



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

01

FILE:

WAC 01 218 50627

Office: CALIFORNIA SERVICE CENTER

Date: NOV 15 2005

IN RE:

Petitioner:

Beneficiary:

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.

Mari 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 May 3, 2005. 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 "religious worker-children ministry." The director determined that the petitioner had not established that the beneficiary possessed the required two years membership in the denomination or that she had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

Section 205 of the Act, 8 U.S.C. § 1155, states that 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 BIA 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.*

On appeal, counsel submits a brief.

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).

Citing *Firstland Int'l v. INS*, 377 F.3d 127 (2nd Cir. 2004), counsel asserts that Citizenship and Immigration Service (CIS) does not have authority to revoke approval of the petition as the alien is already present in the United States.

On December 17, 2004, the President signed the Intelligence Reform and Terrorism Prevention Act of 2004 (S. 2845). See Pub. L. No. 108-458, 118 Stat. 3638 (2004). Specifically relating to this matter, section 5304(c) of Public Law 108-458 amends section 205 of the Act by striking "Attorney General" and inserting "Secretary of Homeland Security" and by striking the final two sentences. Section 205 of the Act now reads:

The Secretary 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 1154 of this title. Such revocation shall be effective as of the date of approval of any such petition.

Furthermore, section 5304(d) of Public Law 108-458 provides that the amendment made by section 5304(c) took effect on the date of enactment and that the amended version of section 205 applies to revocations under section 205 of the Act made before, on, or after such date. Accordingly, the amended statute specifically applies to the present matter. Counsel's argument is, therefore, without merit.

The first issue is whether the petitioner has established that the beneficiary possessed the required two years membership in the denomination.

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.

The petition was filed on April 30, 2001. Therefore, the petitioner must establish that the beneficiary was a member of its denomination throughout the two-year period immediately preceding that date.

In its April 12, 2001 letter accompanying the petition, the petitioner stated that its form of ecclesiastical government is Presbyterian and that it was affiliated with the Presbyterian Church (USA). The petitioner also stated that "[p]rior to joining our church[, the beneficiary] has been a member and a Religious Worker of Grace

Fellowship Church from June 1994 to August 2000 . . . In September 2000[she] transferred her membership” to the petitioning organization.

In its January 7, 2002 response to the director’s request for evidence (RFE) dated October 19, 2001, the petitioner stated that it was a “member church in the Presbyterian denomination and follows its Book of Order in all matters including organization and worship . . . [T]he Grace Fellowship Church . . . is a member of the Baptist denomination.” The petitioner also stated:

[The beneficiary] was interviewed by the Senior Pastor of the church and a group of Elders . . . Based on those interviews, the Pastor and these Elders agreed that there was a sufficient similarity between the practices, beliefs, methods and order of worship, and theology of her previous church and our church that there was no impediment to her transferring her membership from that church to the [petitioner]. The two churches use the same versions of the Bible, use the same affirmations of belief and confessions of faith, and use song books that use many of the same hymns. On many occasions over the years, ministers from churches in one of the denominations have shared or exchanged pulpits with ministers from the other denomination.

In his decision revoking the petition, the director stated that “mere similarities in religious practices do not serve to make unrelated religious organization members of the same ‘religious’ denomination’ as that term is defined in the regulations.”

The regulation at 8 C.F.R. § 204.5(m)(2) defines religious denomination as:

[A] religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship and religious congregations, or comparable indicia of a bona fide religious denomination.

On appeal, counsel asserts that the director erred in focusing only on the first part of the regulatory definition and determining that, as the petitioner and the beneficiary’s previous church did not share the same ecclesiastical government, they were not of the same denomination. Citing *Immigration Law and Procedure* (2004), counsel further asserts that a broad reading of the term “denomination” would permit, for example, a person of the Protestant faith to satisfy the two-year denomination membership in either a Baptist or Methodist church.

This interpretation appears to be based on guidance issued by the United States Department of State. We note that regulations used by the United States Department of State to administer consular visa processing are not binding on CIS in the administration of the Act. Further, despite counsel’s assertions that the director based his decision on only the first part of the regulatory definition, the petitioner submitted no evidence that the Presbyterian Church (USA) and the Baptist churches share the same creed or statement of faith, the same form of worship, the same formal or informal code of doctrine and discipline, the same religious services and ceremonies, or established places of religious worship and religious congregations.

Its response to the RFE, the petitioner clearly distinguishes its denomination from that of Grace Fellowship Church. Additionally, the petitioner based its decision on allowing the beneficiary to transfer her membership on its local church analysis as to the similarity between its organization and that of Grace Fellowship Church. The process appears to be designed to allow members of a denomination different from that of the petitioner to

become a member of the petitioner's denomination; it does not establish that the two churches are of the same denomination. Further, the petitioner submitted no evidence that the process that it used in permitting the beneficiary to transfer her membership was condoned by its governing body, the Presbyterian Church (USA).

Accordingly, the evidence submitted does not establish that the Presbyterian Church of America (USA), with which the petitioner is affiliated, and the Baptist church are the same religious denomination and does not establish that the beneficiary possessed the required two years membership in the petitioner's denomination prior to the filing of the visa petition.

The second issue on appeal is whether the petitioner established that the beneficiary was continuously engaged in a qualifying vocation or occupation for two full years immediately preceding the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file a Form 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 petitioner must establish that the beneficiary was continuously working as a religious "worker-children ministry" throughout the two-year period immediately preceding the filing date of the petition, April 30, 2001.

According to the petitioner in its April 12, 2001 letter, the duties of the proffered position are:

Congregational visitation; deliver weekly sermons for Sunday children's service, develop and direct educational programs of bible study classes for children ministry, training Sunday school teachers, workshops, and Christian youth summer and music camp; coordinates religious and charitable events, activities and children programs sponsored or co-sponsored by [the petitioner].

The petitioner also stated that the beneficiary served as a religious worker-children's ministry with Grace Fellowship Church from 1994 to August 2000, and that her duties included leading children's bible studies, coordinating activities sponsored by the church, carrying out church-related assignments for the senior pastor, visiting the sick and poor, serving as a staff member for the women's ministry, and counseling church members. An April 16, 2001 letter from Grace Fellowship Church confirmed that the beneficiary had worked for the

organization performing the services specified by the petitioner. However, the petitioner submitted no corroborative documentary evidence of the beneficiary's work with Grace Fellowship Church. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

As evidence of the beneficiary's work with the petitioning church, the petitioner submitted copies of weekly church programs for the period March 11 through April 1, 2001, which identify the beneficiary as a religious worker, and three weekly programs for a children's program dated March 25, 2001 through April 8, 2001 that list the beneficiary as Sunday school director. The petitioner submitted no other corroborative documentary evidence of the beneficiary's employment with the petitioning organization. *See id.*

The petitioner also submitted copies of a "student certification" and transcript reflecting that the beneficiary attended Bethesda Christian University as a full-time student from 1998 with an expected graduation date of March 2002.

In response to the director's October 19, 2001 RFE, the petitioner stated that the beneficiary was paid \$1,300 per month for her work with the petitioning organization. The petitioner submitted copies of pay stubs reflecting that it paid the beneficiary \$1,300 per month from March through December 2001. The petitioner submitted no evidence that it compensated the beneficiary from September 2000 through February 2001.

The petitioner also submitted a January 7, 2002 letter from Grace Fellowship Church, which stated that the beneficiary "served as our Sunday School worker from June 1994 to August 2000. [She] was primary [sic] a volunteer worker. Her work is equivalent to a full time worker who worked 40 hours per week." The letter indicated that the beneficiary was not paid "a salary but our church members paid a small scholarship personally." A weekly schedule was submitted purporting to show the beneficiary's duties; however, the petitioner submitted no documentary evidence to verify that the beneficiary performed these duties. *Id.*

In a letter dated January 7, 2002, the beneficiary stated that she worked as a volunteer for Grace Fellowship Church from June 1994 to August 2000 "in the full time position [of] Religious Worker in the Children's Ministry." The beneficiary stated that she received money for her support from her mother in Korea and child support payments from her ex-husband.

The petitioner submitted copies of canceled child support checks in the amount of \$600 made payable to Joe and Ara Koh (the beneficiary's children) from September 1999 through January 2001, and payable to the beneficiary through November 2001. The petitioner also submitted copies of "Applications for Remittance," apparently for money wire transfers. However, these documents are not accompanied by complete English translations in accordance with the provisions of 8 C.F.R. § 103.2(b)(3), which require 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." Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

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.

On appeal, counsel asserts that evidence of the beneficiary's prior experience was satisfactory to the initial adjudicating officer and since there has been no change in the law, "[I]t cannot be the basis to issue a NOIR simply because an officer, in a different adjudicating section, has a difference of opinion with another Service officer about certain items of evidence." Nonetheless, as previously stated, 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*, 19 I&N Dec. at 590.

The petitioner submitted no evidence such as authenticated work schedules to corroborate the beneficiary's employment with Grace Fellowship Church, and submitted no evidence of the beneficiary's employment with the petitioning organization from September 2000 through February 2001. Therefore, the petitioner has not established that the beneficiary worked continuously in a qualifying religious occupation for two full years preceding the filing of the visa petition.

Beyond the decision of the director, the petitioner has not established that the position qualifies as that of a religious worker.

According to the regulation at 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work as a religious worker. 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 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. Persons in such positions would reasonably be expected to perform services directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

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.

The proffered position is identified only as a "religious worker-children ministry." The petitioner submitted no evidence that the proffered position is defined and recognized by the Presbyterian Church (USA), or that the position is traditionally a permanent, full-time, salaried occupation within the Presbyterian Church. The petitioner submitted no evidence that the position existed in the petitioning organization prior to September 2000 when the beneficiary assumed the role, and submitted no evidence that the position was compensated prior to March 2001.

Accordingly, the petitioner has not established that the position qualifies as a religious occupation within the meaning of the statute and regulation. This deficiency constitutes an additional ground for which the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.