

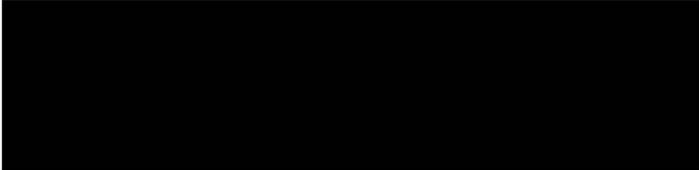
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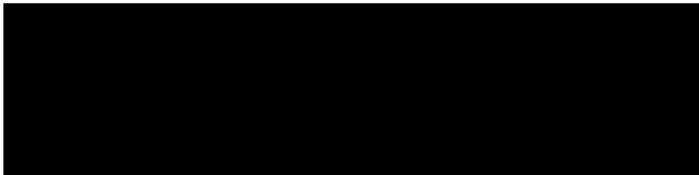


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **JUN 27 2006**  
WAC 01 277 55221

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

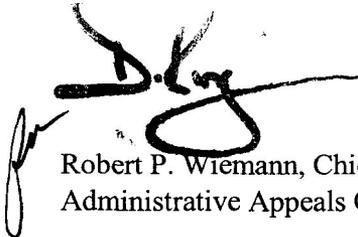
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The matter is now before the Administrative Appeals Office 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 educational evangelist. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as an educational evangelist immediately preceding the filing date of the petition. The director stated that this conclusion arose from unresolved discrepancies in the record.

On appeal, counsel repeats previous explanations and asserts that the beneficiary's student work does not disqualify him.

Section 205 of the Act, 8 U.S.C. § 1155, states: "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 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

*Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*. The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 582.

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)(1) indicates that the “religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.” 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on September 9, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an educational evangelist throughout the two years immediately prior to that date.

When considering the petitioner’s claims and evidence, we cannot ignore issues of credibility. Doubt cast on any aspect of the petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho* at 582, 586.

[REDACTED], senior pastor of the petitioning church, describes the beneficiary’s training and experience:

[The beneficiary] completed Divinity course in United Christian Theological Seminary from March of 1996 to December of 1997 in Seoul, Korea. Then, he came to the United States to obtain a Master’s degree in Theology. He is pursuing Master of Divinity in Talbot School of Theology from August of 2000 until now in La Mirada, California. . . .

[The beneficiary] served Grace & Truth Church as its choir director from January of 1990 to December of 1995 and he also served the same church as its educational evangelist from January of 1996 to June of 1997. He came to the United States in July 1997. At that time he

joined our Church in Orange, California and has been serving as our Church education evangelist until today. *Please see . . . his resume attached.*

The beneficiary's résumé repeats the details provided by [REDACTED]. Under "Experience," the beneficiary identifies three periods of employment: as education director at Grace & Truth Church from January 1990 to December 1995; as church education evangelist at Grace & Truth Church from January 1996 to June 1997, and at the petitioning church from July 1997 onward. Thus, while the beneficiary purportedly worked at Grace & Truth Church from 1990 to 1997, the beneficiary split this time into two listings to show that the nature of his duties had changed. For reasons to be discussed later, it is significant that the beneficiary did not split his listing regarding the petitioning church. He lists only one job title and one set of duties at that church.

Under "Education" on the résumé, the beneficiary lists three periods of study: Dan Kook University, Seoul, from March 1984 to February 1991 (Bachelor of Engineering); United Christian Theological Seminary, March 1996 to December 1997 (unspecified Divinity degree); and Talbot School of Theology, La Mirada, California, from August 2000 onward ("Pursuing Master of Divinity"). By listing his engineering studies at Dan Kook University, it is clear that the beneficiary did not limit his résumé to religious matters.

The petitioner submits various certificates attesting to the beneficiary's employment and education. A "Certificate of Graduation" from United Christian Theological Seminary states that the beneficiary "successfully completed the four years Divinity course by this Seminary, Seoul, Korea." The certificate shows the "Date of Admission" as "Mar. 4, 1996," and the "Date of Graduation" as "Dec. 8, 1997." An accompanying transcript indicates that, in 1994 and 1995, the beneficiary was "Enrolled in third grade." The entries for 1996 and 1997 show specific courses over two semesters per year. The petitioner took 17 credit hours of coursework per semester, except that he took a slightly heavier course load (18 **credits**) in the second semester of 1997. The materials identify [REDACTED] as president of the seminary. [REDACTED] is also identified as the senior pastor of Grace and Truth Church.

The petitioner, in the initial submission, does not explain how it is possible that the beneficiary took two semesters of courses at a seminary in Korea in 1997, graduating in December of that year, even though he had supposedly been working for the petitioner in California since July of that year. The petitioner's claims and supporting documents appear to put the beneficiary in Korea and California, simultaneously, throughout the second half of 1997.

The petitioner submits a partial copy of the beneficiary's passport, showing on June 20, 1997, the beneficiary received an F-1 student visa to study at "Waynesburg College, Waynesburg, PA." Stamps in the beneficiary's passport show that the beneficiary entered the United States on three occasions: July 2, 1997, at New York, New York; July 18, 1996, at Los Angeles, California; and July 22, 2000, again at Los Angeles. Stamped across the 1998 admission stamp is the notation "F-1 D/S," meaning that the beneficiary was an F-1 nonimmigrant student for the duration of his status as a student. On the I-360 petition form, the petitioner claimed that the beneficiary has never worked in the United States without authorization. Nevertheless, an F-1 visa authorizing the beneficiary to study in Pennsylvania would not have authorized him to work for the petitioner in California.

The petitioner also submits copies of the beneficiary's 1999 and 2000 income tax returns. The returns show no wages or salaries. Instead, they show "Other income," reported on Form 1099-MISC, in the amounts of \$9,500 in 1999 and \$10,500 in 2000. The beneficiary paid a self-employment tax in both years. On the returns, the beneficiary listed his occupation as "Church evangelist."

We note that, in a letter accompanying the initial filing, counsel states: "the beneficiary is not ordained yet, but will be ordained in the very near future." Given that the beneficiary had supposedly been working for years as an educational evangelist without ordination, it is not clear what purpose ordination would serve unless the beneficiary does not, in fact, intend to work as an educational evangelist.

On February 21, 2002, the director issued a request for evidence. The director stated: "You have indicated on the petition that the beneficiary has never worked in the United States without permission, therefore, provide evidence to establish how the beneficiary has been supporting him or herself (and family members, if any)." In response, Rev. Park repeats the assertion that the beneficiary "has been employed by our church since July, 1997." The petitioner offers no evidence that the beneficiary held an R-1 nonimmigrant religious worker visa at that time, nor does the petitioner address the earlier assertion that the beneficiary has never worked in the United States without authorization. CIS records do not show that the petitioner ever filed Form I-129 in order to change the beneficiary's nonimmigrant status from F-1 student to R-1 religious worker. As noted above, stamps in the beneficiary's passport indicate that the beneficiary was an F-1 student as recently as July 1998, in which case he was not authorized to work for the petitioner at that time.

The director approved the petition on October 9, 2002. Shortly thereafter, the beneficiary applied for adjustment to permanent resident status. As part of that adjustment application, on November 7, 2002, the beneficiary completed Form G-325A, Biographic Information, indicating that he worked for Grace & Truth Church in Korea from January 1996 to June 1997, and for the petitioning church from July 1997 onward. Instructed to list his residential addresses over the previous five years, the beneficiary indicated that he resided in "Morgantown, CA, West Virginia" (*sic*) from July 1997 to November 1997, and in Glendale, California from December 1997 onward.

Accompanying the adjustment application was a letter from Rev. Park, affirming again that the beneficiary "has been serving our Church as our church education director since July 1997."

Also submitted with the adjustment application were copies of five Forms I-20 A-B/I-20-ID, relating to the beneficiary's F-1 student status. The beneficiary signed all of these forms, thereby certifying, "I seek to enter or remain in the United States temporarily, and solely for the purpose of pursuing a full course of study at the school named on Page 1 of this form." The first form, from June 1997, indicates that the beneficiary had been accepted at Waynesburg College to study for a Master's in Business Administration from July 1997 to May 1999. A second form, executed in October 1997, indicates that the beneficiary was "currently enrolled" in "Intensive English Lang[uage] Train[ing]" at West Virginia University, Morgantown, West Virginia, and was expected to complete "four months" of study no later than November 30, 1998.

The third form, executed January 1998, indicates that the beneficiary transferred from West Virginia University to "LASC American Language and Communication" for a one-year course of English language study to begin on February 2, 1998. This is the earliest contemporaneous document to place the beneficiary in California. The fourth form, executed January 1999, indicates that the beneficiary required a second year of English language study at LASC. The fifth and most recent form indicates that the beneficiary sought to transfer from LASC to Biola University, La Mirada, California, in order to study for a Master of Divinity degree, beginning January 22, 2000. (The Talbot School of Theology is a component of Biola University.) Although the beneficiary had already spent two years in a one-year English proficiency course at LASC, and several months in "Intensive English" classes at West Virginia University, the form from Biola indicates that the beneficiary was not yet proficient in English at the time he transferred there.

The Forms I-20 require identification of the student's "means of support." The I-20 from Waynesburg College identifies two sources: the beneficiary's mother, and a "full scholarship" from "Kooil Engineering & Construction Co., Ltd., Seoul," identified as the beneficiary's "employer." The next three Forms I-20 indicate that the beneficiary relied on his own personal funds. The last I-20, from Biola University, indicates that the beneficiary relied entirely on "Family Support."

The Forms I-20 are consistent with the residence information on Form G-325A (Morgantown, West Virginia, is with reasonable commuting distance from Waynesburg, Pennsylvania), but not with the employment information on that same form. The record shows that the beneficiary was allegedly studying in Seoul, studying in Pennsylvania and West Virginia, and working in California, all at the same time (late 1997).

On August 19, 2003, the director issued a request for evidence. The director stated:

A letter by the Pastor states that the [beneficiary] has been working for the church since July 1997. However, the I-20 showed that at that time the applicant was taking his Master of Business Administration [courses] in Waynesburg College in Pennsylvania. Please explain with proof and or evidence to support your explanation.

The director also asked the petitioner to explain why it issued Forms 1099-MISC to the beneficiary, rather than Form W-2 Wage and Tax Statements. In response, [redacted] states that the beneficiary received Forms 1099 "due to his immigration status and per our accountant's advice. Now that he has obtained a valid EAD card and is in line to become [a] permanent resident pending your kind approval, we will be putting him on regular employee payroll and issue him a W-2 by this year's end." With regard to the discrepancies regarding the beneficiary's activities in late 1997, Rev. Park states:

I visited [the beneficiary's Korean] church for a spiritual revival meeting in early 1997 and was significantly impressed with his professionalism and religious conviction. He expressed to me then his desire to visit the United States to study, and we agreed that he'd service our church as a missionary while attending a graduate school on the east coast. In July 1997, upon his arrival in the U.S., [the beneficiary] visited our church and became a member of our congregation in order to conduct missionary work for our Church in that region of [the] U.S. Soon thereafter, in late 1997, he abandoned his attendance of the graduate school course in

order to go to a seminary school and so moved to Los Angeles to join us physically and to assist our ministry. He immediately started servicing as our full-time evangelist while attending a school for English instructions, thereby keeping his F-1 status intact. . . .

During the course of our association with [the beneficiary], our Church has supported his educational pursuit by paying for his school tuition and living expenses from 1998 to the present.

The petitioner submits no documentary evidence of any kind to support claims. The record does, however, contain ample evidence to throw doubt on those claims, as we shall discuss further.

The beneficiary's résumé, and several letters from [redacted] repeatedly indicated that the beneficiary began working for the petitioner in 1997. At the time, no one claimed that the beneficiary spent any of that time as a "missionary" in the mid-Atlantic area. That claim surfaced only after the petitioner was confronted with incontrovertible proof that the beneficiary was not in California in 1997.

On November 23, 2004, the director issued a notice of intent to revoke, stating that information on the Forms I-20 contradicts the petitioner's subsequent claims. For instance, the Forms I-20 never identify the petitioning church as the beneficiary's source of support; the earliest I-20 indicates that the beneficiary was employed by a construction and engineering company (which is consistent with the beneficiary's engineering degree). Also, the director noted the overlap between the beneficiary's claimed studies in Korea and his proven presence in the United States in late 1997. The director found that several of the petitioner's key claims are entirely uncorroborated by reliable evidence.

In response, [redacted] states: "I truly regret that [the beneficiary] did not fully understand the American immigration laws and custom. . . . Nothing was intentional but I apologize for anything that was not right." [redacted] offers no response or rebuttal to any of the specific points articulated in the notice of intent to revoke.

The petitioner also submits a statement from the beneficiary, who states:

After graduation from college, I have worked for Kooil Engineering & Construction Company for seven years. During that time, I was called by God and eventually decided to study theology. Therefore, I worked fulltime for the company daytimes and studied theology at night. . . . My employer recommended that studying Business Administration in English would help me improve my English skills quickly since I was the manager in the Business Administration Division. The employer promised to support me financially for two years because of his faithful Christian mind and my devotion to the company for the past seven years.

After a few days at Waynesburg College, I realized that . . . the school did not offer any ESL (English as a Second Language) programs. Therefore, with the permission of Waynesburg College, I had to transfer to Intensive English Language Program at West Virginia

University. After the first semester, I felt that it would be a good idea to study English nearby a seminary where I would like to attend. Therefore, I transferred to LASC American Language and Communication in Los Angeles, CA, and finally entered Talbot School of Theology in January of 2000. . . .

The beneficiary's explanation fails to reconcile discrepancies in the record, such as the petitioner's failure to make any mention of Kooil Engineering & Construction until confronted with the information on the I-20 from 1997. As with prior notices, the petitioner submits no evidence to support the beneficiary's claims. For instance, the record contains nothing from Kooil Engineering & Construction to show that the company subsidized the beneficiary's studies in Pennsylvania out of religious conviction and gratitude, rather than out of the expectation that the beneficiary would return to Korea with enhanced management skills.

With respect to the overlap between the beneficiary's purported study in Korea, and his arrival in the United States, the beneficiary states:

United Christian Theological Seminary . . . focuses on minister development by experiences. The school offers a program in which graduating seniors in their last semester could train themselves in ministry fields and graduate by taking independent classes such as assignment projects. Seniors determined to study abroad are especially treated as ministers. . . . Therefore, this is how I was able to graduate the school in Korea in December of 1997 while claiming residence in the United States since July 1997.

The director revoked the approval of the petition on February 4, 2005, stating that the petitioner's attempts to explain away the numerous discrepancies are inconsistent and lacking in evidentiary support. On appeal, counsel argues that the beneficiary worked for the petitioner throughout the two-year period immediately prior to the filing date (September 1999 to September 2001), and therefore there should be no question regarding the beneficiary's eligibility. Counsel asserts that the beneficiary's seminary studies are consistent with continuous religious work.

The director did not revoke the approval of the petition because the beneficiary is an F-1 student at Biola University. Rather, the director stated that "inconsistencies" in the record "have not been fully explained," which, in turn, casts doubt on the beneficiary's eligibility. Counsel, on appeal, fails to address many of these discrepancies.

Counsel states:

[The beneficiary] has been serving as Educational Evangelist for [the petitioner] since February of 1998 (When our law office prepare[d the] I-360 package for [the beneficiary], we made a mistake. His service with the petitioner began in February of 1998, not July of 1997. We sincerely apologize for the mistake).

Like many other explanations in the record, this explanation simply does not account for the available evidence. [REDACTED] stated on at least three occasions that the beneficiary's employment began in July 1997,

and the beneficiary's own résumé says the same thing, as does the Form G-325A submitted with his adjustment application. Counsel's new claim of a "mistake" therefore casts doubt on counsel's own credibility, while doing nothing to restore that of the petitioner or the beneficiary.

Regarding the beneficiary's purported seminary studies, counsel states:

[The beneficiary] finished all of [his] required coursework at United Christian Theological Seminary before he came to the United States in July of 1997. [The beneficiary] was able to finish the rest of the requirements for the degree by completing independent assignment projects in the United States. Again, please see attached Certificate of Graduation from United Christian Theological Seminary. It clearly states that [the beneficiary] obtained his degree in December of 1997.

(Evidentiary citation omitted.) The director did not contest that the Certificate of Graduation "clearly" shows a December 1997 graduation date. The problem, as stated previously, is that the beneficiary is known to have the beneficiary in West Virginia, not Korea, in late 1997. The wording of counsel's statement falsely implies that the Certificate of Graduation corroborates the claim that the beneficiary conducted "independent assignment projects in the United States." Counsel, here, does little more than restate the beneficiary's attempted explanation. There is no evidentiary support at all for the petitioner's claim that his Korean seminary education continued in the United States.

The transcript submitted with the initial filing contains no suggestion of foreign study or "completing independent assignment projects." Rather, it indicates that, in the second semester of 1997, the beneficiary took courses entitled "Church Growth," "Bible Hermeneutics," "Church Administration," "Church Music," "General Epistles," "Epistle to Hebrews," "Pastoral Epistles," "Modern Theology," and "Bible"; the beneficiary also received a credit for his "Thesis." Clearly, the transcript is intended to show that the beneficiary received credits, and grades, for taking specific courses. Because the beneficiary was not in Korea at the time, the questions remain as to where the beneficiary took these courses and who issued the grades.

Nothing from United Christian Theological Seminary states or even implies that the beneficiary studied abroad during late 1997. Nothing in the transcript indicates that the second semester of 1997 was any different from the three preceding semesters. The claim that the beneficiary studied abroad originated with the beneficiary himself, in a statement that contained numerous other questionable assertions. Given that the beneficiary obviously did not study on the seminary's campus in late 1997, we cannot at this point express confidence in the accuracy or authenticity of the documents attributed to the seminary.

Throughout this proceeding, the petitioner has repeatedly modified its claims in the face of conflicting evidence. Despite specific instructions from the director to produce evidence to support these explanations, the petitioner has neither produced such evidence nor explained its failure to do so. Thus, the various explanations from the petitioner and the beneficiary have the appearance of increasingly tenuous *ad hoc* attempts to harmonize the original claims with the evidence.

Section 204(b) of the Act, 8 U.S.C. § 1154(b), provides for the approval of immigrant petitions only upon a determination that “the facts stated in the petition are true.” False, contradictory, or unverifiable claims inherently prevent a finding that the petitioner’s claims are true. *See also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho* at 582, 592. Here, the petitioner has not produced competent objective evidence to corroborate its version of events, and therefore we are not obliged to presume that the explanations offered by the petitioner and the beneficiary are credible.

We find that neither the petitioner nor the beneficiary have been truthful and forthcoming in their various statements throughout the course of this proceeding, and we concur with the director that the unresolved discrepancies in the record prevent a finding of eligibility. The petition was approved based on incomplete information, and as further evidence surfaced, calling into question several material facets of the petitioner’s initial claim, the director acted properly in revoking the approval of the petition.

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.