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U.S. Citizenship  
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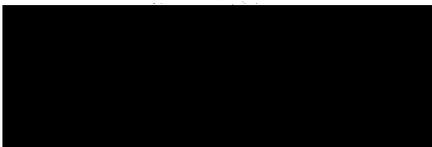
FILE: [redacted]  
SRC 99 109 51923

Office: TEXAS SERVICE CENTER Date: **DEC 30 2004**

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The petitioner filed a motion to reopen, which the director dismissed. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is a ministry. 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 its director of education, youth and children's ministry. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience in the position immediately preceding the filing date of the petition. In addition, the director determined that the beneficiary had engaged in the solicitation of funds, which is not a qualifying religious occupation.

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Attorney General 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 un rebutted, 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. *Matter of Ho*. 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 582.

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,

(II) before October 1, 2008, 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 October 1, 2008, 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; 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).

The regulation at 8 C.F.R. § 204.5(m)(1) indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on February 25, 1999. Therefore, the petitioner must establish that she was continuously performing the duties of the proffered position throughout the two years immediately prior to that date.

The petitioner asserts that the beneficiary performed the duties of the proffered position for the petitioner throughout the 1997-1999 qualifying period. The petitioner's initial submission contained no information to show how much, if anything, the petitioner paid to the beneficiary during the qualifying period.

Subsequent to the approval of the petition, the beneficiary applied for adjustment to permanent resident status. As part of that application, the beneficiary submitted Form G-325A, Biographical Information. This form instructed the beneficiary to list her employment over the past five years (i.e., 1994 to 1999), including employment outside the United States. The beneficiary stated "None."

The director, in the notice of intent to revoke, stated "the beneficiary had been attending school while working as a volunteer for the petitioning religious organization as a director of education in a non-salaried capacity." The director stated that unpaid volunteer work is not qualifying experience in a religious occupation.

In response to this notice, counsel states that the petitioner "provided a stipend or honorarium to [the beneficiary] in exchange for the services she provided to the ministry as director of education. Although neither [the beneficiary] nor the ministry considered [the beneficiary] to be an 'employee' of the organization, INS has consistently held that such remuneration does constitute employment." Counsel acknowledges that the petitioner had described the beneficiary as a "volunteer," but counsel contends "the word volunteer was used only to signify that the parties did not consider [the beneficiary] a salaried employee, but rather the recipient of 'designated offerings.'"

director of the petitioning entity, states "[a]lthough [the beneficiary] is not a salaried employee of [the petitioning entity], she does receive, in consideration of the services she provides, a weekly stipend or living allowance of approximately \$400.00 from the cash offering and donations contributed to our organization."

The director, in revoking the approval of the petition, did not withdraw the earlier finding that the beneficiary was an unpaid volunteer. Rather, the director stated “[t]he receipt of love offerings, benevolence funds, or any other type of requested offering falls into the definition [of] solicitation of funds.” Pursuant to 8 C.F.R. § 204.5(m)(2), solicitation of funds does not constitute a qualifying religious occupation. The director stated that the beneficiary’s “dependency on . . . the solicitation of funds” is a disqualifying factor.

On motion, counsel observes that the beneficiary was compensated from funds that the church had already collected, and the label used to describe that compensation is irrelevant. The petitioner provided consideration in return for services, which does not amount to solicitation of funds.

On motion, counsel observes that, according to the petitioner, the beneficiary received modest compensation for her efforts, and therefore she was not an unpaid volunteer. Counsel states “[i]n a letter dated May 3, 2003, the petitioner explained that . . . [the beneficiary] received monthly ‘compensation’ in the amount of \$1,200.00 per month.” The petitioner’s letter contained no such claim. The petitioner had claimed that the beneficiary received \$400 per week, which would equal \$20,800 per year, or roughly \$1,733 per month.

The director dismissed the petitioner’s motion and reaffirmed the revocation, stating “[t]he petitioner has not submitted any evidence to substantiate the beneficiary has been continuously working as a valid employee in religious work.” The director did not discuss the arguments that counsel had advanced on motion.

There is an obvious contradiction between director’s findings that the beneficiary was unpaid, and yet the beneficiary received solicited funds. There is no evidence in the record that the beneficiary’s duties have ever included solicitation of funds. If the beneficiary received any remuneration from the petitioner, then the record indicates that it was in the form of funds that the petitioner had already collected through routine donations.

The director’s finding cannot stand, because the director did not address or rebut the petitioner’s claim that the beneficiary was, in fact, compensated throughout the qualifying period. That being said, questions remain which prevent outright approval of the petition in the absence of further evidence.

Counsel claims, on appeal, that “the petitioner submitted evidence that the beneficiary received a \$400.00 weekly honorarium to assist her in meeting living expenses during the two year period preceding the filing of the I-360 petition.” While the petitioner had submitted a *claim* that the beneficiary received this amount, such an after-the-fact claim is not *evidence* that the beneficiary received \$400 a week. While the petitioner has submitted various financial documents, there is no *contemporaneous* documentation to show that the petitioner made regular payments to the beneficiary.

The petitioner had previously submitted what purport to be copies of its annual reports for 1997, 1998 and 1999, indicating that the beneficiary received \$12,000 in “Designated Offerings” in each of those years. \$12,000 a year is substantially less than “approximately \$400.00” per week; it is less than \$231 per week, barely half the amount claimed. This discrepancy raises questions of credibility, particularly in light of other discrepancies to be discussed elsewhere in this decision. Doubt cast on any aspect of the petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988).

The petitioner, on appeal, submits copies of documents showing wire transfers to the petitioner from her spouse in Korea during the qualifying period. The petitioner offers no comparable documentation to establish its own claimed payments to the beneficiary during that same period of time, although the beneficiary has demonstrably retained financial documents dating back to 1997.

Also relevant to the issue of the beneficiary's past experience are the beneficiary's studies at a local seminary. In a letter included with the initial filing [REDACTED] stated that the position offered to the beneficiary requires "a minimum of four years experience as a member of a Christian church, organization or other Christ-centered ministry and a baccalaureate degree [or] higher in divinity or ministry." The beneficiary holds a master's degree in ministry from [REDACTED], and as of the filing date, she was continuing her studies at that institution.

The director, in the notice of intent to revoke, stated that continuing study by an already-ordained minister does not interrupt the continuity of the minister's experience, but "undergraduate or graduate theological studies do not count for any part of the two years of continuous work experience requirement." The director determined that the beneficiary's studies [REDACTED] interrupted the continuity of the beneficiary's work for the petitioner.

In response, [REDACTED] asserts that the beneficiary "attends class only one day a week" and therefore she has been able to devote most of her time to her work for the petitioner. An official of the college states that the beneficiary "has been attending [REDACTED] and Seminary every Monday for 9 hours as a full-time student since January 1997 in order to maintain her F-1 visa."

In the notice of revocation, the director stated "it cannot be determined that the beneficiary is pursuing further study rather than initial study for a position as a minister," and therefore the petitioner had failed to show that the beneficiary's studies did not interrupt the continuity of her work during the qualifying period.

On motion from this decision, counsel did not address this finding by the director. In reaffirming the revocation, the director stated "[w]ithout evidence the beneficiary has been continuously carrying on the religious occupation or vocation, time spent in B-1/B-2 or F-1 nonimmigrant status breaks the two years of continuous experience required by statute."

On appeal, counsel correctly argues "[t]here is no statutory requirement that the beneficiary of an immigrant [religious worker] visa have entered the U.S. on an R nonimmigrant visa." The director's decision wrongly suggests that study, except by an already-ordained minister, is inherently a disqualifying interruption of past experience. While seminary studies *can* interrupt the continuity of religious work, if those studies prevent the alien from performing full-time religious work, in this instance the college where the beneficiary has studied has indicated that the beneficiary has studied only one day a week. There is no indication that the beneficiary's studies are inherently interruptive of her claimed religious work.

Turning to case law, the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980). This decision does not mean that seminary study *per se* is disqualifying. In *Varughese*, the study was disqualifying in part because it prevented the alien from working full-time (although other disqualifying factors were present as well in that case).

When considering the question of full-time employment, another issue arises which the director has, as yet, not mentioned. The petitioner has provided a breakdown of the beneficiary's projected responsibilities, along with a percentage value assigned to each:

- A. Training 13% (approximately 2 hours weekly)
- B. Planning and Leading Activities 15% (approximately 3.5 hours weekly)
- C. Discipleship/Worship/Bible Studies 40% (approximately 10 hours per week)
- D. Personal Growth 32% (approximately 6 hours per week)

The above duties add up to only 21½ hours per week, which cannot be considered full-time employment. The percentages listed with each duty add up to 100%, indicating that the above list is complete and that the beneficiary would have no other occupational responsibilities beyond those covered in that list.

Thus, the petitioner has indicated that the beneficiary will work (and, presumably, has worked) only part-time, an issue that the director has heretofore not addressed. Given the other credibility issues in this proceeding, we note that any future attempt by the petitioner to amend this accounting of the beneficiary's schedule must include compelling documentary evidence, as well as a persuasive explanation of why the above schedule was submitted multiple times. The part-time nature of the beneficiary's stated schedule also raises some questions about whether the beneficiary's seminary studies were truly limited to only one day per week. The college and seminary presumably has first-hand, contemporaneous records that could shed further light on this issue.

When considering credibility issues regarding the beneficiary's studies, we also note the assertion by a seminary official that the beneficiary studied "in order to maintain her F-1 visa." The wording of this assertion suggests that the beneficiary pursued those studies not for their own sake, but as a pretext for remaining in the United States. This would not be inconsistent with the fact that it apparently took the beneficiary five years to complete a typically two-year master's degree, while supposedly a "full-time" student. Given the other credibility issues in this proceeding, this observation is not trivial.

One final credibility issue surfaces from review of the record. The petitioner has submitted various background documents regarding its ministry. One document, apparently entitled "Current Status of Ministry," discusses the petitioner's mission to North Korea:

- 1. Objective area: North Korea
- 2. Present mission area: Around [REDACTED]
- 3. Number of full time missionar[ies]: 4
- 4. The way of mission
  - a. Contact with North Korean pretending to be merchant or fisherman
  - b. Organize Bible study group
  - c. Establish church
- 5. Number of believer[s]: 33

This document's reference to "pretending to be merchant or fisherman" in order to penetrate North Korea suggests that, as a matter of official policy, the petitioner's workers are encouraged or even instructed to use misrepresentation as a means of gaining entry to other nations. The relevance and implications for an immigration proceeding are obvious. Even if the subterfuge is intended only for person-to-person dealings once the missionaries are already inside North Korea, this document raises troubling questions that the petitioner should have the opportunity to answer before a final decision is rendered. Considered alongside the

petitioner's inconsistent and uncorroborated claims regarding the beneficiary's past work, the credibility issues warrant serious consideration. The director did not discuss these issues in any previous correspondence with the petitioner.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. 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 and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.