

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

C1

PUBLIC COPY



FILE: [Redacted]
SRC 00 102 52362

Office: TEXAS SERVICE CENTER Date: JAN 31 2007

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas 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) remanded the matter for further consideration and action. The director revoked the approval a second time and, pursuant to the AAO's remand order, certified the decision to the AAO for review. The AAO again remanded the matter, and the director has again certified a new order of revocation to the AAO for review. The decision of the director will be affirmed and the approval of the petition will remain revoked.

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 pastor. In the most recent decision, the director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition, or the employer's ability to pay the beneficiary's proffered wage. The director also determined that the petitioner had failed to clarify critical aspects of the job offer extended to the beneficiary.

The director certified the denial decision on October 13, 2006. Because the record contains no subsequent submission from the petitioner, the AAO considers the record to be complete as it now stands.

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 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 February 8, 2000. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a minister throughout the two years immediately prior to that date.

The beneficiary arrived in the United States on December 1, 1998, as a B-2 nonimmigrant visitor. Therefore, the beneficiary was outside the United States for part of the two-year qualifying period. On May 19, 1999, the beneficiary applied for an extension of his B-2 nonimmigrant visa. There is no indication that any church sought an R-1 nonimmigrant religious worker visa on the beneficiary's behalf at that time. An R-1 visa, unlike a B-2 visa, would have permitted the beneficiary to work as a minister in the United States.

Executive Secretary of the Council of Assemblies of God of Colombia, attests in a letter to the beneficiary's credentials and employment as a minister. This letter, however, is dated March 5, 1997, more than a year before the qualifying period began, and therefore it is not evidence of qualifying ministerial work during that period. The beneficiary's possession of prior ministerial credentials is not *prima facie* evidence of later ministerial work. Even then, the letter only attests to the beneficiary's credentials; it does not identify any church where the beneficiary has actually worked as a minister. Another letter, dated March 3, 1997, repeatedly

identifies the beneficiary as a "teacher" at the Central Biblical Institute in Bogotá. The letter refers to the beneficiary's "experience as [a] teacher and pastor," but does not indicate that he was actively performing pastoral duties at the time.

The beneficiary's résumé, submitted with the initial filing of the petition, lists five positions that the beneficiary held between August 1963 and April 1997. It does not list any work during the 1998-2000 qualifying period. The résumé does not mention the Central Biblical Institute by name, but there is a general reference to ancillary work as a "Bible School Teacher" from January 1993 to April 1997.

In a letter dated December 21, 1999, Rev. [REDACTED] Senior Pastor of the petitioning church, states that the beneficiary "has faithfully served his congregation for over thirty years in Colombia and Venezuela and now seeks to serve God in the U.S. through his ministry." Rev. [REDACTED], in this letter, does not state that the beneficiary has worked in the United States for the petitioner or for any other church. He refers to the beneficiary's work in the United States in the future tense, discussing what the beneficiary "will" do.

Other details of the beneficiary's reported work history appeared in the AAO's remand order issued April 15, 2005:

The director approved the petition on March 9, 2000, and the beneficiary filed a Form I-485 adjustment application on February 21, 2003. On Form G-325A, Biographic Information, the beneficiary indicated that he had worked since March 1998 at the [REDACTED] of God, [REDACTED] Houston, Texas. (The March 1998 starting date cannot be correct, as the beneficiary did not arrive in the United States until December 1998.) . . .

In response to [a May 15, 2003 request for evidence], [REDACTED] [REDACTED] of the Church of God, South Central Hispanic Region, states that the beneficiary "is currently serving as a minister to the [REDACTED] in Houston, Texas. [The beneficiary] was assigned to the Renacer congregation in January 2000. Originally [the beneficiary] came to the country to assist Rev. I [REDACTED] in the [petitioning church]; soon thereafter he was assigned to the Renacer church." As noted above, the beneficiary's aforementioned Form G-325A makes no mention of any change of assignment in January 2000. . . .

The petitioner also submits "Income Expences [sic] Report[s]" from "Iglesia de Dios Restauracion," [in Columbus, Texas]. The 2000 report indicates that the beneficiary received \$4,800 in salary that year. . . .

[T]he petitioner must establish that the beneficiary was continuously performing the duties of a minister between February 1998 and February 2000. The record, at this point, is nebulous with regard to the beneficiary's work prior to the filing date.

Pursuant to the above, the petitioner must establish a complete chronology of the beneficiary's church assignments from February 1998 to the present, with corroboration from each of those churches. . . .

If the petitioner cannot show that the beneficiary worked continuously as a minister throughout the two-year qualifying period prior to the filing date . . . then such grounds would justify the revocation of the approval of the petition.

Form G-325A, mentioned above, instructs aliens to show their "last occupation abroad," including the "full name and address of employer," "occupation," and dates of employment. On his form, the beneficiary claimed to have worked as a "Senior Pastor" from January 1995 to December 1998, but he did not identify the employer; he left that section blank.

On June 9, 2005, the director instructed the petitioner to "establish a complete chronology of the beneficiary's church assignments from February 1998 to the present, with corroboration from each of the churches." In response to this request, the petitioner does not provide any such chronology. Instead, counsel states:

While the regulations require continuous work for two years before filing, the Act itself merely requires continuous work for two years before applying for admission. . . . Counsel interprets the provisions to deter fraudulent applications by assuring that ministers are indeed following a religious calling. It is abundantly clear that forty-two (42) years as a minister is a religious calling. . . . Moreover, the record reflects that the Beneficiary has more than met the two-year requirements set out by the regulations. Moreover, there is no evidence that the Beneficiary has ceased ever from being [*sic*] a minister.

While the statutory wording refers to application for admission, the alien cannot apply for admission until after a petition is approved, and the petition cannot be approved unless the alien is eligible for the benefit sought. As to the manner in which "[c]ounsel interprets the provisions," counsel's interpretation of the statute and regulations is not binding on the government. The statute and regulations clearly state that the two years of experience must "immediately" precede the request for benefits. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d. 1289, 1295 (5th Cir. 1987). If Congress had intended simply that an alien must have had at least two years of experience at some undefined time in the past, then the statutory phrase "immediately preceding" would have no purpose or meaningful effect; indeed, the phrase would be redundant and only cause confusion. We construe this phrase to require that the alien has not only accumulated experience, but remains active in the field at the time the petition is filed.

As for counsel's assertion that "there is no evidence that the Beneficiary has ceased ever from being a minister," Section 291 of the Act places the burden of proof on the party seeking benefits. The government does not need to produce any evidence that the beneficiary has ceased to work as a minister. It is the petitioner's burden to produce persuasive evidence that the beneficiary has worked continuously. In the absence of such evidence, there is no presumption of eligibility.

The director issued a straightforward request for the petitioner to account for the beneficiary's work during a specific two-year period. Rather than comply with this request, counsel for the petitioner has proffered a self-serving alternative interpretation of the statutory and regulatory language. We must therefore conclude that the petitioner has refused to comply with the director's request. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. 8 C.F.R. § 103.2(b)(14).

On October 31, 2005, the director issued a new notice of revocation and certified its decision to the AAO. In response to this notice, counsel states: "The petitioner has shown that [the beneficiary] has been an evangelical pastor for over 40 years. Since 40 years is more than 2 years, [the beneficiary] has worked at least for 2 years prior to his application for admission as an immigrant as an evangelical pastor." Counsel's logic, here, ignores once again the requirement that the two years of experience must immediately precede the request for benefits. The beneficiary's experience prior to that two-year window, whatever its duration, does not create a permanent entitlement to special immigrant classification.

On August 30, 2006, the director issued a new notice of intent to revoke, repeating that the petitioner "must show that the beneficiary was engaged in a religious occupation or vocation for the period of February 8, 1998 to February 8, 2000" (director's emphasis). The director added: "The fact that the beneficiary has been ordained as a minister does not in fact prove that the beneficiary is actually working as a minister," and that the statute clearly defines a specific two-year qualifying period. The director also noted: "It is incumbent on the petitioner to show that the beneficiary qualifies for this benefit," rather than on immigration authorities to produce evidence to the contrary. The record contains no response to this notice, nor, as noted above, any response to the certified notice of revocation. The petitioner's response to the October 31, 2005 revocation appears to be the petitioner's final communication on this matter.

The record is devoid of evidence to show that the beneficiary worked as a minister between February 1998, when the qualifying period began, and December 1998, when he entered the United States. The petitioner has not even identified any church or churches where the beneficiary worked during that period. Regarding the beneficiary's subsequent work in the United States prior to the filing of the petition, the petitioner has failed to clarify its sometimes contradictory claims, despite several opportunities to do so. We therefore affirm the director's finding that the petitioner has failed to establish that the beneficiary continuously carried on the vocation of a minister throughout the two-year qualifying period.

Two of the grounds for revocation are somewhat interrelated, specifically the terms of the job offer and the intending employer's ability to compensate the beneficiary. The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability

shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The regulation requires “evidence that the prospective . . . employer has the ability to pay the proffered wage.” The petitioner and the prospective employer are not always the same entity. Therefore, the petitioner must first establish the identity of the prospective employer, and then demonstrate that entity’s ability to pay the beneficiary’s wage.

The AAO’s 2005 remand order contains a chronology regarding the place of employment and ability to pay:

Rev. [REDACTED] . . . stated that the church “has recently expanded to Columbus [sic], Texas. The congregation as well as the Office of the State Overseer, located in San Antonio, Texas, make ourselves responsible for [the beneficiary’s] support of \$1,200.00 per month. In addition, we will provide housing for the family. . . . We hope to place [the beneficiary] as the Senior Pastor for the Columbus church located at [REDACTED], Columbus, Texas.”

The petitioner’s initial submission did not include any of the types of documentation required by 8 C.F.R. § 204.5(g)(2). Instead, the petitioner submitted a copy of a bank statement, showing a balance of \$1,485.39 as of November 30, 1999. The bank statement was addressed to [REDACTED], Houston, Texas. This address is not the address shown on the Form I-360 petition. . . .

Subsequently, on May 15, 2003, the director requested additional information relating to the adjustment application. The director quoted the regulation at 8 C.F.R. § 204.5(g)(2), including the list of acceptable types of documentation, and instructed the beneficiary to submit “evidence for 2000, 2001 and 2002 showing that [the petitioner] has the ability to pay a salary” to the beneficiary.

In response to that notice, [REDACTED], administrative bishop of the Church of God, South Central Hispanic Region, states that the beneficiary “is currently serving as a minister to the Church of God Renacer in Houston, Texas. [The beneficiary] was assigned to the Renacer congregation in January 2000. Originally [the beneficiary] came to the country to assist Rev. [REDACTED] in the [petitioning church]; soon thereafter he was assigned to the Renacer church.” As noted above, the beneficiary’s aforementioned Form G-325A makes no mention of any change of assignment in January 2000. [REDACTED] does not mention the beneficiary’s compensation at all, and therefore his letter does not corroborate the claim that the Office of the State Overseer is responsible, in part or in full, for paying the beneficiary’s salary.

Counsel asserts “Iglesia de Dios-East Houston does have the ability to pay [the beneficiary]. Attached are the **ORIGINAL AUDITED FINANCIAL STATEMENTS** for **2000, 2001 and 2002**” (counsel’s emphasis). These statements cover the period from September 1, 2000 to December 31, 2002.

The director issued a notice of intent to revoke, stating that the financial statements do not establish *the petitioner's* ability to pay the proffered wage. . . .

The petitioner submits an unaudited "balance sheet," dated November 9, 2002, showing that the petitioning church has \$20,000 in "current assets," of which \$17,000 consists of "Sound equipment" and "Chairs and equipment." An accompanying table indicates that the petitioner paid out \$1,400 per month in "Wages/Salaries/Benefits" during 2001 and 2002. The petitioner also submits copies of bank statements from December 2001 through May 2003. The petitioner also submits "Income Expences [sic] Report[s]" from "[redacted] [redacted]" the Columbus church. The 2000 report indicates that the beneficiary received \$4,800 in salary that year. The phrase "6 mount" is inserted in parentheses after the beneficiary's name. Another named pastor received the same amount, again with "6 mount" added in parentheses. Assuming "mount" to mean "month" (the reports contain other misspelled words as well), this report indicates that the petitioner paid the beneficiary only \$800 per month in 2000, substantially less than the proffered salary of \$1,200 per month.

The director revoked the approval of the petition on January 2, 2004, stating that the financial documents for "[redacted]" do not document the finances of the petitioning church. The director added that the figures shown in the unaudited reports from the "[redacted]" church do not match the figures in the audited reports from the "[redacted] Houston" church. This latter conclusion is unremarkable, as the record plainly shows that "Restauración" and "[redacted]" are two different churches at two different addresses.

The director also observed that some materials place the beneficiary at [redacted] and others place him at [redacted]. On appeal, counsel shows that these two terms apply to the same church, which we shall call "East Houston."

The director based the revocation, at least in substantial part, on the assertion that the *petitioner*, not the *employer*, must establish ability to pay. This finding, however, is inconsistent with the plain wording of 8 C.F.R. § 204.5(g)(2), which requires "evidence that the prospective United States employer has the ability to pay the proffered wage." In this instance, the petitioner is a church, but not the church where the beneficiary has worked or intends to work.

It is crucial for the petitioner to establish and confirm the actual source of the beneficiary's past and intended future wages. The available evidence is unclear in this regard. On the one hand, the petitioner has submitted financial statements from the [redacted] church, including "[redacted]". On its face, such evidence certainly implies that the [redacted] church pays its own clergy. On the other hand, however, the petitioner has submitted unaudited statements from the [redacted] church, identifying the beneficiary by name as having received wages from that church in 2000.

The materials in the record are not entirely in agreement as to when the petitioner left one church to work at another. It would be in order, therefore, for the petitioner to produce some type of documentary evidence to establish definitively when the beneficiary left the [REDACTED] church for the [REDACTED] church, in addition to documentation that specifically identifies the entity responsible for paying the beneficiary's salary.

With regard to the audited financial statements from the [REDACTED] church, those statements cover all of 2001 and 2002, but only the last four months of 2000, and thus the statements do not establish the church's financial status as of the petition's February 2000 filing date. As of September 1, 2000, the church operated at a net deficit of \$2,866.38. The church ended each year with current assets between \$1,800 and \$2,600. The church's expenses include a [REDACTED] of \$6,690.00 in 2000, \$22,350.00 in 2001, and \$24,400.00 in 2002. These amounts exceed the beneficiary's proffered salary of \$1,200 per month, although the report does not specify whether the [REDACTED] went to a single pastor or was shared among two or more. Without some information as to which individual(s) received the "[REDACTED]" we cannot determine whether these audited financial statements establish ability to pay. If the "[REDACTED]" amounts do not include payments to the beneficiary, then it does not appear that sufficient funds remained for the beneficiary's salary. If, on the other hand, the petitioner can demonstrate that the "[REDACTED]" included the beneficiary's salary in full, then such evidence would show that the petitioner not only could, but *did*, pay the beneficiary's proffered wage during the time in question.

In a June 9, 2005 request for evidence, the director stated: "For each church where the beneficiary worked since February 2000, the petitioner must show that the church was able to pay (or paid) the beneficiary his full proffered wage of \$1,200 a month during that time that the beneficiary was working for that church." In response, counsel states that the beneficiary originally "was voluntarily working for the branch church in Columbus. The Petitioner then offered the Pastor the position of head pastor at the Columbus branch church. . . . While working as a minister for the Columbus church, the Petitioner saw the need to transfer the beneficiary to work for the new Hispanic [REDACTED] Church of God which is where the Beneficiary is presently working." Counsel does not state when the transfer took place. We note that the R-1 nonimmigrant petition that allowed the beneficiary to work at the church in Columbus was valid only at that location. A transfer to a different church would have required a new I-129 petition, pursuant to 8 C.F.R. § 214.2(r)(6).

Regarding the audited financial statements from the East Houston church, counsel states: "The Church is a non-profit [*sic*] which essentially means that its funds vary and obviously so does [*sic*] that of the salaried workers. The accounting records of a Church cannot compare to those of a private business. . . . Again, the audited financial records should be viewed not as those of a private business but that [*sic*] of a church." Counsel cites no statute, regulation, or case law that arbitrarily entitles churches to an especially lenient standard of proof.

The director had inquired as to the number of employees at the church where the beneficiary was to work. Counsel has responded: "The only salaried employees are the beneficiary and another employee." The petitioner provides no evidence to corroborate this assertion. The assertions of counsel do not constitute evidence. *Matter*

of Laureano, 19 I&N Dec. 1, 2, 4 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, counsel does not even identify the "other employee," either by name or by title, nor does counsel specify this other individual's salary.

The resubmitted audited financial statements for the East Houston church list several itemized expenses, but there is no line item for "payroll," "salary" or any comparable term. It is, therefore, impossible to draw any conclusions about the claimed second employee from these statements. In the absence of any identifiable line item for salaries, we cannot rule out that the ' [REDACTED] ' is shared between the beneficiary and the other unidentified employee.

The statements show negative income for 2002, 2001 and the last four months of 2000. As the AAO has already noted, the statements do not reach all the way back to the filing date, and the petitioner has not explained this omission. The claim that churches should be entitled to different rules or standards of evidence is special pleading and not persuasive in this proceeding.

In a letter dated August 15, 2005, [REDACTED], Secretary of the [REDACTED] church, states that the beneficiary "is assigned an initial salary of \$500.00 weekly," which will increase as the church grows. Ms. [REDACTED] does not indicate what provisions, if any, the church has made for the beneficiary's housing (previously stated as part of his compensation). The audited financial statements show that the "[REDACTED]" has never matched the "initial salary of \$500.00 weekly," even if we assume without evidence that the beneficiary received all of the [REDACTED]

The director, in the October 31, 2005 notice of revocation, found that the petitioner had not resolved the outstanding issue of the intending employer's ability to pay the beneficiary. In response, in the last substantive communication relating to this proceeding, counsel discusses the credentials of the accountant who prepared the audited financial statement, and states: "The report . . . notes that [the beneficiary] has been the Church's full time pastor since September 2000." The report, however, says no such thing; the beneficiary's name does not appear in the document. The statement shows only the disbursement of a "[REDACTED]" The petitioner has provided no documentary evidence to show how much of the "[REDACTED]" went to the beneficiary.

In the most recent substantive submission, the petitioner has provided no new evidence. The petitioner has simply resubmitted documents which had already been found to be deficient. The evidence of record still leaves key questions unanswered, and therefore, contrary to counsel's assertion, the petitioner has not established by a preponderance of evidence that the beneficiary's intending employer has consistently been able to pay the beneficiary's salary throughout the period of his employment there.

The revocation will be affirmed for the above stated reasons, with each considered as an independent and alternative basis for revocation. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The director's decision of October 13, 2006 is affirmed. The approval of the petition is revoked.