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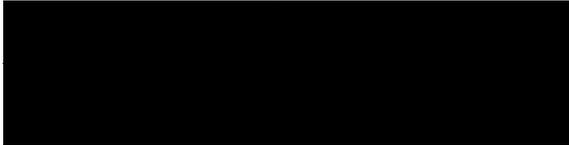
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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUN 01 2006
WAC 03 085 54162

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.

Σ Robert P. Wiemann, Chief
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 July 29, 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 minister. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

On appeal, counsel submits a brief, a copy of a statement from Fuller Theological Seminary and copies of previously submitted 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 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.*

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 issue presented 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) 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 January 21, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister throughout the two-year period immediately preceding that date.

In its December 12, 2002 letter accompanying the petition, the petitioner stated that the beneficiary had been ordained as a pastor with the [redacted] International in October 1999, and that:

From 1999 to date, [he] has been actively involved in missions work bringing the gospel to people groups [sic] in their own cultural context. He has pastored a local church in Cameroon and worked on translating the Bible into other local languages. More recently, since August 2001, [the beneficiary] has been enrolled as a student at Fuller Theological Seminary, studying for a Masters degree in Intercultural Studies.

The petitioner submitted a June 26, 2003 letter from [REDACTED] in which its International Student Advisor, [REDACTED] certified that the beneficiary was a full-time student at the school, having begun his matriculation during the fall quarter of 2001 and with an expected completion date of no later than June 30, 2004. [REDACTED] further stated that the beneficiary was present in the United States pursuant to an F-1 nonimmigrant student visa and had maintained a full-time course load in each of his academic terms. A handwritten "PS" on the letter indicated that the beneficiary "does not have an authorization for employment. He is a first time applicant." However, an annotation on the beneficiary's Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Student Status – For Academic and Language Students, signed by [REDACTED] June 26, 2003 states, "Economic hardship work permit recommended."

The petitioner submitted no documentary evidence with the petition of the beneficiary's work during the qualifying two-year period prior to his study at [REDACTED]. 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)).

In response to the director's Notice of Intent to Revoke (NOIR) approval of the visa petition dated May 21, 2005, the petitioner submitted copies of pay vouchers indicating that the [REDACTED] paid the beneficiary a basic salary of 200,000 Cameroon francs in March, April, May and July 2001. The petitioner submitted no other documentary evidence of the beneficiary's employment with [REDACTED] International. *See id.*

The director also noted in his NOIR that the beneficiary stated on his Form G-325A, Biographic Information, dated September 10, 2003, that he worked as a custodian at [REDACTED] from October 2002 to the "present time."

In his cover letter accompanying the petitioner's response, counsel stated that:

[The beneficiary] entered the United States in F-1 status in order to pursue his Master's program at [REDACTED]. Accordingly, he was precluded from receiving an income for services rendered by him by immigration laws and regulations, which neither he nor the Petitioner wished to flout. Indeed, the only paid employment that [the beneficiary] was legally able to take up was on-campus employment of no more than 20 hours per week and the only position available to him was that of janitor at [REDACTED].

Evidence submitted in response to the NOIR included a "work history" by the beneficiary in which he stated that he was a student at [REDACTED] and volunteered his services to the petitioner. On his G-325A, Biographic Information, signed on September 10, 2003, the beneficiary stated that he had worked as a custodian for [REDACTED] from October 2002 to the present date. The regulation at 8 C.F.R. § 204.5(m)(2) specifically excludes custodial work from the definition of religious occupation and therefore it is not qualifying work experience for the purpose of this visa preference classification.

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.

Counsel states on appeal that the beneficiary was in pursuit of an advanced religious education, and that the AAO has held that such pursuits by ordained clergy do not interrupt the continuity of experience requirement of the statute and regulation. Counsel asserts:

[The beneficiary] was a paid religious worker whilst in the Cameroon; performed religious work for religious organizations in the Cameroon while in the U.S.; was enrolled in a theological seminary to further his religious studies during the requisite two-year period; and received a salary or financial support from such religious organizations during such two-year period.

Advanced theological training would not necessarily interrupt the continuity of experience requirement for clergy who have been practicing their vocations prior to attending school and continue to perform the qualifying duties on a full-time basis while in school. See *Matter of Varughese* 17 I&N at 399. The petitioner's evidence, however, does not establish that the beneficiary was fully engaged as a minister prior to his attendance at [REDACTED] or that he carried on the duties of a minister while in school. His employment as a janitor is not qualifying work experience. See 8 C.F.R. § 204.5(m)(2). Further, the petitioner submitted corroborative evidence of the beneficiary's employment with [REDACTED] International for only four months in 2001, the time frame of the qualifying period, prior to the beginning of his schooling at the seminary in the fall.

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

Beyond the decision of the director, the petitioner has not established that it has the ability to pay the beneficiary the proffered wage.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

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

The petitioner indicates that it will pay the beneficiary \$2,500 per month in addition to housing. As evidence of its ability to pay this wage, the petitioner submitted a copy of its unaudited financial report for 2001.

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. In this instance, the petitioner has not submitted any of the required types of primary evidence.

Accordingly, the petitioner has failed to establish that it has the ability to pay the beneficiary the proffered wage. This deficiency constitutes an additional ground for which the petition may not be approved.

Further beyond the director’s decision, the petitioner has not established that it qualifies as a bona fide nonprofit religious organization.

The regulation at 8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

(3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code (IRC) of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement, if applicable, and a copy of the organizing instrument of the organization, which contains a proper dissolution clause and which specifies the purposes of the organization.

The letter accompanying the petition shows the petitioner's address as [REDACTED] in Monrovia, California. A copy of a 2001 church brochure also reflects that address. However, the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, indicates the petitioner's address is [REDACTED] Pasadena, California.

As evidence of its tax-exempt status, the petitioner submitted a copy of a March 1, 1996 letter from the IRS to the Association of [REDACTED] Inc., granting that organization group tax-exempt status for its subordinate units. The petitioner also submitted a certificate from the [REDACTED] certifying that [REDACTED] at [REDACTED] in Monrovia, California is affiliated with the Association of International Gospel Assemblies, Inc. An April 17, 1989 letter from the State of California Franchise Tax Board notified [REDACTED] in Monrovia, California, that it was exempt from state franchise and income tax. The petitioner submitted no evidence that it and the churches listed at the addresses in Monrovia are the same.

The petitioner must either provide verification of individual exemption from the IRS, proof of coverage under a group exemption granted by the IRS to the denomination, or such documentation as is required by the IRS to establish eligibility as a tax-exempt nonprofit religious organization. Such documentation to establish eligibility for exemption under section 501(c)(3) includes: a completed Form 1023, a completed Schedule A attachment, if applicable, and a copy of the articles of organization showing, *inter alia*, the disposition of assets in the event of dissolution.

Absent a letter from the IRS specifically granting it tax-exempt status as a religious organization, the organization can establish eligibility under 8 C.F.R. § 204.5(m)(3)(i)(B) by submitting documentation that establishes the religious nature and purpose of the organization, such as brochures or other literature describing the religious purpose and nature of the activities of the organization. The necessary documentation is described in a memorandum from William R. Yates, Associate Director of Operation for Citizenship and Immigration Services (CIS), *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003):

- (1) A properly completed IRS Form 1023,
- (2) A properly completed Schedule A supplement, if applicable,
- (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization, and
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

This list in the Yates Memorandum is consistent with the regulatory requirement at 8 C.F.R. § 204.5(m)(3)(i)(B). The memorandum specifically states that the above materials are, collectively, the "minimum" documentation

that can establish “the religious nature and purpose of the organization.” Thus, for example, a petitioner cannot meet this burden by submitting only its articles of incorporation. Also, obviously, it is not enough merely for the petitioner to *submit* the documents listed above. The *content* of those documents must establish the religious purpose of the organization.

As the evidence submitted by the petitioner does not establish that it is the same or a successor to the church located at [REDACTED] in Monrovia, California, and the petitioner has not submitted evidence of an individual tax-exemption from the IRS or evidence to establish its eligibility pursuant to 8 C.F.R. § 204.5(m)(3)(i)(B), it has not established that it is a bona fide nonprofit religious organization as required by the statute and regulation. This deficiency forms 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.