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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

[Redacted]

C1

DATE: **SEP 10 2012** Office: CALIFORNIA SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner: [Redacted]  
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.

Thank you,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, initially approved the employment-based immigrant visa petition on [REDACTED] 2005. On further review, the director determined that the beneficiary was not eligible for the visa preference classification. Accordingly, the director served the petitioner with a Notice of Intent to Revoke (NOIR) the approval of the preference visa petition and subsequently exercised her discretion to revoke the approval of the petition on [REDACTED] 2009. A subsequent appeal was rejected as untimely by the Administrative Appeals Office (AAO) and returned to the director for consideration as a motion to reopen and reconsider. On [REDACTED] 2011, the director granted the motion and issued a decision while at the same time requesting additional evidence. The matter is again before the AAO on appeal. The AAO will withdraw the director's decision and remand the petition for further action and consideration.

The petitioner is a 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 senior pastor. The [REDACTED] 2009 NOIR discussed the negative findings of a site visit and determined that the petitioner failed to establish that the beneficiary had the requisite two years of continuous, qualifying religious work immediately preceding the filing of the petition and that the petitioner operated in the capacity claimed in the petition. In the [REDACTED] 2009 revocation, the director determined that the petitioner had not responded to the NOIR. After approving the petitioner's motion, on [REDACTED] 2011, the director issued a decision finding that the petitioner's additional evidence did not overcome the grounds for revocation. The director also instructed the petitioner "to submit evidence and/or a written statement in rebuttal to this finding," and specifically requested evidence of church activities during the period from [REDACTED] 2002 to [REDACTED] 2004, a list of the petitioner's current employees and volunteers, and information regarding any individuals for whom the petitioner filed special immigrant and nonimmigrant religious worker petitions within the past five years.

The petitioner submits no further evidence on appeal. Although counsel indicated on the Form I-290B, Notice of Appeal that a brief and/or additional evidence would be submitted within 30 days, no further documentation has been received to date. Therefore, the AAO will consider the record complete as it now stands.

The director's decision does not make clear that the petition has been revoked. First, although the cover page of the decision indicates that the decision is revoked, the director affords the petitioner 30 days in which to appeal the decision. See 8 C.F.R. 205.2(d) which provides for 15 days to file an appeal on a revocation. Further, in the body of the decision, the director makes no definitive finding that the petition is revoked and adds language requesting a rebuttal and further evidence. This language serves to further confuse the issue regarding the director's ultimate determination.

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 director's ██████████ 2011. decision contained additional allegations regarding the petitioner's evidence that were not discussed in the ██████████ 2009 NOIR. Further, the decision itself contained a request for additional evidence without providing an opportunity for the petitioner to respond to the request. Moreover, the decision was not based on the regulations in effect at the time of approval.

Accordingly, in order to revoke the petition, the director 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 based on the appropriate regulations 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.

Therefore, 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.