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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]
WAC 97 101 51774

Office: CALIFORNIA SERVICE CENTER

Date: MAY 17 2005

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:

[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.

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 Buddhist association that operates a temple. 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 producer of audio and video recordings. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a producer immediately preceding the filing date of the petition. In addition, the director determined that the beneficiary has relied on supplemental employment, and that the beneficiary's actions did not demonstrate a *bona fide* intent to perform qualifying religious work.

On appeal, counsel asserts that the director has ignored case law and relevant evidence.

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 various grounds for revocation are somewhat interconnected. 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.

8 C.F.R. § 204.5(m)(4) requires the petitioner to demonstrate how the alien will be paid or remunerated if the alien will work in a professional religious capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support. 8 C.F.R. § 204.5(m)(1) indicates that an alien seeking classification as a special immigrant religious worker must be coming to the United States for the purpose of performing qualifying religious work.

The petitioner filed the Form I-360 immigrant visa petition on February 28, 1997. In a letter accompanying this petition, [REDACTED] abbot of [REDACTED] in Taiwan, states that the beneficiary worked at that monastery from April 8, 1992 to May 31, 1995, and that the beneficiary traveled to the United States on June 24, 1995, for the specific purpose of working for the petitioner. The petitioner's initial submission contained no other evidence or documentation of the beneficiary's work during the 1995-1997 qualifying period; [REDACTED] letter, by itself, accounts for only three months of the qualifying period. The petition included no discussion of the terms of the beneficiary's proposed employment, a deficiency which, by itself, should have prevented the approval of the petition if not remedied.

The director approved the petition on April 10, 1997. On May 9, 1997, the beneficiary filed a Form I-485 adjustment application. Like the form I-360 before it, the Form I-485 indicated that the beneficiary was an F-1 nonimmigrant student at the time. On Form G-325A, Biographic Information, the beneficiary indicated that he has worked for the petitioner since June 1995. In an October 27, 1998 letter submitted in support of the adjustment application, [REDACTED] chief executive officer of the petitioning association, states that the beneficiary "will not be dependent on supplemental employment or solicitation of funds for support in the U.S.," because "the sources of financial support will be supported by" the petitioner. [REDACTED] does not state that the beneficiary has worked for the petitioner; rather, he states, "our Buddhist association *will* employ" the beneficiary (emphasis added).

On November 2, 1998, during his adjustment interview, the beneficiary gave a sworn statement that reads, in pertinent part:

I came with my family to the United States in 1995 as a tourist. And I started going to the school, South Baylo University for a master degree [in] Acupuncture. I'm a full time student & also work for [the petitioning] temple when I'm not at school. [My work at the] temple is volunteer without any paying from [the] temple. I'm doing Audio & Video Taping & Editing of the Temple's Activities the same job as I have been doing at Taiwan's temple. My job at Taiwan is a TV producer. And I have [brought] money from TAIWAN to support myself and my family.

Counsel attested to the above sworn statement; counsel's signature appears on the document. The beneficiary's statement is consistent with the F-1 student status reflected on Forms I-360 and I-485.

On September 8, 2003, the director issued a notice of intent to revoke, based on the information in the beneficiary's sworn statement. In response to this notice, counsel protests that the notice "is vague and ambiguous. It does not provide adequate notice of the grounds for the proposed revocation. It, therefore, does not provide a reasonable opportunity to respond." This is a valid criticism; the director simply summarized the sworn statement, without explaining why this information justified revocation of the approval of the underlying petition.

We note that, in this response to the notice of intent to revoke, counsel argues "the beneficiary's two years of experience cannot be the basis for the revocation action since all the evidence establishes that [the beneficiary] was employed full-time and was salaried while in Taiwan working as a producer."

On December 7, 2003, the director requested additional evidence relating to the beneficiary's then-pending adjustment application. Among other evidence, the director requested documentation of the beneficiary's paid employment from 1997 to the date of the notice.

In response, the beneficiary submitted a new Form G-325A, dated December 29, 2003. This form instructs the alien to list his employment over the preceding five years (in this case, 1998-2003). The beneficiary listed only one "employer," specifically the petitioner, and identified his occupation as "Volunteer." The form warns of "severe penalties" for "concealing a material fact."

The beneficiary submits a new letter from [REDACTED] dated December 10, 2003. The text of this letter is identical to the earlier letter of October 27, 1998, including the assertion that the beneficiary "will not be dependent on supplemental employment." This is the last communication in the record from any official of the petitioning entity.

The beneficiary's tax returns show that, from 1999 to 2002, the beneficiary reported no wage income; the only reported income was from his spouse's employment, interest on savings, and (in 2000) capital gains from electronic stock trading. Before 1999, the beneficiary states "I used my savings for living expense." The record does not show the amount of these savings, but we can infer the existence of a substantial cash reserve, given that the beneficiary reported thousands of dollars in interest income each year, while investing tens of thousands of dollars in the stock market.

Form I-20A-B, dated April 19, 1996, shows that the beneficiary enrolled in a four-year program in "Acupuncture/Oriental Medicine" at South Baylo University. The beneficiary did not explain the relevance of this degree to the occupation of producing recordings for a Buddhist temple.

Following the issuance of the notice of intent to revoke, an investigation revealed that, during much of 2003, the beneficiary worked for [REDACTED]. On March 15, 2004, the director issued an "Addendum to Initial Notice of Intent to Revoke," stating that the beneficiary's employment with Acco Furniture "clearly demonstrates . . . that [the beneficiary] is not being adequately compensated for his services by the petitioner," and that the beneficiary is relying on supplemental employment, despite the petitioner's claims that the beneficiary would not require such employment.

The director noted that the petitioner has apparently never paid the beneficiary for his work, and the director held that part-time volunteer work does not satisfy the two-year experience requirement, nor do such terms constitute a qualifying employment offer. The director further observed that the beneficiary's pursuit of a degree in acupuncture and oriental medicine does not suggest that the beneficiary intends to work as an audio/video producer.

In response, the beneficiary, in a new declaration, asserts that he "briefly worked for [REDACTED] for five months, from June to October 2003. The sole purpose of this employment was to earn money to enable my son to remain in attendance at the University of California at San Diego. . . . This was a one time emergency" (the beneficiary having apparently exhausted the savings that allowed him to invest \$58,319 in the stock market in 2000, and \$49,430 in 2001). The beneficiary does not explain why he failed to disclose this employment on his second Form G-325A, executed only two months after his work at Acco Furniture ended. That form instructed him to list his employment over the past five years, and cautioned against concealing materials facts; and yet the beneficiary failed to disclose his only paying job during the five-year period in question.

The director, on December 7, 2003, had specifically instructed the beneficiary to submit his "six most recent pay stubs," and the beneficiary, at that time, did not submit any pay stubs from [REDACTED] or any other employer. The beneficiary's response to the notice did not contain any information at all about his work at Acco Furniture. It took an investigation to bring that employment to light. We conclude that the beneficiary deliberately withheld information about this employment, which had ended only a few weeks before the director asked for documentary evidence of recent employment.

With regard to his work at the temple, the beneficiary states "I have received compensation but it has not been in a monetary form. Such compensation would violate our Buddhist beliefs. The compensation takes the form of such things as food and materials." The record contains nothing from any official of the petitioning entity to confirm this claim, or to explain why the petitioner's CEO had previously pledged "financial support." In his 1998 sworn statement, the beneficiary never indicated that he had received any support, in any form, from the petitioning temple. Instead, he indicated that he had brought "money from TAIWAN to support myself and my family."

Counsel had previously implied that the beneficiary's work at the temple in Taiwan was paid employment, when counsel wrote: "the beneficiary's two years of experience cannot be the basis for the revocation action since all the evidence establishes that [the beneficiary] was employed full-time and was salaried while in Taiwan working as a producer." If the beneficiary's paid work as a television producer was unrelated to his temple work, as now appears to be the case (judging from his claim that "compensation would violate our Buddhist beliefs), then his paid work must have been secular, which would plainly be irrelevant to the issue of the beneficiary's past *religious* work.

The petitioner also asserts that he studied acupuncture and oriental medicine so that he could provide treatment to the monks at the petitioning temple. Once again, there is no evidence to support this new claim.

As late as 2003, temple officials made no mention of acupuncture or oriental medicine in descriptions of the beneficiary's duties, and in his 1998 sworn statement, the beneficiary made no attempt to link his studies at South Baylo University with his work at the temple. Rather, he stated: "I'm a full time student & also work for temple when I'm not at school."

Inconsistencies in the beneficiary's statements, in conjunction with his failure to disclose his secular employment, cast significant doubt on the credibility of the beneficiary's recent statements. 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*, 19 I&N Dec. 582, 586 (BIA 1988).

Counsel asserts that the beneficiary's "activities at the Temple have not been provided on a volunteer basis," and that "the beneficiary is not merely volunteering time while engaged in unrelated activities." These claims conflict with the sworn statements, attested by counsel, in which the beneficiary stated: "I'm a full time student & also work for [the petitioning] temple when I'm not at school. [My work at the] temple is volunteer without any paying from [the] temple." Counsel does not acknowledge, much less resolve, the contradiction between counsel's new claim and the beneficiary's previous sworn statement.

Counsel makes several additional arguments that are repeated on appeal, and we shall address them in that context.

The director revoked the approval of the petition on April 28, 2004, stating that the petitioner has failed to prove that the beneficiary possesses the required experience; that the beneficiary intends to work at the petitioner's temple; or that the beneficiary will not rely on supplemental employment. On appeal, counsel asserts that the regulations do not disqualify part-time volunteer work, and cites an unpublished district court decision as evidence that "the Service conceded that voluntary employment was acceptable for the two-year period." Counsel's claim is not supported by the record as counsel has not provided a copy of the court's decision. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Furthermore, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). In this matter, the district court was in New York, whereas the petitioner is in California. The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. In addition, as the published decisions of the district courts are not binding on the AAO outside of that particular proceeding, the unpublished decision of a district court would necessarily have even less persuasive value.

While the regulations are silent as to the issue of compensation and work hours for past experience, in *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980), the Board of Immigration Appeals ruled that an individual who performed part-time, uncompensated religious work lacked the continuous experience necessary for the immigration benefit sought. *Varughese*, unlike the case cited by counsel, is published, binding case law.

We note that *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982), states that compensated work constitutes "employment" for immigration purposes, even if the compensation was non-monetary. In this instance,

however, there is no credible evidence that the beneficiary received any compensation in any form from the petitioning temple. The beneficiary's own statement lacks credibility, for reasons already discussed, and the petitioner has never corroborated the relatively new claim that the beneficiary has been compensated. Given the petitioner's evident lack of involvement in the appeal, it is not immediately clear that counsel has filed this appeal at the behest of the petitioner, rather than that of the beneficiary (who is also counsel's client).

In the notice of revocation, the director noted that the beneficiary's Forms G-325A show several changes of address since the beneficiary arrived in the United States. Information on the Form I-360 petition demonstrated that the beneficiary was not residing at the temple at the time of filing. The director reasoned that, if the petitioner has been supporting the beneficiary as claimed, but the beneficiary has not been residing at the temple, then the petitioner would have to have been paying the beneficiary's rent. The director noted the absence of evidence that the petitioner has, in fact, supported the beneficiary in this way. Counsel does not address this finding, except indirectly through the general and unsupported assertion that the petitioner has been supporting the beneficiary.

Counsel argues that the director failed to give due evidentiary weight to the beneficiary's recent declaration. The director, however, had explained the inconsistencies which compromise the beneficiary's credibility. The director, for instance, observed that the beneficiary failed to mention his mid-2003 work at [REDACTED] on his December 2003 Form G-325A. The director concluded "the beneficiary was attempting to conceal this information." Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). On appeal, counsel states:

The decision vaguely references what it apparently finds to be a credibility problem. It points to an inconsistency between the statement in the beneficiary's declaration that he worked briefly for [REDACTED] and the absence of such information in the G325A submitted with his adjustment application. There is no credibility issue, however, since as the Service concedes, the beneficiary did not hide the fact of his employment during his adjustment interview.

Counsel's assertion is a significant distortion of the facts shown in the record. The director's decision contains no such "concession." The only adjustment interview mentioned in the director's decision took place in 1998, nearly five years before the beneficiary worked for Acco Furniture.

We concur with the director that the beneficiary's behavior (enrolling at an acupuncture school, working for a furniture company and concealing that employment on a government document) does not readily project a *bona fide* intention to work exclusively at a Buddhist temple. The beneficiary's attempts to reconcile the various discrepancies in the record are not persuasive. Officials of the petitioning entity have never even directly claimed that the beneficiary has ever worked at the temple (referring instead to the beneficiary's duties in the future tense). The record does not establish that the beneficiary meets the two-year experience requirement.

Regarding the issue of supplementary employment, the regulations do not entirely forbid such employment. Instead, 8 C.F.R. § 204.5(m)(4) states only that the beneficiary cannot be *solely* dependent on such employment. Counsel asserts that the beneficiary was not dependent on his work at Acco Furniture "for support," because his earnings from that job went toward his son's tuition rather than toward any economic necessities. That being said, the record is devoid of documentary evidence to show that the petitioner has ever provided any support to the beneficiary, and the beneficiary acknowledged his employment at Acco Furniture only after the director disclosed the results of an investigation. We concur with the director that the petitioner has not persuasively demonstrated that the beneficiary will not rely on supplemental employment.

Indeed, the petitioner has failed to specify how the alien will be paid or remunerated, as the above regulation requires. The petitioner has offered only the vague assurance that the petitioner will be the beneficiary's "source of financial support." 8 C.F.R. § 204.5(g)(2) requires the petitioner to establish its ability to compensate the beneficiary, but the petitioner has offered no specific information at all about the nature or amount of its "support." Without knowing anything about this support, it is impossible to determine that the petitioner has shown its ability to provide that support.

Beyond the decision of the director, the petitioner has not explained how the beneficiary's duties, mostly involving the production and editing of audio and video recordings, relate to a traditional religious function as required by 8 C.F.R. § 204.5(m)(3)(ii)(D). While the content of the recordings may be religious in nature, there is nothing intrinsically religious about producing or editing tape recordings. There is no evidence that the beneficiary is in any way responsible for the religious content of the recordings he produces. Had the director explored this issue, it may well have yielded yet another ground for revocation, even without the beneficiary's new claim that he also intends to practice acupuncture and oriental medicine (which are not traditional Buddhist religious duties) at the petitioning temple.

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).

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.