



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE **JAN 14 2014** Office: CALIFORNIA SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

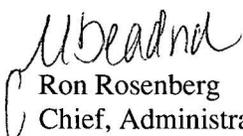
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

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.

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, initially approved the employment-based immigrant visa petition on January 14, 2002. 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 May 30, 2012. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will remand 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 a pastor. In the NOIR, the director discussed the negative findings of a compliance review. 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 instant Form I-360, Petition for Amerasian, Widow or Special Immigrant, was filed by [REDACTED] on April 2, 2001, and approved on January 14, 2002.

The director issued the NOIR on April 12, 2012. In the notice, the director discussed findings of misrepresentation relating to petitions filed by [REDACTED] and the organization [REDACTED]. Review of the

record indicates that a previous Form I-360 petition was filed by [REDACTED] on behalf of the beneficiary on November 5, 1997, and was denied due to abandonment on April 24, 1999. The NOIR was not mailed to the petitioner's address of record, [REDACTED] but was instead addressed to the petition's signatory, [REDACTED]

On May 30, 2012, the director issued a decision revoking approval of the petition based on the petitioner's failure to respond to the NOIR. The director sent the decision to the petitioner at its address of record.

On appeal, counsel asserts that the petitioner did not receive or have an opportunity to respond to the NOIR. The petitioner submits a letter from [REDACTED] stating:

...I wish to clarify any misconception of identity between [REDACTED]
[REDACTED]
[REDACTED] Please, be informed that we are different Pastors working in different ministries with nothing in common.

The evidence discussed in the NOIR pertained to an individual and an organization unrelated to the instant petitioner. Accordingly, it is not a proper basis for revocation of the instant petition. If the director intends to revoke the petition, the director must issue a new NOIR setting forth the reasons for doing so and send it to the petitioning church at its current address in order to give the petitioner an opportunity to respond.

ORDER: The matter is remanded to the director, California Service Center, for issuance of a new Notice of Intent to Revoke the petition (if necessary) and a new decision in accordance with the requirements of the regulations in effect at the time of approval of the petition. If the new decision is adverse to the petitioner, it shall be certified to the Administrative Appeals Office for review.