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

(b)(6)

DATE: APR 0 7 2014 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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (VSC director), initially approved the employment-based immigrant visa petition. After determining that the petition had been approved in error, the Director, California Service Center (hereafter "the director") properly served the petitioner with a notice of intent to revoke (ITR), and subsequently revoked the approval of the petition. The Administrative Appeals Office (AAO) rejected the petitioner's untimely appeal and instructed the director to consider the untimely appeal as a motion to reopen. The director dismissed the motion, and the petitioner again appealed the matter to the AAO. The AAO remanded the petition for further action and consideration. The director again revoked the approval of the petition and certified the decision to the AAO for review. The AAO affirmed the director's certified decision. The matter is now before the AAO on a motion to reconsider.

The petitioner seeks classification 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). The petitioner initially sought employment as a Hindu priest at The director determined that the job offer that formed the basis for the petition no longer exists. The AAO affirmed the director's finding.

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 Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 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).

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 . . . ; 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).

A capsule history of the relevant procedural information follows below. Additional details regarding the previous procedural history of this petition appear in the AAO's prior decisions dated December 2, 2011, and December 18, 2012.

The petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on July 22, 2005. The initial filing documented the petitioner's past work at [redacted] Michigan, but the petitioner left that temple before filing the petition.

On November 10, 2005, the VSC director requested information and evidence relating to the petitioner's proposed future employment. The petitioner responded by stating that he was "[c]urrently working in [redacted]. The petitioner submitted a December 11, 2005 letter attributed to [redacted] indicating that the temple "will continue to [employ the petitioner] once he is granted Permanent resident status." The petitioner also submitted evidence relating to [redacted]-affiliated entity in [redacted]

The VSC director approved the petition on May 15, 2006. On June 15, 2006, the petitioner filed Form I-485, Application to Register Permanent Residence or Adjust Status, including Form G-325A, Biographic Information. On Form G-325A, the petitioner indicated that he left SRGT in February 2006, while the petition was pending, and subsequently worked at [redacted] Virginia from March 2006 onward.

The director revoked the approval of the petition on May 5, 2009, citing credibility concerns as well as newly revised regulations concerning lawful immigration status. The petitioner appealed the decision,

and the AAO withdrew the director's decision and remanded the petition for a new decision. The AAO stated that, while the stated grounds for revocation could not stand,

> there is another reason why USCIS cannot approve the petition. The pre-2008 regulation at 8 C.F.R. § 204.5(m)(4) called for details about the job offer underlying the petition. The former regulation at 8 C.F.R. § 204.5(m)(3)(i) required evidence of the employer's tax-exempt status. Clearly, it has never been sufficient for an alien to declare a general intention to perform religious work in the United States. The former regulations, like their successor regulations, demanded a specific job offer from a specific, identified employer.
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> When the petitioner filed the petition, the job offer was with [redacted]. That employment ended in February 2006, while the petition was still pending at the VSC. When the job offer at [redacted] disappeared, the basis for the petition disappeared with it. Nothing in the statute or regulations relating to special immigrant religious workers permits the substitution of one employer for another while the petition is pending. The petitioner's February/March 2006 change of employers did not come to light until after the VSC director approved the petition in May 2006. If the VSC director had been aware of the change of employment, the VSC director would likely have denied the petition.
>
> An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. 8 C.F.R. § 103.2(b)(1). USCIS cannot properly approve the petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Once the petitioner's original job offer disappeared, the petitioner could not remedy that defect within the same proceeding by obtaining new employment. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998).

Subsequently, in response to a new [redacted] issued on February 15, 2012, the petitioner documented a new job offer from the [redacted] Counsel asserted, at that time, that the change of employers was not a disqualifying circumstance.

The director certified a new revocation notice to the AAO on April 10, 2012. In response to that notice, the petitioner explained the reasons for his original change of employer, and contended that USCIS had authorized the various changes of employer. In affirming the director's decision, the AAO stated:

> [T]here simply exists no provision that would allow a substitution of employers in a special immigrant religious worker petition. As noted previously, the regulation at 8 C.F.R. § 103.2(b)(1) states that the petition must be approvable at the time of filing,

> and a job offer that appears months after the filing date cannot retroactively cause eligibility as of the filing date. . . .
>
> The 2005 petition rested, fundamentally and unalterably, on an offer of employment with When that job offer ended, the justification for approving the petition disappeared with it. The early 2006 job offer from cannot justify approval of a petition with a mid-2005 priority date. The petitioner's reasons for changing jobs, and for wishing to remain in the United States (with yet another employer) now, are irrelevant; the petitioner seeks a form of relief that the statute, regulations and case law simply do not provide.

The AAO also stated:

> In its 2011 remand order, the AAO cited the USCIS regulation at 8 C.F.R. § 103.2(b)(1), and the precedent decisions *Matter of Katigbak* and *Matter of Izummi* (full citations appear further above). Taken together, these decisions and regulations – which are binding on all USCIS and AAO employees – indicate that the petition must be approvable at the time of filing and must continue to be approvable, under essentially the same conditions, at the time of adjudication. The petitioner cannot file the petition under one set of circumstances (such as employment at and expect approval under different circumstances (such as employment at . At the time of filing the petition, there was no job offer from and therefore USCIS could not properly approve the petition based on the later appearance of such an offer. The change of circumstances would warrant the filing of a new petition, not the after-the-fact alteration of the first petition. . . .
>
> The VSC director . . . inadvertently approved the petition based on information that was already outdated and did not reflect the circumstances of the petitioner's intended future employment. The VSC director based the approval of the petition on conditions that no longer applied, and thus no longer justified approval of the petition.

On motion, the petitioner states:

> The AAO's decision relies heavily on *Matter of Katigbak*. . . . However, a close examination of *Katigbak* reveals that its core holding does not support the broad conclusion articulated in the AAO's decision.
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> In *Katigbak*, the petitioner's application was denied because the applicant was not an academically qualified accountant at the time of the filing of her petition. . . . [T]he focus of *Katigbak* . . . was the eligibility of the beneficiary based upon the beneficiary's personal qualifications (i.e. education or experience) at the time of the filing.

The specific facts of *Katigbak* differ from those in the present proceeding, but the general point still holds that a petition cannot be approved based on qualifying circumstances that did not exist at the time of filing. This principle does not arise solely from *Katigbak.* Nevertheless, there remains a parallel between *Katigbak* and the present proceeding. When the petitioner filed the petition on his own behalf, the regulation at 8 C.F.R. § 204.5(m)(4) required a specific offer of employment. That particular offer of employment was, itself, required initial evidence, without which the petition could not be approved. The petitioner sought immigration benefits arising from his employment with Subsequently, the petitioner asserted that his new employment with should equally qualify him for the benefit sought. The job offer from did not exist at the time of filing, and therefore that particular job offer cannot retroactively qualify him for benefits as of a date prior to the existence of the job offer.

The petitioner alleges "an overly broad reading of *Izummi*," which "prohibits retroactive application of amendments to fix a petition that was flawed at the outset." That decision states: "a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to [USCIS] requirements." *Id.* at 175. *Izummi* does not specify that the petition had to be deficient at the time of filing, only that new qualifying circumstances cannot retroactively preserve the original filing date. *Izummi* also cited other case law, stating that USCIS "cannot consider facts that come into being only subsequent to the filing of a petition. *See Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981)." Specifically, *Bardouille* stated: "qualifying facts which come into being only subsequent to the filing of a preference visa petition may not be considered in support thereof." *Id.* at 116. In the present proceeding, the end of the petitioner's qualifying employment with eliminated the original basis for the petition. His subsequent employment with is a "qualifying fact[] which came into being only subsequent to the filing of [the] petition." The petitioner's assertion that he performed similar duties for both employers is irrelevant, because the revocation did not rest on a finding that the petitioner's duties had changed.

The petitioner contends that neither *Katigbak* nor *Izummi* "stand for the rule that 'the petition must continue to be approvable, under essentially the same conditions, at the time of adjudication.'" The petitioner also asserts that the regulation at 8 C.F.R. § 103.2(b)(1) "provides only that eligibility is to be determined as of the time of filing, nothing more." 8 C.F.R. § 103.2(b)(1) requires: "[a]n applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication." The conditions that applied at the time of filing ceased to apply while the petition was pending, and therefore those conditions no longer warranted approval of the petition.

The petitioner acknowledges that revocation would be in order "if the Director found that a religious worker . . . petitioner's actual employment involved working in a restaurant instead of in a religious capacity." Eligibility, however, did not simply hinge on the petitioner's employment "in a religious capacity." Rather, as explained in prior decisions, the regulations in effect at the time of filing made it clear that eligibility revolves around a specific job offer, and the required initial evidence included materials relating to a particular employer. Once the petitioner left that employment, the qualifying conditions no longer applied, regardless of the petitioner's claimed reasons for leaving. The proper

course of action would entail the filing of a new petition, because no procedure exists to allow the petitioner to amend a previously filed petition.

Counsel had previously claimed that there was no regulation that specifically prohibited a change of employers, but there is no implied right to change employers mid-proceeding. There was, and is, no regulation specifically permitting such a change of employers.

The petitioner asserts: "As a matter of fairness, if the AAO believes it to be acceptable to rely upon post-filing evidence to deny the petition . . . , then this this should open the door for the Petitioner to submit post-filing evidence . . . to cure any deficiencies in the petition, including post-filing changes in employment." The petitioner here assumes a symmetry that does not exist. It is possible for an alien to be eligible at the time of filing, and then cease to be eligible due to a change of circumstances. It is not, however, possible for a post-filing change of circumstances to extend back to the filing date. Eligibility at the time of filing rested not on a generic offer of employment, but on a specific offer of employment with one particular identified employer. When that particular condition ceased to apply, the petitioner was no longer eligible for benefits linked to the petition's filing date.

The petitioner states that "revoking the petition retroactive to the date of the petition's filing makes no sense," because "the Petitioner worked for the original employer in a manner consistent with the original I-360 through February of 2006." The petitioner contends that the revocation should be effective "as of the date of termination of employment, not as of the date of the original petition." Section 205 of the Act, 8 U.S.C. § 1155, states that "revocation shall be effective as of the date of approval of any such petition." Because this provision derives from the statute, USCIS has no discretion or authority to alter the effective date of revocation.

The petitioner acknowledges the AAO's "concerns that a change in employer invites the potential for abuse," but asserts that "the Director can alleviate those concerns by a post-filing follow-up investigation into the Petitioner's present circumstances." The proposal of a mechanism for verifying post-filing changes in employment does not establish that the statute or regulations permit such changes. The petitioner asserts, in effect, that the filing of one petition, with one fee, should entitle him to multiple adjudications, but the petitioner cites no provision of law to permit that situation.

The petitioner asserts that he "volunteered his changes in employment" and "has nothing to hide." This observation is irrelevant, because the revocation was not based on any allegation that the petitioner attempted to conceal the change in employment.

The petitioner states: "the essential question here is . . . whether it would be consistent with the statute to allow a petitioner to substitute employers, provided that both employers meet the statutory requirements." The statute and regulations are structured in a way that refers not to a generic employer, but to a specific employer. The regulation at 8 C.F.R. § 204.5(m)(6) requires that the "petition must be filed . . . either by the alien or by his or her prospective United States employer." No other party may file the petition. The regulations contain no provision for employer-filed petitions to be treated any differently than alien-filed petitions. In the case of an employer-filed petition, the entity filing the

petition would cease to be the "prospective United States employer" once the alien change employers, and thus there would be no valid basis to approve such a petition. The petitioner has not shown that an alien-filed petition should receive consideration that is not available to an employer-filed petition.

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. Accordingly, the AAO will affirm the revocation of the approval of the petition.

ORDER: The AAO's decision of December 18, 2012, is affirmed. The approval of the petition is revoked as of the date of filing, July 22, 2005.