



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF V-S-S-

DATE: MAY 25, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a [REDACTED] seeks to classify the Beneficiary as a nonimmigrant religious worker to perform services as a minister. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(R), 8 U.S.C. § 1101(a)(15)(R). This nonimmigrant classification allows non-profit religious organizations, or their affiliates, to temporarily employ foreign nationals as ministers, in religious vocations, or in other religious occupations in the United States.

The Director, California Service Center, initially approved the petition. After two compliance review site visits, the Director issued a notice of intent to revoke (NOIR) and subsequently revoked the petition's approval, determining that the statement of facts contained in the petition were not true and correct and that the Beneficiary had violated the terms and conditions of the approved petition.

The matter is now before us on appeal. In its appeal, the Petitioner argues that the NOIR did not provide sufficient details to enable it to respond to the adverse information.

Upon *de novo* review, we will withdraw the Director's decision and remand the petition for further action and consideration.

I. LAW

Non-profit religious organizations may petition for foreign nationals to work in the United States temporarily to perform religious work. The petitioning organizations, and the foreign nationals who are the beneficiaries of this nonimmigrant visa, must meet certain eligibility criteria.

Section 101(a)(15)(R) of the Act pertains to a foreign national who:

- (i) for the 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; and
- (ii) seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii).

Section 101(a)(27)(C)(ii) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii), pertains to a nonimmigrant who seeks to enter the United States:

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
- (II) before September 30, 2016, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
- (III) before September 30, 2016, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation.

The regulation at 8 C.F.R. § 214.2(r)(1) states that, to be approved for temporary admission to the United States, or extension and maintenance of status, for the purpose of conducting the activities of a religious worker for a period not to exceed five years, a foreign national must:

- (i) Be a member of a religious denomination having a bona fide non-profit religious organization in the United States for at least two years immediately preceding the time of application for admission;
- (ii) Be coming to the United States to work at least in a part time position (average of at least 20 hours per week);
- (iii) Be coming solely as a minister or to perform a religious vocation or occupation as defined in paragraph (r)(3) of this section (in either a professional or nonprofessional capacity);
- (iv) Be coming to or remaining in the United States at the request of the petitioner to work for the petitioner; and
- (v) Not work in the United States in any other capacity, except as provided in paragraph (r)(2) of this section.

The regulation at 8 C.F.R. § 214.2(r)(16) allows U.S. Citizenship and Immigration Services (USCIS) to verify information supporting the petition through any means deemed appropriate, including an on-site inspection. It further provides: "If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition."

Regarding revocation of petitions, the regulation at 8 C.F.R. § 214.2(r)(18) states:

Revocation of approved petitions—(i) Director discretion. The director may revoke a petition at any time, even after the expiration of the petition.

(ii) *Automatic revocation.* The approval of any petition is automatically revoked if the petitioner ceases to exist or files a written withdrawal of the petition.

(iii) *Revocation on notice—(A) Grounds for revocation.* The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:

(1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;

(2) The statement of facts contained in the petition was not true and correct;

(3) The petitioner violated terms and conditions of the approved petition;

(4) The petitioner violated requirements of section 101(a)(15)(R) of the Act or paragraph (r) of this section; or

(5) The approval of the petition violated paragraph (r) of this section or involved gross error.

(B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition.

Finally, the regulation governing the notification requirements for adverse information is contained at 8 C.F.R. § 103.2(b)(16) and provides in pertinent part:

(i) Derogatory information unknown to petitioner or applicant. If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(16)(ii), (iii), and (iv) of this section. Any explanation, rebuttal, or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding.

II. ANALYSIS

The issues in this decision relate to whether the Director provided the petitioner with adequate opportunity to respond to the issues in the NOIR and articulated sufficient grounds for revocation of the petition.

In support of the petition, the Petitioner indicated that the Beneficiary would be working full time leading morning and evening prayers and devotional songs, performing the arotik daily religious ceremony, teaching students from religious scriptures, and preaching to explain the religious philosophy and lifestyle. The Petitioner also filed a petition for nonimmigrant religious worker status, and a petition for extension of that status, on behalf of the Beneficiary's son. After approving the Beneficiary's petition, the Director issued the NOIR based on the findings of two on-site inspections. Within the NOIR, the Director cited findings that the Beneficiary misled the investigating Immigration Officers (IOs) regarding her son's duties; that she is working less than part time and only performing a small portion of the duties listed in the petition; and that the petitioner's signatory and the Beneficiary provided different descriptions of her duties. The Director concluded: "[I]t appears that the statement of facts contained in the petition was not true and correct, and that the [P]etitioner violated terms and conditions of the approved petition. Furthermore, [b]ased on USCIS records, and the information obtained from the site visit, the information relating to the [B]eneficiary described within the petition has not been verified." Following the Petitioner's submission of a response to the NOIR, the Director issued a notice revoking the petition.

In its appeal brief, the Petitioner argues that the Director's NOIR did not identify the basis for her conclusion that the Beneficiary was working less than part time, instead providing only a general statement to that effect. The Petitioner also states that the Director did not offer enough information about any conflicting declarations regarding the Beneficiary's duties for the Petitioner to meaningfully respond. While it maintains that the information provided in support of the petition was correct, the Petitioner also contends that any minor changes that may have occurred in the Beneficiary's duties would not constitute a material change that would require an amended petition or warrant a revocation. Finally, the Petitioner indicates on appeal that the Director did not properly consider the evidence it submitted in response to the NOIR.

For the reasons discussed below, we find that the Director's NOIR was not sufficient to afford the Petitioner an opportunity to respond to specific shortcomings, and that she did not adequately articulate her grounds for revocation.

A. Site Visit Findings

The tentative schedule included within the Form I-129 consisted of 41 hours of work per week. The Director stated in the NOIR that, during the site visit, "it was revealed that the [B]eneficiary was only working less than part time," but did not offer the average number of hours she was found to be working. Regarding the Beneficiary's duties, the NOIR only stated that, during the on-site inspection interview, "it was revealed to the IO . . . that the [B]eneficiary was not performing the

(b)(6)

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majority of her duties,” and that the Petitioner’s signatory, [REDACTED] on the petition offered a different description of the Beneficiary’s duties than the Beneficiary gave during the interviews. The Director did not provide the statements or the IO’s observations that led her to conclude that the Beneficiary was working less than full time or not performing her duties. Further, the NOIR stated it appeared that information within the approved petition was not true and correct, that the Beneficiary had violated the terms of her visa, and that the information about the Beneficiary in the petition had not been verified, without specifying the perceived shortcomings or derogatory information.

The regulation at 8 C.F.R. § 103.2(b)(16)(i) requires the Director to advise the Petitioner of the derogatory information to a level of detail that it affords the Petitioner “an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered.” In addition, the revocation regulation at 8 C.F.R. § 214.2(r)(18) mandates that the NOIR “shall contain a detailed statement of the grounds for the revocation,” and 8 C.F.R. § 205.2(c) requires the Director to “provide the petitioner or the self-petitioner with a written notification of the decision that explains the specific reasons for the revocation.” We find that the notices in this case were not sufficient to meet the cited revocation regulations, nor did the Director afford the Petitioner with enough derogatory information to offer an informed response.

B. Beneficiary’s Son

As stated previously, the instant Petitioner also filed two nonimmigrant religious worker petitions for the Beneficiary’s son. Both the Director’s NOIR and the revocation notice stated the Beneficiary misled the IOs regarding the whereabouts of Beneficiary’s son as well as his duties. The Director did not offer the manner in which the Beneficiary misled the IOs, nor did she describe any misleading statements. Further, the Director did not describe how such an act was material to the Beneficiary’s petition.

C. Petitioner’s NOIR Response

The NOIR response included a letter from the Petitioner in which it conveyed that, at the time of the site visit, the Beneficiary was performing her duties as stated on the petition and was working on a full-time basis. The Petitioner indicated that some of the inconsistencies pertaining to the Beneficiary’s duties that the IOs perceived could have stemmed from the officers’ lack of knowledge about the religion and the distinct terms used within the religion. As discussed above, the Director’s NOIR did not offer the details of what caused her to conclude that the Beneficiary was working less than full time or that she was not performing her duties as stated within the petition. The Petitioner maintained that, without this information, it could not resolve any possible misunderstandings. The Director did not address this argument in the notice of revocation.

In addition, within a sworn statement the Petitioner provided in response to the NOIR, the Beneficiary explained that she mentioned to the IOs that she was not very proficient in English, and

that her ability to understand and speak English diminishes when she is nervous.¹ The record does not indicate that the IOs made arrangements for a Spanish speaking interpreter to be present, nor does it reflect that the IOs made an effort to call USCIS' interpreter services. The revocation notice did not address the Beneficiary's statement that her English speaking abilities may have impacted her interviews during the site visit. For the reasons discussed above, it is not apparent that the Director fully considered the Petitioner's NOIR response.

III. CONCLUSION

For the reasons discussed above, we find that the Director's NOIR was not in compliance with the regulation, as it lacked "a detailed statement of the grounds for the revocation" to allow the Petitioner an opportunity to rebut any derogatory information. The appeal will be remanded for the above stated reasons. If the Director determines it appropriate, she must issue a new NOIR, containing specific findings that will afford the Petitioner the opportunity to present a meaningful response. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

ORDER: The decision of the Director, California Service Center is withdrawn. The matter is remanded to the Director, California Service Center, for further proceedings consistent with the foregoing opinion and for the entry of a new decision, which, if adverse, shall be certified to us for review.

Cite as *Matter of V-S-S-*, ID# 16495 (AAO May 25, 2016)

¹ The Beneficiary was born in and is a citizen of Venezuela where Spanish is the official language with numerous indigenous dialects. See the Central Intelligence Agency's "The World Factbook," <https://www.cia.gov/library/publications/resources/the-world-factbook/geos/ve.html>, accessed on May 19, 2016, and incorporated into the record of proceeding.