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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
WAC 01 135 56156

Office: CALIFORNIA SERVICE CENTER

Date: MAR 17 2011

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

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

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

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 September 16, 2003. The petition is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is an "Orthodox Day School with a Judaic and English Studies program." 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 teacher of religious studies. The director determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization.

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 Esteime*, . . . 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 Esteime*, 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)(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.

The petitioner submitted a September 20, 1994 letter from the Internal Revenue Service (IRS), informing the petitioner that it had been granted tax-exempt status as an organization as described in sections 509(a)(1) and 170(b)(1)(A)(ii) of the Internal Revenue Code (IRC). The petitioner also submitted a copy of its articles of incorporation, containing the dissolution clause required by the IRS under section 501(c)(3), and an unsigned copy of its year 2000 Form 990, Return of Organization Exempt From Income Tax. The petitioner additionally submitted a copy of a letter from the California State Franchise Tax Board, notifying the petitioner of its exemption from the state's franchise or income taxes. The director determined that the petitioner had not established it was a bona fide religious organization pursuant to 8 C.F.R. § 204.5(m)(3)(i) in that it had failed to establish it held tax-exemption under section 170(b)(1)(A)(i) of the IRC.

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 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 §

501(c)(3) of the 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) which applies to churches, and a copy of the organizing instrument of the organization which contains a proper dissolution clause and which specifies the purposes of the organization.

On appeal, the petitioner submitted a copy of the Form 1023, Application for Recognition of Exemption, that it filed in May 1994 with the IRS. The petitioner stated on the Form 1023 that the purpose of the organization is "to furnish education for the persian jewish children and to keep the jewish heritage between the persian jewish families." The petitioner also listed as one of its objectives the "education" of members regarding Jewish religion.

The petitioner's articles of incorporation indicate that its purpose is "to promote the Orthodox Jewish religion and its culture and values [including] by: (i) forming Jewish synagogues and other places of worship and prayer."

The record is sufficient to establish that the petitioner is a bona fide nonprofit religious organization.

Nevertheless, the case may not be approved as the record now stands, and it will be remanded to the director to enter a new decision.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States." The regulation indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition."

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

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

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

The petition was filed on October 23, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a Hebrew and Jewish studies teacher throughout the two-year period immediately preceding that date.

In a letter dated November 29, 2001, the petitioner's director [REDACTED] stated:

The beneficiary worked in Israel as a teacher . . . from 3-16-99 until 7-9-2000 when she came to the USA.

She continued to work in the USA for [the petitioner] from September 2000 through March 15, 2001 as a teacher of religion. As she did not have a work permit the school exchanged her services for the tuition that she would have had to pay for 4 of her children.

The petitioner submitted a copy of a December 18, 2000 statement from the Yeshiva & Colel (Institute of Religious Study), "certifying" that the beneficiary had been "employed as a teacher presenting lectures regarding Judaic Religious studies, . . . during the last 3 years for our Institute on a regular basis." A December 2000 letter from Midraset Ateret, "certified" that the beneficiary "has been teaching Torah (Bible), Jewish Law, Jewish house, household and customs, during 1998 and 1999, 3 times a week." Neither of the statements indicated that the beneficiary worked full-time for the organizations and neither indicated that the beneficiary was compensated for her work. The petitioner submitted no further evidence to substantiate the beneficiary's employment with these organizations or with the petitioner. 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).

Additionally, the petitioner stated that the beneficiary worked in the United States from September 2000 to March 15, 2001. The petitioner does not allege and provides no evidence of the beneficiary's employment from the latter half of March 2001 to October 23, 2001, the date the petition was filed.

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 remand, the director should address whether the petitioner has established that the beneficiary has been continuously employed as a Hebrew and Jewish studies teacher for two full years preceding the filing of the visa petition.

This matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.