

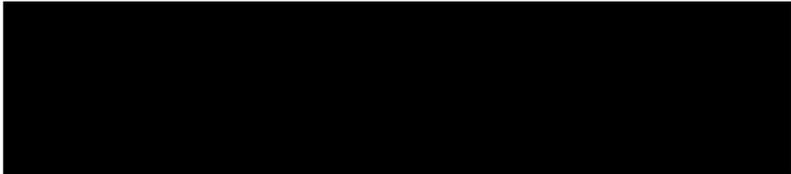


U.S. Citizenship
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FILE:



Office: CALIFORNIA SERVICE CENTER

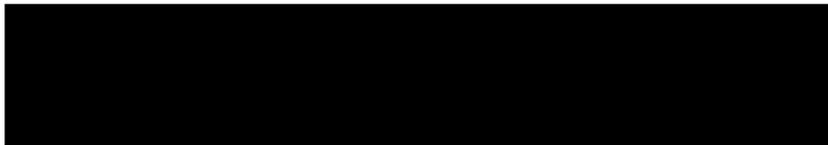
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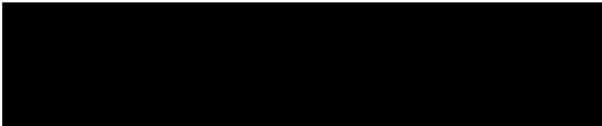
Petitioner:

Beneficiary:



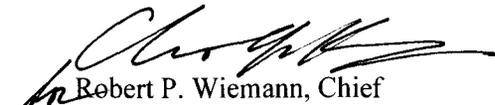
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

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 (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church of the Romanian Orthodox denomination. 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 director of youth religious education. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a director of youth religious education immediately preceding the filing date of the petition.¹

On appeal, the petitioner submits a brief from counsel and several exhibits, mostly consisting of copies of previously submitted materials.

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 Dec. 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.* 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 589.

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:

¹ We note that the petitioner had previously filed another petition on the beneficiary’s behalf (I-360 receipt number WAC 97 167 50023) using a variation of the beneficiary’s name. That petition, too, was initially approved but later revoked for reasons similar to those cited in the present proceeding. The director rejected an improperly filed appeal from that decision.

(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 August 6, 2004. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a youth education director throughout the two years immediately prior to that date.

In a letter accompanying the initial filing of the present petition, [REDACTED] of the petitioning church, stated:

[The beneficiary] has been an active member of our Church since his arrival in the U.S. in October of 1996. . . . He is currently serving as the Director of Youth Religious Education, a permanent paid full time position at our Church. He has served in this position with our Church for more than two years now. His duties include:

- Providing spiritual and religious leadership to the youth according to the teaching of the Bible and our Church.
- Directing and coordinating religious education programs for the young members of the congregation based on the Bible, the teaching of our Church and religious curriculum and text that are approved by the Church Board.

- Preparing religious texts for study of our creed, liturgy, hymnals, confirmations and baptisms.
- Organizing religious retreats, prayer groups and other religious youth events designed to spiritually awaken our youth congregation's religiosity and to instill within our youth congregation a sense of religious duty and passion.
- Selecting, training and overseeing Sunday School teachers, preparing Sunday School curriculum, and directing the Sunday School services.
- Serving as religious counselor to the youth and advising them in accordance with the Bible and the principles and teaching of our Church.
- Meeting all religious and spiritual needs of our Youth Congregation.

[The beneficiary] works more than 35 hours per week and is paid \$1,700.00 per week with some benefits. He is not dependent on supplemental employment or solicitation of funds for support.

We note that [REDACTED] did not include travel among the beneficiary's duties. The significance of this observation will become apparent later in this decision.

The initial submission included documentation about the petitioning church, but no documentary evidence that the beneficiary had ever worked at the petitioning church, or that the petitioner had ever paid the beneficiary.

On March 29, 2005, the director issued a request for evidence (RFE), instructing the petitioner to submit "evidence of the beneficiary's work history beginning in August 6, 2002 and ending August 6, 2004." The director requested evidence of "monetary payment, such as W-2 forms, pay stubs, or other items showing that the beneficiary received payment." The director also requested evidence regarding "any other activity with which the beneficiary was involved that would show financial support" during the two-year qualifying period. Also, the director requested specific details about the beneficiary's duties.

In response, [REDACTED] provided a breakdown of the beneficiary's weekly duties. The detailed schedule, more than a page in length, lists such duties as "hospital visitations," "group catechetical instructions," "[r]etreats & other meetings" and "[r]eviewing & preparing Sunday school studies," occupying a minimum of 35 hours per week, with additional duties during holiday seasons. [REDACTED] also stated that the beneficiary's "duties will include, among others, the following functions:

1. To organize religious youth education classes, procure and adopt the instructional materials and schedules for the weekly classes;
2. To select, train and oversee Sunday School teachers;
3. To assist the clergy with the youth educational work in the parish and missions of the ROEA (Romanian Orthodox Episcopate of America)'s Pacific Coast Deanery;
4. To give instruction in the Christian Orthodox Faith;
5. To assist at the Holy Liturgy, especially with the readings and processions.
6. To assist at the Holy Sacraments: baptisms, weddings and anniversaries; interpreting the church doctrine, liturgical services, the history of the Romanian Orthodox Church.

7. To pay visits to hospitals, hospices & convalescent homes of the sick, afflicted, poor and elderly.
8. To offer religious counseling, especially for the youth group and Sunday School students.

As with [REDACTED] first letter, this second letter contains no specific mention of travel as a significant or even incidental part of the beneficiary's duties.

Fr. Alecse repeated the assertion that the beneficiary "will be paid \$1,700 per month." The petitioner submitted copies of documents showing that the petitioner paid the beneficiary \$1,700 in both April 2005 and May 2005. The petitioner issued both of these payments after the director issued the RFE in March 2005. The petitioner submitted no evidence that it paid the beneficiary during the 2002-2004 qualifying period.

The petitioner also submitted a copy of a letter to the beneficiary from the Internal Revenue Service (IRS), summarizing the information on the beneficiary's income tax returns from 2002, 2003 and 2004. According to the letter, the beneficiary reported adjusted gross income of \$12,334 in 2002, \$20,400 in 2003 and \$20,400 in 2004. The record does not contain the tax returns themselves or indicate when the beneficiary filed those returns. Furthermore, although \$1,700 per month annualizes to \$20,400 per year, this does not by itself prove that the reported income was from the petitioner.

A document from the Social Security Administration, listing the beneficiary's "Summary FICA Earnings" from 1997 to 2003, shows the following amounts:

| | | | | | | | |
|------|------------|------|-------------|------|-------------|------|--------|
| 1997 | \$9,675.43 | 1999 | \$32,619.99 | 2001 | \$14,427.30 | 2003 | \$.00 |
| 1998 | 26,199.52 | 2000 | 9,387.96 | 2002 | .00 | | |

The petitioner does not explain why there were no reported FICA earnings in 2002 or 2003, the only listed years that relate to the qualifying period.

The director approved the petition on June 8, 2005, but subsequent inquiry called the petitioner's claims into question. On January 26, 2007, two immigration officers (IOs) visited an address in Murrieta, California, where the beneficiary resided during part of the qualifying period. [REDACTED], the owner of the property at that address, provided a copy of the beneficiary's rental agreement, dated March 20, 2003, which indicated that the beneficiary worked as a teacher for "Temecula Valley USD" (United School District).

The rental agreement identified the beneficiary's prior landlord as [REDACTED]. The IOs contacted [REDACTED] who informed the IOs that he was aware of the beneficiary's immigration issues, and that the beneficiary told him that the church had falsely claimed that the beneficiary worked for the church, when in fact the beneficiary was working for Glen Ivy Hot Springs."² [REDACTED] also furnished a copy of a business card for "Auction Access Inc. / Fine Arts – Real Estate – Boats – Autos," identifying the beneficiary as president of

² The beneficiary's employment as a massage therapist at Glen Ivy Hot Springs factored into the revocation of the approval of the first petition that had been approved on the beneficiary's behalf.

that company. The card also shows the phrase "Wholesale Distribution" just above the beneficiary's telephone number.

The IOs also visited the site of the petitioning church on January 26, 2007, and spoke to [REDACTED] who resides in an apartment on the church's property. [REDACTED] stated that he had not seen the beneficiary on the church's property in three weeks. [REDACTED] statement is not directly relevant to the question of the beneficiary's work during the 2002-2004 qualifying period, because [REDACTED] did not reside on the church grounds until 2006. Nevertheless, his assertions speak to the frequency of the beneficiary's appearances on the church grounds, relevant because the petitioner and the beneficiary have claimed that the beneficiary has continuously worked at the petitioning church not only during, but also after, the qualifying period. Anything contradicting the petitioner's or the beneficiary's claims of continuous work would necessarily reflect on the credibility of those claims.

The director issued a notice of intent to revoke on February 22, 2007, stating that the above information indicated that the beneficiary had not worked full time for the petitioner, as claimed, during the 2002-2004 qualifying period. In response to the notice, the petitioner submitted new letters and exhibits.

In a letter dated March 22, 2007, [REDACTED]

Since 1984, I [have been] the Dean of the Pacific Coast Deanery of the Romanian Orthodox Episcopate of America, a Diocese of the Orthodox Church of America. As Dean I am in charge of many Romanian Orthodox Churches throughout the States of California, Washington, Oregon, Nevada and Arizona.

Although most of my parishioners are located in California, I also have parishioners in the afore-mentioned states. This mean that I am in charge of 16 Romanian-American communities on the West Coast and I have to rely on people like [the beneficiary] to assist me with traveling to these communities, meet with the priests, adult parishioners and the youth, and help me organize youth entities throughout the Pacific Coast Deanery. . . .

[The beneficiary] had to also travel a lot, to different states, and meet with young people and parish priests to organize youth organization[s] throughout the Pacific Coast Deanery.

If the beneficiary did, in fact, travel extensively on the petitioner's behalf, this may explain why he was not seen on church property for an extended period of time. The petitioner, however, did not submit any documentary evidence to establish that the beneficiary's claimed work involved extensive travel. We reiterate here that [REDACTED] first two letters did not mention travel at all. His second letter contained only a general mention of the beneficiary's involvement with the Pacific Coast Deanery, a reference entirely absent from the first letter.

In his March 22, 2007 letter, [REDACTED] added: "in 1997 we offered [the beneficiary] the position of Religious Education Youth Director. . . . By 2000 his position with [the petitioner] was not only continuous but full time."

The petitioner submitted copies of *Viata Crestina*, a magazine published twice yearly by the petitioning church. These publications identify the beneficiary as the petitioner's "Youth Director" and the "Trustee/Financial Advisor" of the petitioner's Building Committee. The oldest of these magazines dates from after the two-year qualifying period.

In his own declaration, the beneficiary referred to his "tax returns for the period of 2002 to 2005 attached hereto." The tax returns reproduced in the record are unsigned, undated and uncertified by the IRS. It is, therefore, not possible to conclude that the returns reproduced in the record match those that the beneficiary submitted to the IRS. We note that the tax returns refer to taxes withheld, indicating that the beneficiary was not paid "under the table" with no taxes withheld. The petitioner, nevertheless, has not submitted IRS Forms W-2 or comparable documentation, even though the director specifically asked for such evidence. (We add that the checks dated April and May 2005 do *not* show any taxes withheld from the beneficiary's claimed \$1,700 base pay.)

The beneficiary acknowledged having resided in properties owned by [REDACTED] He did not address [REDACTED] the beneficiary stated:

Since my entry into the United States over 9 ½ years ago I have continuously worked for [the petitioner] in the capacity of Youth Director of Religious Education. . . . In August 2002 my employment with the petitioning Church was on a full time basis. . . .

During the period of 2003 to 2004 I rented a room from [REDACTED] . . . During this period I was working full time at [the petitioning church] as a Youth Director of Religious Education. In the previous year, I worked part time for the Temecula School District as a substitute teacher to familiarize myself with the American School Systems and teaching style, to better myself in my position [as] the Youth Director at the [petitioning] Church.

The reason that the beneficiary gave for working in the public school is not persuasive. The petitioner has not shown that its youth education department is modeled on California public schools. More significantly, the petitioner submitted nothing from the Temecula Valley Unified School District to show that the beneficiary was only a part-time substitute teacher for the district.

We note that, according to the beneficiary's tax returns, the beneficiary reported less income in 2002 than in subsequent years, and the amounts that the beneficiary reported (or claimed to have reported) in 2003-2005 are only enough to account for his claimed \$1,700 monthly income from the church. Therefore, the tax documents do not show that the beneficiary ever earned \$1,700 at the church *plus*, at the same time, additional income as a school teacher.

The petitioner submitted a new declaration, attributed to [REDACTED] in Romanian with an English translation. The translation reads, in part:

I see [the beneficiary] on the Church property often.

My native language is Romanian and so far I have a very limited understanding of the English language. For this reason I believe that my statements may have been misunderstood by the officers present at the Church property in January 2007.

The translated letter did not directly contradict or challenge the specific claims set forth in the notice of intent to revoke; there is only the indirect implication of a revision of those claims.

The director was not persuaded by the above materials, and revoked the approval of the petition on April 25, 2007. The director stated: "the petitioner [initially] failed to mention the beneficiary's other employment as a substitute teacher. Furthermore, the petitioner failed to address the beneficiary's businesses [sic] card from Auction Access Inc. which lists the beneficiary as president of the company." The director determined that the petitioner had not credibly established that the beneficiary worked full time for the petitioner throughout the qualifying period.

On appeal, the petitioner submits no new evidence directly relevant to the petitioner's claims. Instead, counsel's appellate brief focuses on the assertion that the petitioner's previous submissions were sufficient to address the issues set forth in the notice of intent to revoke. We do not find this argument to be persuasive. Counsel offers numerous assertions that the record does not support. For instance, counsel states that "in 2002 Petitioner offered Beneficiary . . . the Religious Education Youth Director position full time. . . . Please refer to the March 22, 2007 Declaration of V. [REDACTED]." According to that declaration, the beneficiary's position purportedly became full time in 2000, not 2002. It is the beneficiary who apparently claimed that the position became full time in 2002 (although his declaration is ambiguously worded on this point).

Counsel asserts that [REDACTED] "declaration indicates that [the director's] allegations are incorrect," whereas the declaration states only that [REDACTED] "statements may have been misunderstood by the officers" who interviewed him. Counsel also cites "the previously submitted checks" as evidence of qualifying employment, but as noted previously, these checks do not document payments before 2005. By themselves, the checks show only that the petitioner paid the beneficiary shortly after the petitioner received the RFE. The petitioner has been either unable or unwilling to provide paychecks from the relevant 2002-2004 period.

Counsel states:

As to the issue of the "Auction Access, Inc." business card . . . , it is part of Beneficiary[']s duties with Petitioner as Trustee/Financial Advisor to diversity Petitioner's assets. As Petitioner's declaration verifies, Beneficiary[']s position with the Petitioner is not only a Religious Education Youth Director but he is also assisting the parish priest in overseeing the liquid assets of the Petitioner.

Even if the above claim were confirmed to be true, work as a financial advisor to the church is not a qualifying religious occupation. 8 C.F.R. § 204.5(m)(2) specifically excludes administrative positions from the definition of "religious occupation." More fundamentally, the petitioner has not shown counsel's claim to be true. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA

1980). The assertion that the beneficiary became the president of Auction Access, Inc., simply to assist in “overseeing the liquid assets of the Petitioner” strains credulity. That assertion, like many other claims in the record, lacks contemporaneous documentary support. The record is devoid of any evidence at all to show that the beneficiary’s claim to be president of a “Wholesale Distribution” company, dealing in “Fine Arts – Real Estate – Boats – Autos,” had anything to do with the petitioning church.

Counsel asserts that the petitioner’s and the beneficiary’s declarations should suffice to establish eligibility. Doubt cast on any aspect of the petitioner’s proof, however, may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N 591. 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. *Id.* at 582, 591-92.

Here, the petitioner has offered no independent objective evidence to resolve the inconsistencies cited by the director. Instead, the record suggests a pattern of *new* evidence and *new* statements, created *ad hoc* to address the director’s concerns as they arise. For instance, the available documentation does not show that the petitioner consistently paid the beneficiary throughout the 2002-2004 qualifying period. Instead, it shows that the petitioner issued two checks to the beneficiary in 2005 after the director issued an RFE. Even then, the checks do not show withholding of taxes, even though the beneficiary alleged such withholding on his 2005 tax return. As another example, traveling was never held out to be part of the beneficiary’s duties until after a parishioner was identified who stated that weeks passed without his seeing the beneficiary on the church grounds.

The record indicates that the beneficiary has worked in a series of secular positions before, during, and after the qualifying period. During the qualifying period, in 2003, the beneficiary described himself not as a church worker but as a teacher with a public school district. The beneficiary’s explanation for this secular work is as unpersuasive as counsel’s subsequent assertion that the beneficiary assumed the presidency of a “Wholesale Distribution” company in furtherance of his duties as a church trustee/financial advisor.

Given the enumerated discrepancies in the petitioner’s evidence, and the petitioner’s failure to provide persuasive, independently corroborated explanations to resolve those discrepancies, we affirm the director’s decision to revoke the approval of the petition. 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 Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Systronics Corp. v. I.N.S.*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988). In this proceeding, the petitioner’s credibility is compromised to an extent that does not permit us to accept, at face value, claims put forth by the petitioner that are not supported by verifiable, contemporaneous documentary evidence.

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.