(b)(6)

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

DATE APR 2 3 2013 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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. Please note that all documents have been returned to the office that originally decided your case. Please also note that any further inquiry must be made to that office.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, initially approved the employment-based immigrant visa petition on September 21, 1996. On further review, the Director, California Service Center, determined that the beneficiary was not eligible for the visa preference classification. Accordingly, the director issued 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 August 13, 2012. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will reject the appeal and return the petition for further action by the director.

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 an assistant pastor. In the NOIR, issued on May 24, 2012, the director discussed the negative findings of a site visit conducted at the petitioner's address of record at which called into question the existence of the petitioning church. The director afforded the petitioner thirty days to offer evidence in support of the petition and in opposition to the proposed revocation. In the final decision, the director revoked the petition finding that the petitioner had failed to respond to the NOIR.

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 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 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 regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) states that, for purposes of appeals, certifications, and reopening or reconsideration, "affected party" (in addition to U.S. Citizenship and Immigration Services (USCIS)) means the person or entity with legal standing in a proceeding and does not include the beneficiary of a visa petition. The USCIS regulation at 8 C.F.R.

§ 103.3(a)(2)(v)(A)(1) states that an appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, USCIS will not refund any filing fee it has accepted.

Here, the party that filed the appeal was not the petitioner, but rather an attorney, Accompanying the I-290B, Notice of Appeal was a G-28, Notice of Entry of Appearance as Attorney or Representative, authorizing to represent the beneficiary, on appeal. Because did not file the petition, she is not an affected party, and therefore her attorney has no standing to file an appeal on the petitioner's behalf. Accordingly the AAO will reject the instant appeal as improperly filed.

However, the AAO additionally notes that the director sent the revocation not to the petitioning church, but to the alien beneficiary. Thus, the director never issued the revocation decision to the petitioning church. 8 C.F.R. § 103.5a(a)(1) defines "routine service" as mailing a copy by ordinary mail addressed to a person at his last known address. 8 C.F.R. § 103.5a(b) states that service by mail is complete upon mailing. Here, because the director never sent the final decision revoking the petition to the petitioning organization, the director has arguably never served the notice of revocation. Thus, the petitioner has never had the opportunity to file a timely appeal. The director must reissue the revocation notice based upon the regulations in effect at the time of approval in order to give the actual petitioner that opportunity.

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 matter is remanded to the director, California Service Center, for the issuance of a request for evidence (if necessary) and a new decision to the petitioner's address of record. If the new decision is adverse to the petitioner, it shall be certified to the Administrative Appeals Office for review.

Cc: