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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: APR 28 2005
WAC 01 155 36097

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.

Maui Johnson

S Robert P. Wiemann, Director
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. 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 pastor. The director determined that the petitioner had not established: (1) that the beneficiary had not entered the United States for the purpose of working as a minister; (2) that the beneficiary had the requisite two years of continuous work experience as a pastor immediately preceding the filing date of the petition; (3) that the beneficiary is an ordained minister; (4) the petitioner's ability to pay the beneficiary's proffered salary, or (5) the existence of a valid job offer.

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 first issue raised in the director's decision concerns the beneficiary's entry into the United States. Section 101(a)(27)(C)(ii)(I) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(I), requires that the alien seeking classification "seeks to enter the United States . . . solely for the purpose of carrying on the vocation of a minister." In this instance, the director stated that the beneficiary entered as an F-1 nonimmigrant student. This assertion is inaccurate. In fact, the beneficiary entered the United States as a B-2 nonimmigrant visitor for pleasure, and several months later changed to F-1 status. Either way, the beneficiary did not enter the United States under a classification that allowed employment as a religious worker. Thus, the director concluded, the beneficiary did not enter the United States solely for the purpose of working as a minister.

This finding is not defensible. The AAO interprets the language of the statute, when it refers to "entry" into the United States, to refer to the alien's intended *future* entry *as an immigrant*, either by crossing the border with an immigrant visa, or by adjusting status within the United States. This is consistent with the phrase "*seeks to enter*," which describes the entry as a future act. While the materials in the record raise serious questions, we cannot concur with the director's finding that the beneficiary's status at the time of entry is, by itself, a disqualifying factor. We therefore withdraw this particular finding by the director.

The next issue concerns the beneficiary's past experience. 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 March 15, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a pastor throughout the two years immediately prior to that date.

The beneficiary entered the United States on September 13, 1999, and therefore spent part of the qualifying period outside the United States. A "Certification of Accreditation" (sic) from Yoido Full Gospel Church, Seoul, Korea, indicates that the beneficiary has served as a pastor in Tanzania from July 1997 to August 1999, and was "dispatched [to the] U.S.A. as a missionary" in August 1999. Given that the claimed employment took place in Africa and North America, it is not readily apparent that documentation from Asia is persuasive, first-hand evidence that such employment took place. The initial submission does not indicate whether the beneficiary assumed ministerial duties immediately upon entering the United States.

The assertion that the beneficiary was "dispatched [to the] U.S.A." implies that the beneficiary traveled to the United States upon the church's instructions, but there is no indication that the petitioner made any effort to secure an R-1 nonimmigrant religious worker visa on the beneficiary's behalf. Instead, the beneficiary

entered via a B-2 tourist visa, and in January 2000, he changed status to an F-1 nonimmigrant student, to study for a master's degree in Religion at Bethesda Christian University. The Form I-20A-B in the record indicates that the program was expected to last for two years, a duration consistent with full-time rather than part-time study.

The director approved the petition on August 13, 2001. Subsequently, the beneficiary applied for adjustment of status. As part of the adjustment application, the petitioner submitted Form G-325A, Biographic Information, which indicates that the beneficiary worked as a "missionary" for Yoido Full Gospel Church until August 1999, and as pastor of the petitioning church from October 1999 onward.

The director issued a notice of intent to revoke, noting that the beneficiary was a student for much of the qualifying period, and asserting that unpaid volunteer work is not qualifying experience. Counsel, in response to this notice, maintains that the beneficiary has always been the petitioner's paid employee rather than an unpaid volunteer.

The director, in the notice of revocation, repeated the assertion that unpaid volunteer work is not qualifying experience. On appeal, counsel repeats the assertion that the beneficiary was consistently paid for his work. At no time has the petitioner or the beneficiary claimed that any of the beneficiary's work was as an unpaid volunteer. Of course, given this claim, it is reasonable to note the absence from the record of any documentation of such payments during the qualifying period. There is, thus, minimal support for the petitioner's claim that the beneficiary has worked continuously as a minister during the qualifying period. Given other credibility issues in the record, to be discussed elsewhere in this decision, we find the evidence of record to be insufficient to establish the required experience.

8 C.F.R. § 204.5(m)(3)(ii)(B) requires the petitioner to demonstrate that the beneficiary is an authorized member of the clergy. The director, in revoking the approval of the petition, stated: "The petitioner has not submitted supporting evidence . . . such as a certificate of ordination . . . to establish [that the beneficiary holds] a position of Minister." The record, however, contains a copy of a certificate of ordination issued to the beneficiary. This certificate, written entirely in English despite supposedly having been issued in Korea by a Korean church to a Korean national, is incomplete. The illegible signature is followed by the title "Reverend" and a blank space where the individual's name is apparently supposed to appear. The certificate bears the printed legend " TH Day of MAY ," but there is no day or year shown (suggesting that the party who printed the certificate did not know what year the ordination would take place, but did know that it would be in May). The certificate is from the "Korea Assemblies of God of Korea" (sic), a denomination with no demonstrated connection to the petitioning church. Based on this evidence, and considering other credibility issues addressed elsewhere in this decision, we find that the petitioner has not persuasively established that the petitioner's religious denomination recognizes the beneficiary as an authorized member of the clergy.

The remaining two issues, interconnected to some degree, concern the validity of the job offer and the petitioner's ability to pay the beneficiary's salary. 8 C.F.R. § 204.5(m)(4) requires the petitioner to set forth the terms of the job offer and to demonstrate that the beneficiary will work solely as a minister, without having to rely on supplemental employment or solicitation of funds. 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.

At various times, the petitioner has submitted copies of its budget and bank statements from the beneficiary, the petitioning church, and the denomination's North American headquarters. 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 evidence. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Jae Gi Lee, senior elder of the petitioning church states that the beneficiary "is receiving a monthly wage of one thousand six hundred dollars (\$1,600), which [the beneficiary] has indicated is adequate to meet his living expenses." The petitioner did not submit any evidence to show past payments to the beneficiary.

On his 2002 federal tax return, the beneficiary reported \$19,200 in earnings from his pastoral work, the full proffered wage. The only other income reported on the joint tax return was income from the beneficiary's spouse's job, as reported on a Form W-2 Wage and Tax Statement. The beneficiary, in conjunction with his adjustment application, has submitted copies of canceled checks showing that the petitioner paid the beneficiary his full wage in June and July of 2003.

The petitioner's bank statements show \$1,600 checks cashed in March, May, June and July of 2003. There were no such payments made in April or August of that year. We do not conclude that checks were issued but never cashed, because there is no gap in the numbered check sequence between check 1112, cashed on March 31, and check 1126, cashed on August 27. Thus, the record does not show that the petitioner has consistently paid the beneficiary's proffered wage. There is no explanation for why the petitioner apparently paid the beneficiary for only four months of this six-month period in mid-2003.

The beneficiary has also submitted copies of his own bank statements from March through August of 2003. Each of these statements reflects deposits of \$1,600 or more. The deposits exceeding \$1,600 could plausibly include paychecks from the petitioner, deposited simultaneously with other funds, but only four of these six deposits correspond to debits reflected in the petitioner's bank statements (for example, the beneficiary's bank statement shows a large deposit on March 28, and the petitioner's bank account shows a check cleared on March 31). The beneficiary also received several wire transfers from overseas in late 2001 and early 2002, in amounts that exceed the beneficiary's monthly salary. These wire transfers originated from individuals identified as the beneficiary's relatives and friends.

In the notice of intent to revoke, the director discussed the beneficiary's comments during his 2003 adjustment interview: "the beneficiary admitted under oath that he receives money from his family and friends in Korea . . . because his salary is not enough to pay for medical expenses, travel expenses and his son's school. The beneficiary also stated that his salary of \$1,600 per month is paid from donations from his family and friends in Korea, who make monthly deposits to the church's checking account. . . . The beneficiary has been dependent on supplemental employment or solicitation of funds for support. . . . The petitioner has therefore failed to establish that it has extended a valid job offer." The director also determined that the petitioner had not submitted satisfactory evidence of its ability to pay the beneficiary's salary.

In response, counsel argues “the petitioner is financially supported by [redacted], the mother church in Korea.” Counsel acknowledges that the beneficiary’s salary “is paid from donations from his family and friends in Korea,” but asserts “these donations are financially backed by [the] [redacted].” Counsel thus seems to imply that the mother church, rather than paying the beneficiary’s salary directly, gives the money to the beneficiary’s family and friends, who then send the money to the petitioning church, which, in turn, pays the beneficiary.

Rev. Se Young Park, missions director of the [redacted] in Seoul, states that the beneficiary “has received \$1,600 (Monthly Salary) through [his] family and [a] church member . . . since March 1, 2001.” Rev. Park does not corroborate counsel’s claim that “these donations are financially backed by [the] [redacted].”

Officials of the North America Council of the [redacted] indicate that the beneficiary “is financially supported by the headquarters [of] [redacted] and North America Council of the [redacted].” The organization’s bank statements show monthly balances of between \$20,000 and \$40,000 in a checking account, and nearly \$250,000 in a “Business Interest Maximizer” account in 2003.

The director revoked the approval of the petition, stating that the petitioner has not satisfactorily established that it has made a valid job offer or that it is able to pay the beneficiary’s salary. On appeal, counsel repeats the assertion that the petitioner “has been paying [the] beneficiary [his] wages via its mother church in Korea.” Regarding the beneficiary’s statements at his interview, counsel asserts that the beneficiary’s limited English comprehension may have caused a misunderstanding. Counsel states: “The North America Council of the [redacted] gives the money to [the beneficiary’s] family and friends, who then make donations to [the beneficiary]. (Refer to Exhibit 2, which indicates that [redacted] Inc., is ultimately financially responsible for supporting [the beneficiary]).” Exhibit 2, which is a letter already discussed above, does not say anything about the church’s headquarters giving money to the beneficiary’s friends and relatives, who, in turn, pass the money on to the beneficiary.

The terms of payment, as described by various parties, are confusing, convoluted, and conflicting. The record does show that both the petitioner and the beneficiary have received wire transfers from the beneficiary’s relatives, and that the beneficiary has received at least two paychecks from the petitioner. The record does not, however, show any consistent or credible pattern of payments.

Counsel suggests that the funds go from the church’s headquarters, to the beneficiary’s family; from that family to the petitioning church; and from that church to the beneficiary himself. It is never explained why the funds must take so tortuous a path, or why the church’s headquarters cannot directly transfer the money to the petitioning church (or the beneficiary himself), and instead involves various friends and relatives of the beneficiary in the transaction. There is no one piece of evidence that establishes that the beneficiary’s salary payments follow such a course. Instead, various documents suggest different elements thereof. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

If Citizenship and Immigration Services (CIS) fails to believe that a fact claimed in the petition is true, CIS may reject that claim. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *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). 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. 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*, 582, 586.

Furthermore, the alien himself, under oath for his adjustment interview, did not merely indicate that his salary payments came from the church's headquarters via his friends and family. Rather, the beneficiary indicated that his relatives sent him money *in addition* to his salary, because his salary was insufficient to meet his expenses. Thus, it is difficult to conclude that the beneficiary's earnings as a minister will be sufficient to support him without supplementary income; to date, by the beneficiary's own admission, these earnings have not been sufficient.

The regulation at 8 C.F.R. § 204.5(g)(2) requires that the United States employer, not the beneficiary's family, has the ability to pay the proffered wage. To say that an employer is able to pay the proffered wage, but only because the alien's family is propping up the employer's finances, plainly violates the spirit of the "ability to pay" requirement, the intent of which is to establish that there exists a *bona fide* job offer. From the available evidence, we are unable to determine that there exists a *bona fide* job offer, rather than only the appearance of such an offer, apparently intended to secure immigration benefits for the beneficiary. We cannot accept that the claimed course of payments, from the headquarters, to the beneficiary's family, to the local church, to the beneficiary, is either credible or viable as a payment system, particularly in the long term. Claims regarding such a system appear to have been tailored to eliminate or minimize inconsistencies and contradictions between the claims of various parties.

Pursuant to the above, we cannot conclude that a viable job offer exists. Further reinforcing this finding, beyond the materials cited by the director, we note that the beneficiary, during his adjustment interview, indicated that the petitioning church had only 16 members as of the date of the interview (September 23, 2003). This further supports the conclusion that, without continued infusion of funds from the beneficiary's relatives, the church would simply not be in a position to pay the beneficiary's salary. Some letters indicate that the denomination provides, or is willing to provide, support to the petitioning church, but the record contains no evidence to show that the headquarters has, in fact, provided such funding directly to the petitioning church.

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.