



U.S. Citizenship
and Immigration
Services

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C,

[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 03 2007
WAC 97 214 52282

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.

Σ Robert P. Wiemann, Chief
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 AAO will withdraw the director's decision and remand the petition for further action and consideration.

The beneficiary seeks classification 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 at [REDACTED] (BNP) Church in Ontario, California, where he holds several titles including Officer-in-Charge of the Youth Ministry Program. The director determined that the beneficiary is not entitled to an approved petition, pursuant to the marriage fraud provisions of section 204(c) of the Act.

Part 1 of the Form I-360 petition identifies the BNP Church as the petitioner. Review of the petition form, however, indicates that the alien beneficiary is the petitioner. An applicant or petitioner must sign his or her application or petition. 8 C.F.R. § 103.2(a)(2). In this instance, Part 9 of the Form I-360, "Signature," has been signed not by any BNP Church official, but by the alien beneficiary himself. Thus, the alien, and not the BNP Church, has taken responsibility for the content of the petition. This will not affect the adjudication of the appeal, because the record shows that the attorney who filed the appeal [REDACTED] represents the self-petitioning alien beneficiary. Thus, the appeal has been properly filed.

We note that, in April 2006, [REDACTED] and [REDACTED] were in practice together. More recent submissions show a different address for [REDACTED] with no reference to [REDACTED]. [REDACTED] is the current attorney for the BNP Church, as reflected by a duly executed Form G-28 Notice of Entry of Appearance as Attorney or Representative. Nevertheless, because the BNP Church is not an affected party under 8 C.F.R. § 103.3(a)(1)(iii), and there is no Form G-28 signed by [REDACTED] and by the self-petitioning beneficiary [REDACTED] is not the petitioner's attorney of record. The most recent Form G-28 that bears the alien self-petitioner's signature designates [REDACTED] as the attorney of record.

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).

Section 204(c) of the Act, 8 U.S.C. § 1154(c), states:

Notwithstanding the provisions of subsection (b) no petition shall be approved if (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the [Secretary of Homeland Security] to have been entered into for the purpose of evading the immigration laws or (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

8 C.F.R. § 204.2(a)(2)(ii) states:

Fraudulent marriage prohibition. Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

A visa petition may be denied pursuant to section 204(c)(2) of the Act where there is evidence in the record to indicate that an alien previously conspired to enter into a fraudulent marriage. *Matter of Kahy*, 19 I&N Dec. 803 (BIA 1988). In determining whether the petitioner entered into a fraudulent marriage, we must make an independent determination rather than rely on the outcome of a prior decision. *See Matter of Tawfik*, 20 I&N 166, 169 (BIA 1990). A decision to revoke the approval of a visa petition based on marriage fraud must rest on substantial and probative evidence; a reasonable inference cannot suffice in this regard. *Id.* at 168.

On September 3, 1992, [REDACTED] ([REDACTED]) filed Form I-130, Petition for Immediate Relative, on behalf of the present petitioner. The couple had married on June 9, 1992. On Wednesday, June 30, 1993, the couple reported to the Los Angeles District Office of what was then the Immigration and Naturalization Service for an interview. The interviewing officer asked each of them, separately, about their activities on the weekend of June 26 and 27, 1993; this was the weekend just prior to the interview. The record contains the notes from the interviews.

On April 13, 1994, the District Director, Los Angeles, issued a notice of intent to deny the immediate relative petition based on discrepancies in the statements offered during the June 30, 1993 interview. The district director stated:

Questions were asked on how you [i. [REDACTED] and your spouse spent the weekend of June 26 & 27 1993; [which was] two days before your interview, you said you were up at 6:00 am; spent the day with your [REDACTED] and the evening with friends and then took in a movie with [REDACTED]. Your spouse said he got up later and then at 9:00 am took you to work at AM-PM. Your spouse also said he later saw you at work at 2:00 pm when he arrived at the AM-PM (where he works also) and the two of you worked together until 6:00 pm; when you got off from work. And upon arriving home, had steak dinners and then watched television together for the remainder of the evening. These are only a few [of the] discrepancies noted from your interview.

The interview notes in the record corroborate the account quoted above.

[REDACTED] then attorney, [REDACTED] (a partner of the present attorney of record) requested "a further interview to determine the bona fides of their marriage." [REDACTED] submitted an unsigned statement attributed to [REDACTED]. The statement indicated that, owing to the stress of the upcoming interview, [REDACTED] and her husband quarreled and therefore spent much of the weekend apart. The statement further indicated

that her husband's statements were inaccurate because he "did not want to say we had a quarrel in the interview." The submission included copies of wedding photographs and fairly general witness affidavits.

On August 4, 1994, the district director denied the immediate relative petition, stating that the "evidence did not overcome the issues that were outlined on the intent to deny notice." On August 22, 1994, then attorney [REDACTED] appealed the decision, stating that the district director violated [REDACTED]'s right to due process by failing to grant a new interview. The attorney did not cite any authority that would require the district director to grant an additional interview or otherwise delay adjudication of the petition.

Subsequently, on September 6, 1994, attorney [REDACTED] withdrew the appeal, stating he was acting on behalf of [REDACTED]. Subsequently, at the request of the district director, [REDACTED] provided a duly executed Form G-28 dated October 3, 1994, designating [REDACTED] as [REDACTED]'s attorney of record. [REDACTED] then repeated the assertion that [REDACTED] wished to withdraw the appeal. The district director acknowledged the withdrawal on January 5, 1995.

On November 20, 1995, the petitioner, through attorney [REDACTED] requested a copy of his file under the Freedom of Information Act (FOIA). The record does not reveal why the petitioner requested a copy of the file at that time. On February 1, 1996, the district director informed [REDACTED] that the file could not be located. This correspondence was sent to [REDACTED] at [REDACTED] Los Angeles, California.

On February 23, 1996, the district director notified the alien, in care of [REDACTED] that [REDACTED] had withdrawn the appeal. This notice was sent to the same [REDACTED] address as the previous notice dated a few weeks earlier.

The Director, California Service Center, approved the present special immigrant religious worker petition on November 5, 1997. On February 3, 2006, the director issued a notice of intent to revoke, stating that [REDACTED] petition on the alien's behalf had been denied due to fraud. Therefore, the director concluded, section 204(c) of the Act prohibited the approval of the subsequent special immigrant religious worker petition.

In response to the notice, counsel stated that the "denial of the I-130 petition . . . had been appealed to the Board of Immigration Appeals. . . . To this date neither the beneficiary nor his attorney has received a decision regarding that appeal." Counsel asserted that the revocation "would be improper" because "there has never been a decision issued in regards to the appeal." The response to the notice did not include any evidence contesting or rebutting the district director's finding of fraud.

The response to the notice included a copy of the district director's February 1, 1996 letter to [REDACTED] relating to the temporary disappearance of the petitioner's file and the district director's resulting inability to comply with the FOIA request.

The director revoked the approval of the Form I-360 petition on March 6, 2006, observing that [REDACTED] had withdrawn the aforementioned appeal of the denied Form I-130 petition, and therefore the appeal was no longer pending. The director erroneously stated that [REDACTED] requested the withdrawal "through

counsel, [REDACTED]. Other than the mistaken reference to [REDACTED], the director provided accurate details regarding the withdrawal of the appeal.

On appeal from the I-360 revocation, the petitioner's present attorney of record, [REDACTED] states: "The Director's decision . . . denies Petitioner . . . [his] rights to due process of law in that Petitioner and Beneficiary were denied proper notice and any and all meaningful opportunity to explain and/or deny the Service's allegation of previous marriage fraud." Counsel notes the district director's failure to honor the petitioner's FOIA request, and states that the petitioner "and [his] attorney have no record that any withdrawal had been filed by [REDACTED] through attorney [REDACTED]"

As we have already noted, [REDACTED] no longer represented [REDACTED] when she withdrew her I-130 appeal. She had retained a new attorney, [REDACTED] (as shown by a duly executed Form G-28 in the record), and withdrew the appeal through that attorney. The alien in this matter is the petitioner in the I-360 proceeding, but he was the beneficiary in the I-130 proceeding. The beneficiary of a petition is not an affected party as 8 C.F.R. § 103.3(a)(1)(iii) defines that term, and such a beneficiary has no due process right to contest or prevent the withdrawal of a petition or appeal in this manner. Therefore, while the alien has standing to contest the I-360 revocation, he has no standing relative to the I-130 petition.

With regard to the claim that the petitioner was unaware of the withdrawal of the appeal, we reiterate that the petitioner, through his present attorney, [REDACTED] had previously submitted a copy of the district director's February 1, 1996 letter to [REDACTED] at [REDACTED]. Therefore, [REDACTED] clearly had access to correspondence addressed to [REDACTED] in February 1996. Earlier documents in the record show that Messrs. [REDACTED] were in practice together at [REDACTED]

Only about three weeks after the February 1, 1996 letter, which we know ended up in counsel's hands, the district director notified [REDACTED] at the same [REDACTED] address, of the withdrawal of the I-130 appeal. (The same letter allowed the alien until March 22, 1996 to depart the United States voluntarily.) Subsequent submissions show that [REDACTED] continued to use that same [REDACTED] address and suite number as late as August 2004.

In support of the I-360 appeal, the petitioner submits copies of court documents showing that his marriage to [REDACTED] was dissolved on February 13, 1996. The remainder of the appeal consists of affidavits from the petitioner and several witnesses.

The petitioner presents his version of the history of his relationship with [REDACTED]. He mentions "the immigration interview" in passing, but does not discuss the discrepancies between his statements and those of his then spouse. If the couple did not spend the weekend of June 26-27, 1993 together, then the petitioner lied under oath when he not only claimed that they did spend it together, but also provided numerous purported details regarding their activities that weekend. Perjury is a criminal offense in its own right, quite apart from its indirect immigration consequences, but any legal repercussions arising from the petitioner's stipulation of perjury lie outside the scope of the present proceeding. With respect to the present proceeding, it will suffice to observe that, once the petitioner concedes that his own prior statements under oath are untrue and

unreliable, it becomes very difficult to lend significant weight to any statement the petitioner makes, whether sworn or not. The outcome of this proceeding, therefore, cannot hinge on the petitioner's own claims.

Several witnesses offer affidavits, asserting that the petitioner's marriage was valid and sincere. The witnesses include the petitioner's relatives and friends, as well as [REDACTED] the [REDACTED] whom [REDACTED] had mentioned during her 1993 interview. [REDACTED] "I know that during the time the two went to their immigration interview that they had problems answering questions. I am very sure that the two had their minds occupied because they were having serious problems with their marriage." It is not clear how much [REDACTED] knows about the substance of the couple's statements during the interviews. The two completely contradicted one another regarding events that took place only days before the interview; to say that they "had problems answering questions" is a considerable understatement.

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. *Matter of Ho* at 586. 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. *Id.* at 582, 592. With this in mind, we now turn to the objective evidence offered on appeal.

Bank statements and letters show that the petitioner and his then spouse maintained joint accounts at Bank of America as of June 22, 1993, and Trust Savings Bank as of March 4, 1993. Documents from the California Department of Motor Vehicles and Allstate Indemnity Company indicate that the couple was jointly registered as owners of a 1986 Chevrolet Nova on February 23, 1993. The record also indicates that the couple filed a joint income tax return for 1992. These materials reflect actions beyond mere execution of a marriage license, and corroborate witnesses' claims that the petitioner and his then spouse lived together and shared their resources and responsibilities.

The petitioner has submitted documentation, however sparse, that is consistent with a *bona fide* marriage, and the explanation for the discrepant interview statements is plausible. We find, on balance, that the grounds cited in the revocation notice may support a reasonable inference of marriage fraud, but do not rise to the level of substantial and probative evidence required by *Tawfik*. Therefore, we withdraw the sole stated ground for revocation of the approval of the petition. To emphasize: the AAO does not find that the marriage was legitimate. The AAO finds only that the evidence of marriage fraud is insufficient to meet the stringent requirements of section 204(c) of the Act and related case law. Because the AAO's finding rests on the evidence currently in the record, the AAO's finding does not preclude a future finding of 204(c) marriage fraud based on further evidence that is not currently available to the AAO.

Having examined the director's stated grounds for revocation, and found them wanting, the AAO turns its attention to other factors that the director should consider in any future handling of this proceeding. We note that, while *Matter of Arias*, 19 I&N Dec. 568, 570 (BIA 1988) precludes the introduction of new grounds in a revocation notice, there is no comparable prohibition on discussion such matters in a remand order that may, in the future, lead to the issuance of another notice of intent to revoke.

One issue surfaced in a notice of intent to revoke issued on July 17, 2004, but the director's final notice of revocation did not revisit the issue. That issue relates to the religious denominational affiliation of the petitioner and his intending employer, the BNP Church. The regulation at 8 C.F.R. § 204.5(m) contains the following pertinent definitions:

Bona fide nonprofit religious organization in the United States means an organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations, or one that has never sought such exemption but establishes to the satisfaction of the Service that it would be eligible therefor if it had applied for tax exempt status.

Bona fide organization which is affiliated with the religious denomination means an organization which is closely associated with the religious denomination and which is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

Religious denomination means a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, religious congregations, or comparable indicia of a bona fide religious denomination. For the purposes of this definition, an inter-denominational religious organization which is exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 will be treated as a religious denomination.

The petitioner must identify the religious denomination involved with this petition. The petitioner must demonstrate either that the BNP Church is a self-contained religious denomination in its own right, or that the BNP Church is affiliated with a religious denomination.

An unattributed document in the record, entitled "The Banal na Pag-aaral Church," reads, in part:

The Banal na Pag-aaral Church was founded in 1968 in the Philippines and was brought to the United States in 1983. . . . Its worldwide membership total[s] 55,000 to date. There are 187 BNP Chapters, defined by locations, all over the world. . . .

The BNP Church is governed and administered by the BNP Council. It is the policy-making body of the entire organization. It also serves as a consultative body to the office of the President/Pastor, who is the head of the BNP Church.

The above claims suggest that the BNP Church may be its own denomination, but further evidence is necessary to support a conclusion in this regard. The director must provide the petitioner the opportunity to provide definitive evidence to establish whether Banal Na Pag-Aaral is a denomination in its own right or, in the alternative, a "movement" within some other denomination (such as, e.g., the Roman Catholic Church). A

BNP publication in the record contains numerous terms that appear to be associated with Roman Catholicism, such as “the Feast of the Lady of Guadalupe” and “the Lady of Lourdes.”

On a related note, all of the petitioner’s religious credentials were issued by the Universal Life Church, which, according to the web site <http://www.themonastery.org> (visited July 30, 2007), “welcomes all who ask to Become an Ordained Minister and grants it without question.” Different religious denominations have different standards as to who qualifies for ordination, and it does not appear that denominations that normally require rigorous seminary study would readily recognize the “pop-up instant ordination credential” available from the Universal Life Church Monastery.

Therefore, the director must ascertain not only the religious denomination of the BNP Church, but also the normal minimum requirements for ordination within that denomination. If the petitioner’s credentials from the Universal Life Church are not generally accepted by the denomination, then the petitioner’s eligibility is in question. We note that, because the petitioner has claimed that the BNP Church is an international organization led by a “President/Pastor” and “governed and administered by the BNP Council,” the petitioner must provide documentation of the ordination standards set forth by the BNP Council. A letter from a local church official in Ontario cannot suffice, unless accompanied by independent documentary proof that the local official is also a BNP Council member and/or the BNP President/Pastor. The materials in the record offer no clue as to the location or identities of the BNP Council and President/Pastor.

The record contains a copy of an October 6, 1986 letter from the Internal Revenue Service (IRS), stating that the IRS recognized Banal Na Pag-Aaral, Inc. as a 501(c)(3) tax-exempt non-profit organization. The IRS classified the employer not as a church, under section 170(b)(1)(A)(i) of the Internal Revenue Code (IRC), but under a more general classification, section 170(b)(1)(A)(vi) of the IRC. This latter section *can* apply to religious organizations, but it applies to many types of secular organization as well. The letter is, therefore, not *prima facie* evidence that the BNP Church is tax exempt *as a religious organization* that is affiliated with a religious denomination.

Apart from the issue of the BNP Church’s specific classification under section 170(b)(1)(A) of the IRC, contact with the IRS reveals a more fundamental issue of concern. The IRS maintains an online, searchable version of Publication 78, *Cumulative List of Organizations described in Section 170(c) of the Internal Revenue Code of 1986* at <http://www.irs.gov/charities/article/0,,id=96136,00.html>. When the AAO searched this site for the BNP Church, on November 27, 2007, there was no listing for that entity.

There are various reasons why a church might not be listed in Publication 78; those reasons are set forth at <http://www.irs.gov/charities/charitable/article/0,,id=150282,00.html>. None of those reasons, however, appear applicable to the BNP Church. For instance, if a church did not apply for recognition, then it would not appear in the list. The IRS determination letter from 1986 shows, however, that the BNP Church *did* apply for (and receive) recognition.

The same IRS web page that allows access to the searchable version of Publication 78 also provides a telephone number, [REDACTED] 0, to “confirm an organization’s status.” The AAO called this number on November 27, 2007, and provided the BNP Church’s employer identification number [REDACTED] provided

on the Form I-360, the 1986 IRS letter, and other materials in the record. The IRS representative stated that the BNP Church lost its tax-exempt status in December 1997, thus explaining its absence from Publication 78.

If the BNP Church is not tax-exempt under section 501(c)(3) of the IRC, then the BNP Church is not a qualifying employer under 8 C.F.R. § 204.5(m)(3)(i), and it is not a bona fide nonprofit, religious organization in the United States as required by section 101(a)(27)(C) of the Act and its relevant subsections. The BNP Church's loss of its tax-exempt status effectively voids the petition because no qualifying job offer can exist.

Throughout the ten years following the approval of this petition, the petitioner has consistently maintained that his job offer from the BNP Church entitles him to special immigrant classification, which could only be true if the BNP Church has been, and still is, a qualifying tax-exempt religious organization. The IRS, however, has indicated that the BNP Church lost its tax-exempt status only a month after the November 1997 approval of the petition. The petition cannot be approved unless the petitioner establishes that the BNP Church was tax-exempt without interruption from August 8, 1997 (the date the petition was filed) through the date of this notice.¹ It will not suffice for the petitioner to establish that the BNP Church regained its tax-exempt status after the issuance of this appellate decision or any subsequent notice of intent to revoke or notice of adverse information regarding the loss of that status.

Pursuant to *Arias*, the BNP Church's tax-exempt status (or lack thereof) cannot be used as a basis for revocation unless and until the director cites that issue in a new notice of intent to revoke. Should the petitioner wish to contest the above findings regarding the BNP Church's tax-exempt status, the AAO advises that an IRS representative has already confirmed the loss of status in 1997, and the petitioner therefore bears a very heavy burden of proof to rebut the IRS' confirmation. A copy of the IRS determination letter from 1986 or a pre-1997 copy of IRS publication 78, listing the BNP Church, would not suffice as rebuttal, because such documents would not establish that the petitioner is now tax-exempt, and has been for the last ten years. If the petitioner intends to submit documentation directly from the IRS, such documentation must be unequivocal and verifiable.

Another issue that bears further exploration concerns the petitioner'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 August 8, 1997. Therefore, the petitioner must establish that he was continuously performing the duties of the proffered position throughout the two years immediately prior to that date.

The record of proceeding contains a photocopied IRS Form W-2 Wage and Tax Statement, purportedly for the year 1995. The document appears to have been altered; the numeral "5" in the date "1995" appears to be

¹ The BNP Church also had to be tax-exempt during the two years when the petitioner purportedly accumulated qualifying experience there prior to the filing date, but the available evidence does not call the BNP Church's pre-1997 tax-exempt status into dispute.

handwritten rather than printed. Because part of the two-year qualifying period fell during 1995, documentation of the petitioner's employment in 1995 is material to the petition. The apparent alteration of the purported 1995 Form W-2 bears further inquiry, and raises further credibility questions under *Matter of Ho*.

The petitioner has also, on separate occasions, submitted two different versions of a purported 1996 Form W-2. The first version, printed in all capital letters, showed gross wages of \$12,480.00, minus withholding in the amount of \$773.76 for Social Security tax and \$180.96 for Medicare tax. A subsequently submitted 1996 Form W-2 shows the same gross wages, but shows no taxes withheld. This second document includes lowercase letters. Thus, the petitioner has submitted two very different Forms W-2, purportedly for the same year and from the same employer. By elementary logic, it is impossible that both of the 1996 Forms W-2 accurately reflect tax withholding from the beneficiary's claimed salary.

8 C.F.R. § 103.2(b)(5) reads, in full:

Request for an original document. Where a copy of a document is submitted with an application or petition, the Service may at any time require that the original document be submitted for review. If the requested original, other than one issued by the Service, is not submitted within 12 weeks, the petition or application shall be denied or revoked. There shall be no appeal from a denial or revocation based on the failure to submit an original document upon the request of the Service to substantiate a previously submitted copy. Further, an applicant or petitioner may not move to reopen or reconsider the proceeding based on the subsequent availability of the document. An original document submitted pursuant to a Service request shall be returned to the petitioner or applicant when no longer required.

Pursuant to the above regulation, the director is instructed to request the original 1995 and 1996 Forms W-2 from which the submitted photocopies were made. In the event that the petitioner should fail to provide any of the original documents, that failure would, by itself, constitute grounds for an unappealable revocation under 8 C.F.R. § 103.2(b)(5). Given the unequivocal wording of the regulation, the assertion that the original document has been misplaced or destroyed would not shield the petition from revocation. Also, the regulation does not state or imply that, after the passage of a certain amount of time, a petitioner is no longer required to submit an original document.

We note the inscription on each Form W-2: "This information is being furnished to the Internal Revenue Service." Information from Forms W-2 is typically reported on IRS Form W-3, Transmittal of Wage and Tax Statements. The BNP Church's Forms W-3 for 1995 and 1996 may contain useful information, and the director should endeavor to obtain these documents.

If the petitioner has submitted a Form W-2 that has been materially altered, the submission of the altered document would constitute an attempt to procure immigration benefits through fraud, in violation of Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). The director must, therefore, afford the petitioner a meaningful opportunity to provide objective documentary evidence to establish where the truth, in fact, lies.

The petitioner has overcome the sole ground for revocation stated in the notice of revocation. Nevertheless, additional grounds remain which the petitioner must resolve before the petition can properly be approved. Therefore, 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. If the director intends to issue a new notice of revocation, then the director must first issue a notice of intent to revoke, setting forth all of the intended grounds for such a decision. 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, regardless of the outcome, is to be certified to the Administrative Appeals Office for review.