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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAR 11 2008
WAC 01 217 52915

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, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center initially approved the special immigrant religious worker petition. On further review of the record, the director determined that the beneficiary was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the immigrant visa petition, and the reasons therefore, and exercised his discretion to revoke the approval of the petition on February 11, 2004. The petitioner filed an appeal to this decision, and the petitioner's timely appeal is now before the Administrative Appeals Office (AAO) for review. The AAO will dismiss the appeal.

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. *Id.* at 582. 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.

The petitioner seeks classification of 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 employ the beneficiary as an "Administrative Secretary Deacon." The director determined that the beneficiary's position does not qualify as a religious occupation within the meaning of the regulations.

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)(2) offers the following pertinent definition:

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, fundraisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position it is offering qualifies as a religious occupation as defined in the regulation. The statute is silent on what constitutes a "religious occupation" and the regulation 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 reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature

Citizenship and Immigration Services (CIS), 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.

Reverend Jung, pastor of the petitioning church, describes the beneficiary's duties:

[The beneficiary's] duties are [to] arrange worship and meeting, maintain documents for church members, communication with church members, visit members home or hospital, counseling by telephone or in person to members, control in-out letters, make weekly, monthly and yearly reports, make brochure [sic] for weekly, monthly, or yearly, guide for member [sic] attending worship or special meetings, pick up services, maintain offices, and many other services for [secretarial] matters.

As it relates to the beneficiary's salary and experience during the requisite period [redacted] states:

The Pastor and the members of [REDACTED] wish to invite [the beneficiary] as an Administrative Secretary Deacon for this church.

[The beneficiary] will be assigned to be a[n] Administrative Secretary Deacon for this church and our church members.

* * *
[The beneficiary] has [sic] worked this position from 5-15-98 for our church continuously till present time.

Based on education & experiences, we are happy to invite [the beneficiary] for Administrative Secretary Deacon . . .for full time basis. His salary will [be] \$1,700.

It is noted that although [REDACTED] indicates that the beneficiary has worked in the position as an Administrative Secretary Deacon since May 15, 1998, there is no evidence that the beneficiary received compensation for his work. It must be further noted that as the beneficiary was in the United States as an F-2 nonimmigrant, he was precluded by regulation from working in any position where he would receive compensation.¹

The director requested further evidence from the petitioner, including the beneficiary's "specific job duties" and any evidence of the beneficiary's remuneration.

In response, Reverend Jung states that the beneficiary has been working for the petitioner "from April 17, 1999 to April 17, 2001." This statement contradicts [REDACTED] previous statement that the beneficiary began working for the petitioner on May 15, 1998.

Reverend Jung also submits the following detailed breakdown of the beneficiary's duties which also contradicts his previous statement:

Monday --- 3 hours for arranging Sunday's bulletins.

Tuesday --- 8 hours make report for absent member or sick members and phone calls or send letters.

Wednesday --- 8 hours for leading Deacon's meeting and leading Wednesday night worship.

Thursday --- 8 hours for visiting or counseling members home or hospital and solve problems for youth members

Friday --- 5 hours for make Sunday brochures [sic] or weekly report and discuss with Pastor for members problems

¹ See 8 C.F.R. § 214.2(f)(15)(i) which states "[t]he F-2 spouse and children of an F-1 student may not accept employment.

Saturday --- 2 hours for arranging Bible, Hymn and other preparing for Sunday worshi[p], cleaning church in-outside

Sunday --- 5 hours leading Sunday worship and Bible class

Specifically, it is noted that in his initial letter detailing the beneficiary's duties, [REDACTED] failed to indicate that the beneficiary actually lead Sunday worship and Bible class rather than simply "arrang[ing]" Sunday worship. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Further, it is noted that the second description of the beneficiary's duties portrays his role as being much more substantive than the initial description. A visa petition may not be approved based on speculation of future eligibility or after the petitioner becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

In reference to the director's request for evidence as to how the beneficiary supported himself during the requisite period, [REDACTED] states that the beneficiary "was supported by his own money from Korea because he [had] enough funds in [the b]ank . . . to use for missionary work," but that the petitioner "supported [the beneficiary's] missionary works for \$1700.00 per month."

A review of the record, however, reveals there is no evidence to establish the petitioner's claimed \$1700 monthly payments to the beneficiary. Instead, the record contains copies of checks sporadically issued to the beneficiary during the requisite period. The checks range in amount from \$700.00 to \$1487.07 for the periods covering October 25, 2001 through December 26, 2001, and January 25, 2003 through April 30, 2003, respectively. As the checks cover only 7 months out of the entire 24-month period and given that there is no explanation for the discrepancy between the amount purportedly paid to the beneficiary of \$1700 and actual payments received ranging from \$700 to \$1487.07, we do not find these checks to be sufficient evidence of the beneficiary's remuneration. It should also be noted that one of the checks indicates the beneficiary is being paid the wage for his work performed as "Administrative Secretary."

The tax records submitted by the petitioner cast further doubt on the petitioner's assertion that the beneficiary's position qualifies as a religious occupation. First, the fact that the beneficiary's 2001 Form 1099 - Misc indicates the beneficiary received "nonemployee compensation" in the amount of \$2100.00 indicates the beneficiary was not considered an employee of the petitioning church. Second, the beneficiary's 2001 Schedule C-EZ lists the beneficiary's occupation as "church secretary" and makes no reference to the fact that he is performing the duties of a deacon. Third, the beneficiary's 2002 W-2 form reflects the petitioner paid the beneficiary only \$10,200, an amount not indicative of full-time work. Finally, the beneficiary's 2002 tax return also lists his occupation as "secretary."

In the director's notice of intent to revoke approval of the petition, the director determined that the beneficiary's occupation did not qualify as a religious occupation because it did not require the beneficiary to be engaged in full-time work and required duties that were "primarily secretarial and clerical, not religious."

In response to the director's intent to revoke the petition, the petitioner submits a new job description for the beneficiary which indicates:

Date	Time Schedule	Description in details
Monday	1:00PM – 3:00PM	Arranging Sunday bulletin, books, newsletters, Bible and Hymn, Gospel songs, Music pieces & reference documents.
	3:00PM – 4:00 PM	Review for Bible, [b]ooks, [n]ewsletter, and reference documents.
Tuesday	9:00AM – 12:00 [PM]	Make list & analysis to absent and new members.
	12:00 [PM] – 2:00 PM	Contact to members by phone based on analysis make report.
	2:00 PM – 5:00 PM	Mail to absent members of weekly brochure with letter and mail to new members for Welcome letters.
Wednesday	9:00 AM – 11:00 AM	Leading conference, deacon's meeting & discuss for Bible, make missionary schedules, aims, & special event or programs.
	11:00 AM – 2:00 PM	Write Bible for [s]ermons, select [b]ooks & references data for [s]ermon.
	7:00 PM – 10:00 PM	Conduct Wednesday evening worship.
Thursday	9:00 AM – 12:00 PM	Counseling & guiding spiritual problems for members by in person or phone.
	12:00 [PM] – 4:00 PM	Visit [h]ome for absent or new members and visit hospital for sick members and spiritual guidance for patients.
	4:00 PM – 5:00 PM	Make report for members after visitation.
Friday	1:00 PM – 3:00 PM	Write information for members special announcements, or special notices.
	3:00 PM – 6:00 PM	Meeting with faculties & deacons for missionary promotion & education schedules.
Saturday	1:00 PM – 4:00 PM	Final review & write of Bible, magazines newly issued by missions for sermon, make

weekly reports for members and final arrange
for [s]ermons and etc.

Sunday	10:00 AM – 3:00 PM	Conduct & deliver [s]ermons and communion services with members. Visit serious patients, members [at] home or hospital.
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In revoking the petition the director noted the new job description “has more job duties related to the religion,” but found that the petitioner’s evidence “still falls short of that necessary to be classified as a religious occupation.”

On appeal, counsel for the petitioner argues that although the beneficiary “may have been responsible for minor clerical duties on behalf of the church . . . the significance of his religious and spiritual activities cannot be ignored” We are not persuaded by counsel’s argument. Though it appears that the beneficiary’s duties consist of a combination of both clerical and religious duties, we find the majority of the beneficiary’s time is spent in clerical tasks such as making and arranging schedules, making lists and reports, answering phones, dealing with correspondence, and cleaning the church, rather than religious duties such as delivering sermons and counseling the congregation. We do not find, as counsel argues, that the beneficiary’s clerical tasks are a “minor” part of his responsibilities.

Counsel further argues that the “mistakes” made on the Form I-485 were caused by the senior pastor and that “details pertaining to [the beneficiary’s] work duties were incomplete.” We find no merit in counsel’s argument. Though the Form I-485 contains a separate area for persons other than the applicant to sign if they prepare the form on the applicant’s behalf, this area remains blank on the beneficiary’s application. Instead, the beneficiary signed the Form I-485, and accompanying Form G-325A, as being true and correct, under penalty of perjury. As such, counsel’s assertion that the senior pastor was responsible for not properly describing the beneficiary’s duties cannot be substantiated. Further, the statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

On appeal, counsel fails to address the issue of the lack of evidence related to the beneficiary’s remuneration for full-time work. As noted earlier, beyond the submission of seven paychecks, the record contains no evidence that the beneficiary was compensated for full-time employment throughout the requisite two-year period.

While the determination of an individual’s status or duties within a religious organization is not under CIS’ purview, the determination as to the individual’s qualifications to receive benefits under the immigration laws of the United States rests within CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

The record indicates that a considerable portion of the beneficiary’s time is devoted to clerical tasks. If the beneficiary performs non-qualifying duties for a considerable proportion of his working hours, then he is not employed full-time in a qualifying occupation. Further, the petitioner offered nothing to show that the beneficiary’s duties are routinely assigned to a full-time paid employee, rather than tasks usually delegated to a part-time worker or a volunteer from the congregation. Although given ample opportunity to provide documentary evidence that the beneficiary received a salary in return for full-time duties, the record remains absent such evidence. The fact that the petitioner was able to provide services and operate as a church

without the beneficiary serving in a full-time, paid capacity, does not support the petitioner's assertion that the beneficiary's position is considered a traditional religious function by the petitioner's denomination.

Beyond the decision of the district director is the issue of whether the beneficiary was continuously performing work as an Administrative Secretary Deacon for at least the two-year period immediately preceding the filing of the petition.

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-year period 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."

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 17, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as an Administrative Secretary Deacon for two years immediately prior to that date; the period covering April 17, 1999 to April 17, 2001. The record contains the beneficiary's Form I-94, Arrival and Departure Record indicating the beneficiary entered the United States on May 13, 1998 as a B-2 nonimmigrant. The record also contains a copy of the beneficiary's spouse's change of status to a nonimmigrant student on September 24, 1998. Although there is no evidence in the record to establish the beneficiary's status at that time, we presume he began residing in the United States as an F-2 nonimmigrant at that time.

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. Rpt. 101-723, at 75 (Sept. 19, 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 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. Com. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Com 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 salaried. To hold otherwise would be contrary to the intent of Congress.

As it relates to the beneficiary's work during the relevant two-year period, Reverend Jung indicates that the beneficiary has worked in an administrative position since "5-15-98." As discussed previously, however, not only does [REDACTED] provide contradictory statements about the beneficiary's employment, there is only sporadic evidence of the beneficiary's remuneration during the requisite period. That the beneficiary is only able to produce one Form W-2 for the amount of \$10,200 and seven checks of differing amounts is not persuasive evidence the beneficiary was employed or compensated for full-time work during the requisite period.

Based upon the above discussion, the record does not demonstrate the beneficiary had the requisite experience as an Administrative Secretary Deacon for at least the two-year period immediately preceding the filing date of the petition.

For this additional reason, the petition may not be approved.

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.