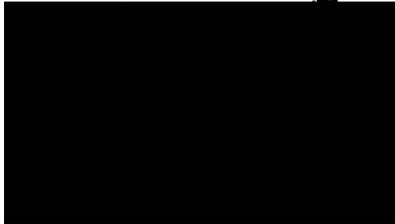


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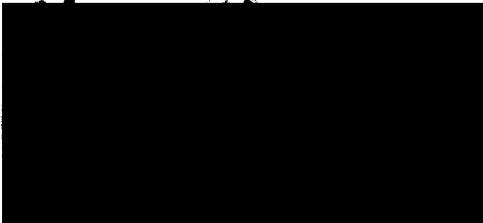
Office: CALIFORNIA SERVICE CENTER

Date: MAR 11 2005

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:



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, Director  
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 February 10, 2004. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a "member of the world wide Chabad-Labavitch Program . . . a worldwide Chassidic outreach movement." 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 religious outreach worker. 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, that it had extended a qualifying job offer to the beneficiary or that it had the ability to pay the beneficiary the proffered wage.

On appeal, counsel submits a letter and additional documentation.

Section 205 of the Act, 8 U.S.C. § 1155, states that the Secretary of the Department of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

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

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and 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 regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States.” The regulation indicates that the “religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.”

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on August 26, 1998. Therefore, the petitioner must establish that the beneficiary was continuously working in the religious occupation throughout the two-year period immediately preceding that date.

In its letter of June 19, 1998, the petitioner stated that the beneficiary was “involved in full-time teaching of Religion . . . to rabbinical students at the esteemed Yeshiva Gedolah Lubavitch College in London, England from 1/96 to 11/97. He was also involved in the day-to-day running of the Rabbinical College with respect to

organization of prayers, Bar-Mitzvah Training, etc.” The petitioner also stated that it had employed the beneficiary in an R-1 status since March 25, 1998, and that he would “continue to be responsible for offering adult classes in a wide array of religious subjects in our adult education program,” and “one-on-one religious counseling” when needed.

The record contains a December 11, 2001 letter from the [redacted] College, which stated that the beneficiary was employed by that organization’s religious seminary on a full-time basis as a teacher of Jewish studies and was an instructor in the synagogue “in the areas of Prayer, [redacted] training etc. from January 1996 until December 1997. He worked at least 40 hours per week in this capacity and was paid £325 per week.” The petitioner submitted no documentary evidence, such as pay vouchers, canceled checks, or verified work schedules, to corroborate the beneficiary’s employment with the Yeshiva Gedola Lubavitch College. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In a letter dated July 22, 2002, the petitioner stated that, as it was unable to legally employ the beneficiary prior to approval of his R-1, nonimmigrant religious worker, visa, it compensated him for his services through the payment of his rent, and food at Kosher food merchants and transportation needs. The petitioner stated that it compensated the beneficiary in this manner from December 1997 to March 1998. The petitioner did not, however, submit documentary evidence of the support that it provided to the beneficiary during this time. Further, the petitioner submitted no other documentary evidence of the beneficiary’s work with the petitioning organization. *Id.*

In response to the director’s Notice of Intent to Revoke dated November 20, 2003, counsel stated that the beneficiary entered the United States in December 1999 on sabbatical leave from the Lubavitch Yeshiva Gedola College for the purpose of visiting the Chabad headquarters in New York and was paid his regular salary while on leave. Counsel submitted a statement from the Lubavitch Yeshiva Gedola College, which stated that the beneficiary took a three-month Sabbatical and “was paid during this time for any religious studies or work connected with the Chabad Lubavitch organization.” The letter did not state how much work the beneficiary performed for the organization during this time frame and did not indicate how much he was paid for his services. Counsel also stated that, it was during this time that the beneficiary “connected” with the petitioning organization “where in addition to his religious studies,” he performed voluntary work for the [petitioner] as a teacher of religion.”

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of “a number of safeguards . . . to prevent abuse.” See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged “principally” in such duties. “Principally” was defined as more than 50 percent of the person’s working time. Under prior law a minister of religion was required to demonstrate that he/she had been “continuously” carrying on the vocation of minister for the two years immediately preceding the time of application. The term “continuously” was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

In the rare case where volunteer work might constitute prior qualifying experience, the petitioner must establish that the beneficiary, while continuously and primarily engaged in the traditional religious occupation, was self-sufficient or that his or her financial well being was clearly maintained by means other than secular employment.

On appeal, counsel asserts that the evidence reflects that the beneficiary received approximately \$1,000 per month from the petitioner in rent and food benefits. However, counsel submitted no further documentation of the beneficiary's financial support during the period that he "volunteered" for the petitioner or to substantiate the beneficiary's work during the qualifying time period. *Matter of Treasure Craft of California*, 14 I&N Dec. 190.

The evidence is insufficient to establish that the beneficiary was continuously engaged in a religious occupation or vocation for two full years prior to the filing of the visa petition.

The director also determined that the petitioner had not established that it had extended a qualifying job offer to the beneficiary. The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

*Job offer.* The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

The duties of the proffered position are discussed above. Although the petitioner does not specify the hours that the beneficiary is expected to work, it stated that it would compensate him at the rate of \$25,000 per year. The job offer sufficiently establishes that the beneficiary will not be dependent upon supplemental employment or the solicitation of funds for his support and is sufficient to overcome the director's determination that the petitioner had not extended a qualifying job offer.

The director further determined that the petitioner had not established that it had 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.

As noted, the petitioner stated that it would pay the beneficiary \$25,000 per year. The record does not reflect that the petitioner submitted any evidence in support of this regulatory requirement during the initial stages of this proceeding. On appeal, the petitioner submitted a copy of a financial statement with the date 1995 marked out and substituted with the handwritten year 2001, a copy of a financial statement with the date 1997 marked out and the year 2002 added by hand, and a 1999 financial statement with the year 2003 substituted by hand. The petitioner submitted no evidence to explain the changes to the financial statements. These obvious changes to the documents indicate that the documents have no indicia of reliability and will be afforded no weight in these proceedings.

Further, doubt cast on any aspect of the petitioner's proof may, of course, 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 Dec. 582, 591 (BIA 1988). If CIS fails to believe that a fact stated in the petition is true, Citizenship and Immigration Services (CIS) may reject that fact. 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).

Additionally, the substituted dates do not reflect the petitioner's fiscal status as of the date the petition was filed. In addition to the financial statements, the petitioner submitted copies of its February and March 2003 monthly bank statements. These documents also fail to establish that the petitioner had the ability to pay the beneficiary the proffered wage as of the date the petition was filed.

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.

Beyond the decision of the director, the record does not establish that the petitioner is a bona fide nonprofit religious organization, exempt from taxation.

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 record is devoid of any evidence that the petitioner meets this requirement of the statute and regulation. This deficiency is an additional ground for dismissal of the appeal.

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.