

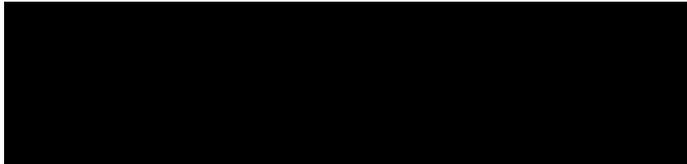
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



01

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **APR 05 2005**
WAC 97 135 50031

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: 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.

Mai Johnson

S Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based immigrant visa petition. On further review, the director determined that the petitioner was not eligible for the visa preference classification. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke the approval of the preference visa petition and his reasons therefore, and subsequently exercised his discretion to revoke the approval of the petition on February 11, 2004. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 minister. The director determined that the petitioner had not established that the beneficiary had come to the United States solely for the purpose of carrying on the vocation or working for the petitioner as a minister. The director further determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition or that it had extended a qualifying job offer to the beneficiary. The director also determined that the petitioner had not established that it had the ability to pay the beneficiary the proffered wage.

On appeal, counsel submitted a brief.

Section 205 of the Act, 8 U.S.C. § 1155, states that the Attorney General (now 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 director stated that, as the beneficiary entered the United States as a student pursuant to an F-1 visa in 1993, that the record did not establish that the beneficiary entered the United States solely for the purpose of working as a minister. The regulation does not require that the alien's initial entry into the United States be solely for the purpose of performing work as a religious worker. "Entry," for purposes of this classification,

would include any entry under the immigrant visa granted under this category or would include the alien's adjustment of status. We withdraw this statement by the director.

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) echoes the above statutory language, and states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States." The regulation 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."

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) 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 April 15, 1997. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister throughout the two-year period immediately preceding that date.

With the petition, the petitioner submitted an April 7, 1997 letter in which its senior pastor stated that the beneficiary began working for the petitioning organization as an associate pastor on April 1, 1997, after serving as pastor of the Korean Southern Presbyterian Church since July 1, 1995. The petitioner submitted letters from the Korean Southern Presbyterian Church "verifying" that the beneficiary had served as an associate pastor of the church from July 1, 1995 to March 31, 1997, and from the Los Angeles Christian Presbyterian Church "verifying" that the beneficiary had been employed by the church as an evangelist from December 1, 1994 through June 1995 at a salary of \$1,200 per month. The petitioner submitted no documentary evidence, such as canceled checks or Forms W2, Wage and Tax Statements, to corroborate the beneficiary's employment with these churches. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In response to the director's Notice of Intent to Revoke dated August 11, 2003, the petitioner submitted copies of canceled checks made payable to the beneficiary for the months of January through June 1995 drawn on the account of the Los Angeles Christian Presbyterian Church, each in the amount of \$1,200. The petitioner also submitted copies of canceled checks for the months of April through December 1997 made payable to the beneficiary and drawn on the petitioner's account, each in the amount of \$1,500.

In an affidavit, the beneficiary stated that he was employed by the Korean Southern Presbyterian Church from July 1995 to April 1997 and compensated at a rate of \$1,400 per month. The beneficiary further states that the petitioner has employed him since April 1997 at a rate of \$1,500 per month plus a monthly housing allowance of \$1,035. The beneficiary asserted that he worked over 40 hours per week in each of the positions he held. The beneficiary stated that he did not file an income tax return for the years 1994 through 1997, and that the Korean Southern Presbyterian Church has closed and that he has been unable to locate anyone who may have access to its financial records. We note that the record contains a prior Form I-360 petition filed by the Korean Southern Presbyterian Church on behalf of the beneficiary (WAC 97 104 54320). The evidence provided in support of that petition also lacks corroborative evidence of the beneficiary's employment with the Korean Southern Presbyterian Church.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for

a religious organization was required to be engaged “principally” in such duties. “Principally” was defined as more than 50 percent of the person’s working time. Under prior law a minister of religion was required to demonstrate that he/she had been “continuously” carrying on the vocation of minister for the two years immediately preceding the time of application. The term “continuously” was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

The term “continuously” also is discussed in a 1980 decision where 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).

In line with these past decisions and the intent of Congress, it is clear, therefore that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

In the rare case where volunteer work might constitute prior qualifying experience, the petitioner must establish that the beneficiary, while continuously and primarily engaged in the traditional religious occupation, was self-sufficient or that his or her financial well being was clearly maintained by means other than secular employment.

Counsel asserts that the beneficiary’s inability to produce corroborative evidence of his employment is due to the delay in the service center’s decision to revoke the petition. It is noted that counsel has represented three petitioners in at least the following three Form I-360 petitions filed on behalf of this beneficiary: (1) a 1994 petition with no receipt number filed by Los Angeles Korean Christian Church/withdrawn on October 7, 1997; (2) WAC 97 104 54320; and (3) WAC 97 135 50031. The prior petitions and the evidence submitted in support of each petition is contained within this record of proceeding, and it is further noted that all three petitions contain the same deficiency with respect to documentation of the beneficiary’s employment. That said, the non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Additionally, we note that the record of proceedings of the petition filed on behalf of the beneficiary by the Los Angeles Korean Presbyterian Church indicates that as an *evangelist*, the beneficiary’s job duties were to assist the ordained clergy in conducting worship services and providing other religious services to the congregation. The record of proceedings in that petition does not establish that the beneficiary worked as a minister with the Los Angeles Korean Presbyterian Church and therefore conflicts with and undermines the

claim in the present petition that the beneficiary served as a minister from April 15, 1995 to June 30, 1995. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho* at 591. Accordingly, the record does not establish that the beneficiary worked continuously in a religious occupation for two full years prior to the filing of the visa petition. For this reason, the petition may not be approved.

The next issue in this proceeding is whether the petitioner has extended a qualifying offer of employment to the beneficiary. The director determined that as there was no evidence that the beneficiary had been paid by the petitioner, the petitioner had not established the beneficiary would not be dependent upon supplemental income for his support. The director therefore determined that the petitioner had not extended a qualifying job offer to the beneficiary.

The petitioner stated that it would pay the beneficiary an annual salary of \$18,000 per year. Canceled checks submitted in response to the Notice of Intent to Revoke indicates that the petitioner paid the beneficiary \$1,500 per month from April 1997 to December 1997. The beneficiary indicates on his Forms 1040, U.S. Individual Income Tax Returns, for 1998 through 2002 that his income was from that of a minister with the petitioning organization.

On appeal, counsel asserts that the regulations do not require that the beneficiary not to be dependent upon supplemental income. According to counsel, the petitioner need only show that the beneficiary will not be *solely* dependent upon supplemental income for his support. The director's determination and counsel's argument are without merit.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

The regulation clearly state that an alien seeking entry into the United States as a minister, unlike for other religious occupations, must do so "solely" for the purpose of carrying on the vocation of minister. The language in the regulation does not address supplemental income, but supplemental employment and solicitation of funds for support. The regulation limits the minister's ability to engage in supplemental *employment* for any financial support, and prohibits the alien from being solely dependent upon solicited funds for support.

However, we note that the Forms 1040 submitted by the petitioner are not signed and contain inconsistencies, such as the amount of compensation received by the beneficiary. We further note that the beneficiary indicates on his year 2002 Form 1040 that he worked for the petitioner at [REDACTED] Angeles, and on his year 1998 Form 1040 that he worked at 129 South California Street in San Gabriel,

California. In his affidavit, the beneficiary stated that he was employed by the petitioner at 144 Alta Street in Arcadia, California from April 1997. No evidence in the record indicates that the petitioner operated branches at these particular addresses. Again, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho* at 591. Based on the unresolved inconsistencies and conflicting information contained in the petitioner's documentation of the beneficiary's alleged employment with the petitioner, it is not possible to determine whether the petitioner has extended a qualifying job offer to the beneficiary. For this additional reason, the petition may not be approved.

The final issue in this proceeding is whether the petitioner has established that it has the ability to pay the beneficiary the proffered wage. The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

During the initial proceedings, the petitioner submitted a statement, which according to the translation, is labeled "1996 Financial Statement."¹ The document apparently reflects actual income and expenses for 1996 and anticipated income and expenses for 1997. In response to the Notice of Intent to Revoke, the petitioner submitted canceled checks to indicate that it paid the beneficiary the proffered salary in 1997.

The evidence is sufficient to establish that the petitioner had the ability to pay the proffered wage as of the date the petition was filed. However, as the petitioner has failed to establish that the beneficiary was continuously employed as a minister for two full years prior to the filing of the visa petition and that it has extended a qualifying job offer to the beneficiary, the appeal must be dismissed.

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 sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ The translation accompanying the document does not comply with the provisions of 8 C.F.R. § 103.2(b)(3), which requires that documents submitted in a foreign language "shall be accompanied by a full English translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English."