



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAY 11 2005
WAC 98 213 52097

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:



PUBLIC COPY

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. 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 Administrative Appeals Office (AAO) rejected the beneficiary's subsequent appeal as untimely. Pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(2), the director treated the late appeal as a motion to reopen. The director reopened the matter and issued a new notice of revocation, certified to the AAO for review. The certified revocation will be affirmed.

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 pianist and director of the petitioner's youth department. The director determined that the petitioner had not established that the position qualifies as a religious occupation, or that the beneficiary had the requisite two years of continuous work experience performing the duties of her position immediately preceding the filing date of the petition.

In response to the certified notice of revocation, the petitioner submits a brief from counsel and several exhibits.

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 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. *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 July 31, 1998. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of the position throughout the two years immediately prior to that date.

The regulation at 8 C.F.R. § 204.5(m)(2) defines “religious occupation” as an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Citizenship and Immigration Services therefore interprets the term “traditional religious function” to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

In a letter accompanying the initial filing, counsel states that the petitioner has offered the beneficiary “the full-time paid position of Pianist and Director of the Youth Department. *See Exhibit ‘C’, Employment Certification.*” Exhibit C, a letter from Pastor Sang Jin Baek, indicates that the beneficiary “has been employed . . . without pay from April of 1996 to present.” There is no mention of whether this work has been full-time. Regarding the beneficiary’s work in the youth department, counsel states: “The classes begin on Saturday mornings at 9:00 a.m. and last until 11:00 a.m.” Counsel does not indicate how much time these duties occupy apart from the two hours of class time each week. Counsel asserts that the beneficiary’s “primary duty is to organize the worship for school aged children.”

In a letter accompanying the initial filing, Rev. Sang Jin Baek, pastor of the petitioning church, states:

[The beneficiary] has been the youth leader at [the petitioning church] since January of 1996. In April of 1996, [the beneficiary] was nominated and accepted as the Head Coordinator of the Youth Department at [the petitioning church]. [The beneficiary's] duties as Head Coordinator require her to oversee the spiritual and social programs presented to members of the congregation between junior high and college age. The Youth Department consists of about 60 members.

Among these duties are: teaching lesson plans to youths, submitting activity proposals to the church board for approval, organizing and planning both spiritual events and social events, such as seminars, guest speakers, planning religious retreats, planning topics for discussion and arranging outreach programs to the community. . . .

Beginning in January of 1996, [the beneficiary] was designated as the head accompanist of the church. Every week, [the beneficiary's] duties included: accompanying the congregation for hymns, accompanying the choir during service and practice, playing for weddings.

In the same letter, Rev. Baek states: "As a part of our job offer to [the beneficiary], she is prohibited from seeking supplemental employment, as this position is considered a full-time job." Rev. Baek also states, however: "If the petition is approved, [the beneficiary's] position will require her to work approximately 25-30 hours per week," which is not a level of employment generally regarded as full-time. Rev. Baek does not specify how many hours per week the beneficiary had been working since 1996, but there is no indication that her anticipated change to a paid employee would involve a reduction of hours from her then-current volunteer work.

The director approved the petition on January 12, 2000, and the beneficiary applied for adjustment of status on August 7, 2000. As part of her adjustment application, the beneficiary submitted Form G-325A, Biographic Information, on which she indicated that she had not been employed during the preceding five years (July 1995 to July 2000).

On November 3, 2003, the director issued a notice of intent to revoke.¹ The director indicated that the petitioner had not shown that a significant portion of the beneficiary's duties relate to qualifying religious functions; the mere performance of music is not inherently a religious function, and some of the beneficiary's other duties appear to be organizational or administrative in nature. The director also held that volunteer work is not qualifying experience toward the two-year experience requirement.

In response, counsel asserted that the regulations do not require the beneficiary's past experience to have been in the form of paid, full-time employment. Counsel did not address the other stated ground for revocation, specifically the nature of the beneficiary's work.

On December 8, 2003, the beneficiary filed an appeal on Form I-290B, Notice of Appeal. Because the director had issued no decision at that time, there was nothing to appeal as of December 8, 2003. Furthermore, the beneficiary is not an affected party in this proceeding. 8 C.F.R. § 103.3(a)(1)(iii) states that, for purposes of appeals, certifications, and reopening or reconsideration, "affected party" (in addition to the

¹ At one point, the director refers to the beneficiary as "a Housekeeping Manager," but elsewhere in the notice the director repeatedly refers to the beneficiary by her correct titles, and describes the duties of the proffered positions. The reference to "Housekeeping" appears to be a harmless error; perhaps mistakenly copied from unrelated correspondence; there is no indication that this reference prejudiced the outcome of the decision.

Citizenship and Immigration Services) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition. Therefore, the beneficiary had no authority to respond to the request for evidence, nor (had there been an appealable decision at that point) to file an appeal. 8 C.F.R. § 103.3(a)(2)(v) states that an appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded. The beneficiary's premature appeal, receipt number WAC 04 048 51627, must be rejected for the reasons explained above.

On December 31, 2003, the director revoked the approval of the petition. Pursuant to 8 C.F.R. § 205.2(d), the director allowed the beneficiary 18 days to appeal the revocation. The petitioner's appeal was received on January 29, 2004, 29 days after the issuance of the notice of revocation. The AAO rejected this appeal as untimely, as required by 8 C.F.R. § 103.3(a)(2)(v)(B)(1). In this appeal, as in the previous response to the notice of intent, counsel's response was limited to the issue of prior payment. Counsel offered no rebuttal to the finding that the beneficiary's work did not qualify as a religious occupation.

8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The director issued a new notice of revocation on March 24, 2005, repeating the previously stated grounds for revocation and certifying the decision to the AAO. The director allowed the beneficiary 30 days to submit a brief in response. The petitioner has submitted a brief and supporting documents.

Counsel states that the statute and regulations contain no provision requiring that past employment be paid or full-time. Counsel neglects to consider case law. In *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980), the Board of Immigration Appeals found that an alien's part-time, unpaid volunteer work did not qualify the alien for immigration benefits as a religious worker. Counsel cites an unpublished appellate decision to support the argument that "religious or related studies may be taken into consideration in the interpretation of religious work." Apart from the fact that unpublished decisions have no precedential authority, study must be consistent and compatible with qualifying religious work. Thus, evening theology courses would not disqualify a full-time pastor; but the full-time studies of an alien who volunteers part-time at a church are not compatible with qualifying work. The visa classification is for aliens with a *bona fide* intention of pursuing a career in religious work; it is not simply a reward for aliens who volunteer at church in their spare time. Here, while the petitioner has referred to the beneficiary's work as "full-time," the beneficiary's duties often occupy only 25 hours per week.

Counsel observes that, owing to the beneficiary's F-1 nonimmigrant status, and, later, her lack of employment authorization, the petitioner "was barred by law from paying a salary to" the beneficiary. This is not a mitigating factor. The petitioner has not shown that Congress intended the F-1 student visa program to be a vehicle for aliens to enter the United States under the pretext of temporary studies, while at the same time accumulating qualifying employment experience. The R-1 nonimmigrant visa exists for temporary religious workers. It can hardly be argued that, when the voluntary actions of the beneficiary and the petitioner are not conducive to lawful employment, the petitioner's burden of proof should be lowered accordingly.

The petitioner's latest submission contains the first response to the director's finding that the petitioner has failed to show that the beneficiary's duties amount to a *bona fide* religious occupation, involving traditional religious functions.

Samuel Lee, senior pastor of the petitioning church, quotes the *Seventh-day Adventist Church Manual*, which admonishes: "Great care should be used in selecting the choir leaders or those who have charge of the music in the services of the church." He does not, however, demonstrate that the beneficiary is in "charge" of music

selection. Rev. Baek had previously stated that the beneficiary's "duties included: accompanying the congregation for hymns, accompanying the choir during service and practice, playing for weddings." Thus, as originally represented, the beneficiary's musical duties were limited to the actual performance of the music. The petitioner submits a translated church program, crediting the beneficiary as the "Pianist" at a worship service. That same program credits another individual as the "Choir conductor." This latter individual, not the beneficiary, would appear to be the "choir leader" discussed in the cited excerpt from the *Manual*. The program indicates that there is also a separate "Organist" in addition to the "Pianist."

If the mere performance of music on an unpaid, part-time basis were a qualifying religious function, then entire church choirs could claim immigration benefits this way, and entire congregations could claim such benefits by joining the choir. Case law cautions against the possibility of abuse by "accommodating religious organizations." *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978). The general observation that music is important to a religious service does not establish that the beneficiary's specific role has such importance. Also, if the petitioner cannot show that the religious denomination does not typically employ a full-time, paid worker in the position offered to the beneficiary, it is not unreasonable to consider whether the position has been specially created by an "accommodating religious organization." As we shall explore elsewhere in this decision, substantial evidence, including the beneficiary's own statements, raises very serious questions about whether the beneficiary intends ever to work exclusively as a church pianist, as the terms of the job offer demand.

As for the beneficiary's educational work, this constitutes only a fraction of a work schedule which is already only part-time (although the petitioner has steadily increased its estimates of the beneficiary's weekly work hours as it became apparent that the director was concerned about those hours).

To demonstrate the depth of the beneficiary's commitment to church music, the petitioner submits a copy of the beneficiary's transcript from La Sierra University, an institution operated by the Seventh-day Adventist Church. This transcript shows that, from 1995 to 1997, the beneficiary studied such subjects as "Piano," "Music and Worship," and "Chamber Music." The transcript then shows a three-year interruption in the beneficiary's studies. In 2000, the beneficiary took "continuing education"-level courses in music, but also enrolled in chemistry classes. The transcript submitted by the petitioner shows no classes after 2000, even though a notation on that document indicates that the beneficiary's most recent admission to the university was in the winter of 2003.

The relevance of the chemistry classes becomes apparent upon review of the documentation and information in the beneficiary's alien file, furnished to the AAO on certification. This documentation shows that the beneficiary began studying for a career in dentistry the same month that she filed her adjustment application. A more complete transcript (an original, unlike the photocopy submitted on certification) from La Sierra University lists the beneficiary's major as "Pre-Dentistry." From 2001 onward, her course work at La Sierra University was in chemistry, biology, physics and anatomy. An August 27, 2004 letter from an official of Loma Linda University confirms the beneficiary's enrollment, "working on a post-baccalaureate Certificate in Biomedical Sciences with the eventual goal of getting into our School of Dentistry. . . . [S]he will be taking pre-entrance exams and taking courses that will prepare her for our Doctor of Dental Surgery (DDS) program."

We note that counsel in the present proceeding is the same attorney who represents the beneficiary in her efforts to reinstate her F-1 student visa in order to continue her dental studies. Thus, counsel is contesting (and litigating) the revocation of an immigrant petition on the beneficiary's behalf, while at the same time attempting to secure for the beneficiary a nonimmigrant status that requires a showing that the alien has no

intention of abandoning her foreign residence. See section 101(a)(15)(F)(i) of the Act, 8 U.S.C. § 1101(A)(15)(F)(i). It is difficult to view these two goals as compatible.

A statement from the beneficiary reads, in part: "While ministry through music was very satisfying to me, I still wanted more. I came to the realization that I wanted to work in the health profession to minister in a different way than I had up to this point in my life . . . I truly believe that dentistry is a way to minister to people and this has been a goal that I have been working towards for the past three years." In light of such a statement, we cannot conclude that the beneficiary seeks to enter the United States for the purpose of working as a church pianist and youth department director. We also note Rev. Baek's earlier assertion that, as the petitioner's employee, the beneficiary "is prohibited from seeking supplemental employment." This condition is, for obviously reasons, totally at odds with the beneficiary's own emphatically stated intention "to work in the health profession."

Furthermore, the record contains an October 18, 2004 job offer letter from Seoul Adventist Dental Hospital in Korea. The hospital making this job offer, like Loma Linda University, is linked to the religious denomination of the petitioning church. It would be absurd to conclude that the Seventh-day Adventist Church intends to train the beneficiary as a dentist, while at the same time desiring to employ her as a pianist under terms that forbid any other employment. This information reinforces the conclusion that the beneficiary's church work is either spare-time volunteer work, or at best a stopgap until she becomes a fully-qualified dentist.

Every step of the beneficiary's training toward a career in dentistry has been under the auspices of the Seventh-day Adventist Church, yet Samuel Lee's April 21, 2005 letter makes no mention of this training. His letter is devoted to a description of her duties; he never explicitly states that the church will, in the future, pay the beneficiary for her work as a pianist or youth department director.

Whatever the beneficiary's circumstances may have been in 1998 when the petitioner filed the petition, by 2004 the beneficiary had taken concrete steps toward a career in dentistry, aided by the same religious denomination which previously had sought to employ her as a pianist and youth department director. The beneficiary herself having personally furnished this information to CIS, we cannot conclude that she has a *bona fide* intent of working for the petitioner under the terms outlined in the petitioner's earlier letters. As cited above, section 101(a)(27)(C)(ii) of the Act requires that the alien seeks to enter the United States for the purpose of performing qualifying religious work. Given the available evidence, we concur with the director that the record does not permit a finding that the beneficiary qualifies for permanent immigration benefits as a special immigrant religious worker.

Beyond the decision of the director, we note a discrepancy in the record. In a cover letter accompanying the initial filing, the petitioner's prior attorney, Eric W. Lee, stated: "The federal tax identification number for all the Seventh-Day Adventist Churches located in the United States is [REDACTED] See Exhibit 'H', *IRS Tax Exempt Certification*." Exhibit H is the beneficiary's diploma from La Sierra University. Mr. Lee apparently meant to refer to Exhibit G, which is a copy of a January 31, 1992 letter from the Internal Revenue Service, addressed to the General Conference of Seventh-day Adventists in Silver Spring, Maryland (the denomination's central headquarters). The printed text of the letter does not include any Employer Identification Number (EIN). An unidentified party hand-wrote the number [REDACTED] into the upper right corner of the document.

According to <http://www.guidestar.org>, a national database of nonprofit organizations, [REDACTED] is the Employer Identification Number for the denomination's Western Oregon Conference, not every Seventh-day

Adventist Church in the United States. The church's headquarters in Silver Spring has the EIN [REDACTED]. Numerous other Seventh-day Adventist churches have their own EINs. Mr. Lee's assertion, therefore, is demonstrably false, and the addition of the handwritten [REDACTED] onto the letter regarding the church's Silver Spring headquarters raises questions that the record does not answer.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis). We stress that this additional finding has not altered or affected our findings with regard to the grounds for revocation as stated by the director.

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 director's decision is affirmed. The approval of the petition is revoked.