has been adopting a more stringent standard of 'qualifying job offer' in terms of the amount of salary" and that most religious workers "do not seek material wealth and high salaries." The petitioner provided no evidence of USCIS adopting "a more stringent standard" to determine whether or not a qualifying job offer meets the wage requirement. A petitioner cannot sponsor an alien to work in the United States and then pay the

individual less than a living wage with the expectation that he or she will find additional work or receive financial support from family or friends. The record reflects that the salary offered by the petitioner is less than the minimum poverty guidelines set forth by the U.S. Department of Health and Human Services and that the beneficiary relied upon, and was expected to continue to rely upon, substantial support from family and friends in Korea. The petitioner submitted no additional documentation on motion regarding this issue.

The AAO also found that the petitioner failed to submit verifiable documentation of the beneficiary's qualifying work history. Documentation submitted in response to the NOIR did not contain certified translations as required by the regulation at 8 C.F.R. § 103.2(b)(3). A list identifying members of the church youth group submitted on appeal contained no evidence that the individuals attended any training provided by the beneficiary and thus provided no evidence of any work performed by the beneficiary during the qualifying period.

The petitioner asserts on motion that, as a religious professional, the beneficiary works more than 40 hours per week and the petitioner's failure to produce "progress reports" and "meeting schedules" should not be justification to deny the petition.

The petitioner has misunderstood the decisions of the director and the AAO. As noted in the AAO's decision, the director's NOIR merely suggested such documents as meeting schedules, number of attendees and progress reports as evidence of the beneficiary's qualifying experience. The director did not require the submission of these documents or any specific documentation to establish the beneficiary's experience qualifications. Additionally, the AAO did not impose any requirement on the petitioner to submit specific documentation. Nonetheless, the documentation submitted by the petitioner in support of its claim must meet the requirements of the regulation. In this instance, the petitioner failed to provide certified translations of documents written in the Korean language and failed to provide any other evidence of the beneficiary's work experience during the qualifying period. The petitioner submitted no additional documentation in support of this issue on motion.

The petitioner submits no additional documentation in support of its motion to reopen as required by the regulation at 8 C.F.R. § 103.5(a)(2). Additionally, the petitioner does not cite to any precedent decisions in support of its motion to reconsider and does not argue that the previous decisions were based on an incorrect application of law or USCIS policy as required by the regulation at 8 C.F.R. § 103.5(a)(3).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motions will be dismissed, the proceedings will not be reopened or reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motions are dismissed.