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U.S. Citizenship
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FILE: [REDACTED]
SRC 98 032 50978

Office: TEXAS SERVICE CENTER Date: **AUG 09 2006**

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:
[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.

2 Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, initially approved the employment-based immigrant visa petition. Following a standard adjustment interview, 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 her reasons therefore, and subsequently exercised her discretion to revoke the approval of the petition on July 28, 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 an evangelist. The director determined that the petitioner had not established that the position qualifies as that of a religious worker, 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, that the petitioner had extended a qualifying job offer to the beneficiary, or that it has the ability to pay the beneficiary the proffered wage.

On appeal, counsel submits additional documentation.

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 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.*

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 on appeal is whether the petitioner established that the position qualifies as that of a religious worker.

Pursuant 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.

The proffered position is that of evangelist. In its October 18, 1997 letter accompanying the petition, the petitioner stated that the beneficiary had worked at the petitioning organization as a "volunteer Evangelist" since April 1996. The petitioner stated that the beneficiary "has functioned as an Evangelist since he was licensed in 1992 and he also participated in some other areas of God's work." The petitioner submitted no other information or documentation regarding the proffered position.

The record contains a copy of a letter dated May 28, 2002, submitted in support of the beneficiary's Form I-485, Application to Register Permanent Residence or Adjust Status, in which it stated:

This is to certify that [the beneficiary] works at the above named church in the capacity of a Church Warden/Worker. His salary is \$400.00 a week from the church plus additional gifts from members within this church and other churches as they seem fit. He will be in the church in the week to prepare for services and programs and during services in the week and weekends, averaging about 40 hours per week . . .

His Duties as a Church Warden/Worker are listed below:

1. Burning of incense during every service
2. Partaking in Sunday service, Friday services, Shiloh services, Protection service on the first Wednesday of the month and night vigil on the last Friday of the month.
3. Play musical instruments in the church.
4. Organizing the processional order of service.
5. Partake in the intercessory prayer.
6. Prepare and read bible lessons
7. Organizations of service

8. [The beneficiary] has just completed a training in handling church services and works directly under the leader in charge. He has the responsibility to handle the services if the Pastor is not available for any reason.
9. Conduct Bible Studies.

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).

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.

The record does not establish the duties of an evangelist within the petitioning organization. It is unclear whether the duties of a church warden, as outlined in the petitioner's letter of May 28, 2002, relate to those of the proffered position of evangelist. Accordingly, the evidence does not establish that the position of evangelist qualifies as that of a religious worker within the meaning of the statute and regulation.

The second issue on appeal is whether the petitioner 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.

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 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 petition was filed on October 24, 1997. Therefore, the petitioner must establish that the beneficiary was continuously working as an evangelist throughout the two-year period immediately preceding that date.

The petitioner stated in its letter of October 18, 1997 that the beneficiary had worked as a volunteer evangelist without salary for the church since April 1996. The petitioner also stated that prior to coming to the United States, the beneficiary "worked with our sister church in Nigeria as an Evangelist for about four years." A September 5, 1997 letter from the general overseer of the petitioner's "sub-headquarters" in Lagos, Nigeria, stated that the beneficiary "was licensed as an Evangelist in 1992, since then, he has been preaching and doing the work of a minister before departing to the U.S. where he is now being offered a job by our sister church in Houston, Texas." The petitioner submitted no evidence to corroborate the beneficiary's employment during the qualifying period. 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 discussed above, the record does not establish the duties of the proffered position of evangelist. In its letter of May 28, 2002, the petitioner stated that the beneficiary worked as a church warden and outlined the duties associated with that position. However, the petitioner did not state when the beneficiary began working in the position of church warden, and whether the positions of church warden and evangelist are the same. As noted by the director, the record contains a copy of a "certificate of ministry" issued to the beneficiary by the petitioner's "School of Practical Ministry;" however, it is unclear as to the purpose for which the document was submitted or its evidentiary value. The petitioner submitted no evidence to corroborate any employment by the beneficiary during the qualifying period. *Id.*

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, the petitioner submits a copy of a church roster that reflects the beneficiary as a member of several departments, including youth minister in the youth ministry department. The date of the organizational structure is not reflected and the document does not indicate work actually performed by the beneficiary or when such work was actually performed.

We note also that on the Form G-325A, Biographic Information, signed by the beneficiary on January 12, 1998 and submitted in support of his Form I-485, the beneficiary stated that he had not worked in the five years preceding the date of the application. 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. at 591-92.

Accordingly, the evidence does not establish that the beneficiary was continuously employed in a qualifying religious occupation for two full years prior to the filing of the visa petition.

The third issue on appeal is whether the petitioner established that it had extended a qualifying job offer to the beneficiary. 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.

In its October 18, 1997 letter accompanying the petition, the petitioner stated that it would pay the beneficiary \$300 per week for his work as an evangelist. The petitioner did not specify the duties of the position nor did it indicate the number of hours that the beneficiary was expected to work. In its May 28, 2002 letter, the petitioner stated that the beneficiary worked as a church warden for approximately 40 hours weekly and at a salary of \$400 per week. The record does not establish the nature of the proffered job and the evidence does not establish that either position is a religious worker within the meaning of the statute or regulation.

Further, we note that the beneficiary stated in his adjustment interview that the petitioner paid his tuition that allowed him to obtain his cosmetologist license. A letter dated March 8, 2002, submitted in support of the beneficiary's Form I-485, indicated that he had been employed as a barber with Exotic Hair Studio for the past three and one-half years with a monthly salary of \$2,000. While this employment is subsequent to the filing date of the petition, it raises questions as to the petitioner's intent in hiring the beneficiary and whether he has worked the 40 hours weekly as a church warden that the beneficiary alleges. The regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to establish that the beneficiary will not be solely dependent upon supplemental employment for his support.

Accordingly, the evidence does not establish that the petitioner has extended a qualifying job offer to the beneficiary.

The fourth issue on appeal is whether the petitioner established that it has the ability to pay 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.

As evidence of its ability to pay the beneficiary, the petitioner submitted a copy of its monthly checking account statement for February and March 2004.

The above-cited regulation states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. Accordingly, the petitioner has not established that it had the continuing ability to pay the proffered wage as of the filing date of the petition.

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.