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[REDACTED]

FILE: [REDACTED]  
WAC 97 052 50316

Office: CALIFORNIA SERVICE CENTER

Date: MAR 15 2005

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:

[REDACTED]

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, California 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 matter 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 "lay worker/missionary." The director determined that the beneficiary: (1) did not enter the United States for the purpose of performing religious work; (2) did not hold the bachelor's degree necessary to be designated as a professional; and (3) had worked primarily as a cook, 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.

When the director revoked the approval of the petition, the director simultaneously denied the beneficiary's I-485 application to adjust status. On appeal, counsel contests both decisions. Some of counsel's arguments apply only to the I-485, such as counsel's assertion that "[t]he Director is WRONG as there is a second I-360 approval." We must disregard these arguments, as there is no appeal from the denial of an I-485. The fact that this denial was issued concurrently with an appealable I-360 revocation does not permit counsel to "piggyback" arguments regarding the I-485 onto the I-360 appeal, nor does it give the AAO jurisdiction to reverse the director's decision denying the I-485. Thus, we must limit consideration to the revocation of the approval of the petition.

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 first issue raised in the director's decision concerns the beneficiary's entry into the United States. Section 101(a)(27)(C)(ii) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii), requires that the alien seeking classification "seeks to enter the United States" for the purpose of carrying on qualifying religious work. In this instance, the beneficiary entered the United States as a B-1 nonimmigrant visitor for business. Thus, the director concluded, the beneficiary did not enter the United States for the purpose of working as a religious worker.

This finding is not defensible. The AAO interprets the language of the statute, when it refers to "entry" into the United States, to refer to the alien's intended *future* entry *as an immigrant*, either by crossing the border with an immigrant visa, or by adjusting status within the United States. This is consistent with the phrase "*seeks to enter*," which describes the entry as a future act. We therefore withdraw this particular finding by the director.

The remaining two grounds relate to the nature of the beneficiary's work for the petitioner. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

*Professional capacity* means an activity in a religious vocation or occupation for which the minimum of a United States baccalaureate degree or a foreign equivalent degree is required.

*Religious occupation* means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

*Religious vocation* means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

The record documents no college-level education for the beneficiary except an associate's degree in Practical Business Management in 1967. On August 25, 2003, the director issued a notice of intent to revoke, stating, in part:

8 C.F.R. 104.5(m)(1) requires a beneficiary to work . . . in a professional capacity in a religious vocation. 8 C.F.R. 204.5(m)(2) [states] Professional capacity means an activity in a religious vocation or occupation for which the minimum of a United States baccalaureate degree or a foreign equivalent degree is required.

The record contains no evidence to establish that the beneficiary has the qualifications for the position [i.e., a bachelor's degree]. Therefore, the petitioner has failed to demonstrate that the beneficiary and the position qualify as a profession in a religious vocation.

The director's subsequent revocation notice contains a similar passage. The petitioner, however, had never claimed that the beneficiary's position is professional in nature. The director has misread the regulations, erroneously interpreting them to mean that *every* religious worker must hold a bachelor's degree and seek a professional position that requires such a degree. While some religious worker positions are professional, neither the regulations nor the underlying statute require every religious worker position to be professional. We therefore withdraw the director's finding to the contrary.

Our above finding does not entirely resolve the issues regarding the nature of the beneficiary's work. At times, the petitioner refers to the beneficiary's position as a "vocation." The record, however, contains no evidence that the beneficiary has taken vows, nor does the record otherwise demonstrate that the beneficiary's work constitutes a vocation rather than an occupation. Indeed, the petitioner's repeated references to the beneficiary as a "Lay Worker" appear to contradict any claim that the beneficiary practices a religious vocation. We shall now examine the beneficiary's work in the context of the definition of a religious occupation.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation at 8 C.F.R. § 204.5(m)(2) states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

Citizenship and Immigration Services therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

senior pastor of the petitioning church, describes the beneficiary's past and present work:

[The beneficiary] has been primarily engaged in her religious ministry and calling in Korea since 1970, when he [sic] served our mother Church . . . as a Staff Worker providing

Christian services for Korean Soldiers, and thereafter as leader in the [redacted] department of the Rainbow Ministry of the [redacted] Prayer Mountain at Pusan. She has continued her religious service and calling in the United States as she is currently an R-1 religious worker at our center providing guidance and direction for our senior center. . . .

[The beneficiary] has indicated her intentions to serve this Church on a permanent basis here, as a Lay Worker and Missionary now during this exciting time. As a Lay Worker for this Church, she will perform religious services including special dietary meals and assistance to the Kamlim Residential Senior Center. She will also lead prayers, Bible studies and other formal services based upon her prior education, work and experience.

The petitioner submits the beneficiary's resume, which indicates that, from 1986 to 1996, the beneficiary was a "Worker for Rainbow Trest [sic] Dias in Kamlim Mission Center at Pusan, Korea." This version of the resume does not define or describe the type of work the beneficiary had performed.

At the time the immigrant petition was filed, the beneficiary was an R-1 nonimmigrant religious worker. The record contains a copy of the Form I-129 petition filed on the beneficiary's behalf in June 1996. This Form I-129, prepared by present counsel of record, contains the following information:

**Job Title**

Senior Center Director

**Nontechnical Description of Job**

Operation of senior center with special dietary program for seniors and family.

**Describe the alien's proposed duties in the U.S.**

Primary assignment in the Rainbow Tres Dias Residential Senior Center for [the petitioner]; will be responsible for special dietary needs and nutrition for seniors as taught by our Church and denomination.

**Describe the alien's qualifications for the vocation or occupation**

[The beneficiary] has been providing this same service to the Kamlim Prayer Mountain in Pusan for over ten (10) years.

The director approved the Form I-360 immigrant petition on January 11, 1997. On February 13, 1997, the beneficiary filed Form I-485 to apply for adjustment to permanent resident status. In documentation accompanying that petition, the beneficiary indicated that she had worked in "Relig[i]ous Ministry" since 1986. The beneficiary's 1997 income tax return identifies her occupation as "Church Manage [sic]."

The petitioner provided an updated version of her resume, indicating that she has worked for churches in Korea and the United States "as a cook" since 1986. In an interview with an officer of the Immigration and Naturalization Service on June 15, 1998, the beneficiary gave a sworn statement in which she stated that, since her entry into the United States, she worked "as a cook, 8 hours a day, 40 hours, general manager, everything."

In the notice of intent to revoke, the director stated: "the proposed position, a Lay-Worker/cook [does not] constitute a qualifying religious occupation." Counsel's arguments in response to this notice are largely

similar to the arguments later advanced on appeal, and we shall address them in that context. The director revoked the approval of the petition on December 5, 2003, stating that the petitioner had failed to overcome the grounds cited in the notice of intent to revoke.

On appeal, counsel observes that the petitioner had filed a second petition on the beneficiary's behalf (receipt number WAC 01 218 54233, filed May 21, 2001), which the director approved on January 14, 2002. Counsel asserts that the revocation of the approval of the 1996 petition is inconsistent with the approval of the 2001 petition, and that "[b]asic and settled principals [sic] of collateral estoppel require that the Service's present action be dismissed out right."

This argument is not persuasive; after all, the 1996 petition, itself, was originally approved. The very existence of a revocation clause in the statute demonstrates that the approval of a petition is not a permanent designation of eligibility. We note that the approval of the 2001 petition was subsequently revoked as well.

With regard to counsel's claims regarding estoppel, *In Re Phat Dinh Truong*, 22 I&N Dec. 1090 (BIA 1999), contains the following discussion of estoppel at 1092:

While the Supreme Court has not yet decided definitively whether estoppel may ever lie against the Government, it has noted that it has reversed every lower court finding of estoppel against the Government that has come before it. *See Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990); see also *INS v. Miranda*, 459 U.S. 14 (1982) (per curiam); *INS v. Hibi*, 414 U.S. 5 (1973) (per curiam). The United States Court of Appeals for the Ninth Circuit has indicated that estoppel against the Government could be possible, but has cautioned that any party asserting it carries a "heavy burden," and that estoppel could lie only where there has been "affirmative misconduct" on the part of the Government. *See Santamaria-Ames v. INS*, 104 F.3d 1127 (9th Cir. 1996); *United States v. Ulysses-Salazar*, 28 F.3d 932 (9th Cir. 1994); *Santiago v. INS*, 526 F.2d 488 (9th Cir. 1975) (en banc), cert. denied, 425 U.S. 971 (1976).

Furthermore, estoppel is a judicial rather than an administrative remedy, and thus proper jurisdiction for estoppel questions lies with the courts. Even then, in the instant proceeding, as we have noted, there has been no judicial finding of affirmative misconduct, which is the only grounds by which estoppel may conceivably apply to the government. There is no basic or settled principle of estoppel that prevents the revocation of a previously approved petition; rather, there is an unambiguous statutory basis to allow such revocations, supported by a firm body of case law.

Counsel states that the director "grossly mischaracterizes [the beneficiary's] duties with her Church and ignores the mounds of evidence demonstrating her position as a Missionary and Deacon of the [petitioning] Church." Counsel does not elaborate upon this claim. Review of the record does not reveal "mounds of evidence demonstrating [the beneficiary's] position as a Missionary and Deacon." The record, as it stood at the time the director issued the notice of intent to revoke, contained no reference to the beneficiary as a deacon at all. The record contains no first-hand evidence regarding the beneficiary's work at all. The only materials that offer any clue as to her duties are statements by the petitioner, the beneficiary, and counsel.

If it is a "gross mischaracterization" to say that the beneficiary was a cook, then counsel clearly contributed to that mischaracterization when he prepared the Form I-129 petition, stating that the beneficiary's primary responsibility would be that she "will be responsible for special dietary needs and nutrition for seniors." The question also remains as to why the beneficiary would refer to herself, under oath, as a "cook" if she was not a cook. Counsel never addresses this issue. There is no evidence in the record to persuade us that the

beneficiary's general references to "management" refer to traditional religious functions that outweigh her self-described work as a "cook." Counsel's assertion that it is "demeaning" to refer to the beneficiary by the same title she repeatedly applied to herself requires no further comment.

Counsel asserts that the director also ignored the petitioner's submissions relating to the 2001 petition. Each petition is incorporated in its own *separate* record of proceeding; the records involving the two petitions are, at present, housed in separate file folders, and it is not clear that the officer adjudicating the 1997 petition was, at the time of the notice of intent to revoke, even aware of the 2001 petition. Furthermore, the petitioner must demonstrate eligibility *at the time of filing*; developments and modifications more than three years after the fact cannot retroactively erase grounds for ineligibility. See *Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998), and *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971). In this instance, the 2001 correspondence describes duties and titles never discussed at the time of filing over four years earlier.

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 experience in the religious vocation, professional religious work, or other religious work. Because the petition was filed in 1996, the beneficiary must have performed qualifying work from 1994 onward. The materials related to the 2001 petition, cited by counsel and submitted on appeal, refer to the beneficiary's activities as of 2001. They neither rebut, nor even directly address, the beneficiary's own prior statements regarding the nature of her work in the mid-1990s. Whether or not the beneficiary was a cook in 2001, she herself indicated that she was a cook in 1998 and previous years, consistent with the description written by counsel and endorsed by the petitioner in 1996.

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.