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U.S. Citizenship
and Immigration
Services

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MAR 30 2007

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:
WAC 01 218 50949

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:

SELF-REPRESENTED

INSTRUCTIONS:

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

Mari Johnson

S Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. an appeal, the director reopened and approved the 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 member church of Iglesia Evangelica de Jesucristo. 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 minister. 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. In addition, the director determined that the petitioner had not established its ability to compensate the beneficiary.

On appeal, the petitioner argues that it has met the regulatory requirements regarding submission of 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 unrebutted, 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 all, in some way, involve the issue of compensation. 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 April 30, 2001. 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 religious organization seeking to employ the beneficiary as a minister must state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration). 8 C.F.R. § 204.5(m)(4). 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. 8 C.F.R. § 204.5(g)(2).

In a letter submitted with the initial filing, [REDACTED], Pastor of the petitioning church and Executive Secretary of its parent organization, stated that the beneficiary “has been [a] minister since 1996. . . . After he Graduated from the Bible Institute [in] June 1998 He was promoted to the Christian education department director. [In] January 1999 he received a full Minister Ord[i]nation. Up the present he’s working voluntar[il]y.” [REDACTED] indicated that the beneficiary’s “position guarantees a minimum salary of 1,200.00 [dollars] per month and the usual fringe benefits.”

In a request for evidence issued December 4, 2001, the director instructed the petitioner to provide further details and evidence regarding the beneficiary's work history for the 1999-2001 qualifying period and "the terms of payment for services or other remuneration." The director also requested an explanation as to how the beneficiary has supported himself in the United States. In response, [REDACTED] has stated:

[The beneficiary] has been working at [the petitioning church] from April 1999 to the present on a volunteer basis. [The petitioning church] collects an offering to pay him for his services. He currently receives an offering of \$1,200.00 per month as remuneration for his services. He currently holds the position of Assistant Pastor. He conducts worship services, bible studies, choir direction, etc.

We note that, while the petitioner called the beneficiary a "volunteer," the petitioner also indicated that the beneficiary received the full proffered compensation of \$1,200 per month.

The director denied the petition on June 4, 2002, stating that "volunteer activities do not constitute qualifying work experience." The director acknowledged the petitioner's claim that the beneficiary "receives an offering of \$1,200 per month for his services," but stated that the petitioner "must show that [the beneficiary] will be employed in the conventional sense of full-time salaried employment."

On July 8, 2002, the California Service Center received an appeal filed by [REDACTED] of Los Angeles, California. [REDACTED] connection to the petitioning church is not clear; she did not identify herself as a church official, or as an attorney or representative of the church. It is, therefore, not clear whether or not this 2002 appeal was properly filed by an affected party. The subsequent reopening of the petition makes this procedural question moot.

The 2002 appeal included Internal Revenue Service (IRS) Form 1099-MISC Miscellaneous Income statements, indicating that the petitioner paid the beneficiary "Nonemployee compensation" in the amount of \$9,600 in 1999, and \$14,400 per year in both 2000 and 2001. These amounts are consistent with regular payments of \$1,200 per month beginning in May 1999.

The director, upon receipt of the 2002 appeal, apparently reopened the proceeding for the purpose of approving the petition, pursuant to 8 C.F.R. § 103.3(a)(2)(iii). The director approved the petition on July 31, 2002.

On July 16, 2003, the beneficiary filed a Form I-485 application to adjust status. In conjunction with this application, the beneficiary submitted a letter from [REDACTED] reaffirming that the beneficiary has been working as "Pastor Assistant with a salary of \$1,200.00 . . . Per month." The beneficiary reported his church income as business income (from "Church Adm[inistration]") on his income tax returns. Several of the earlier returns have been amended to reflect this income, which was omitted from the original returns.

On January 16, 2006, the director issued a notice of intent to revoke, stating: "There is no evidence in the record that the beneficiary was working in a religious capacity, and was paid for this employment during the

time required.” The director noted [REDACTED]’s repeated references to the beneficiary as a “volunteer.” The director also stated: “The record is silent on the petitioner’s ability to pay the proffered wage.”

In response to the notice, the petitioner has submitted copies of canceled checks, showing that the petitioner paid the beneficiary \$1,200 per month in November 2004, January through August 2005, December 2005 and January 2006. The petitioner has also submitted copies of IRS Form 990-EZ returns for 2003 and 2004 for Iglesia Evangelica de Jesucristo and other documents, which we shall discuss later in this decision.

The director revoked the approval of the petition on April 1, 2006, using language that essentially echoed that of the notice of intent to revoke. The director repeated the assertion that the record contains “no evidence that the beneficiary . . . was paid for this employment.” The director did not discuss or acknowledge the previously submitted tax forms such as IRS Forms 1099-MISC.

On appeal, [REDACTED] states:

As we specified in the past [the beneficiary] was working for one of our church[es] called . . . Casa de Oracion located at [REDACTED] from 01/99 to 12/00 as Minister. . . . [The beneficiary] was working voluntarily for Iglesia . . . [REDACTED] [i.e., the petitioning church] located at [REDACTED] because he could not work 40 hrs. with them since he was already employed by Casa de Oracion in Compton, CA.

In a separate letter, [REDACTED] Pastor of Casa de Oracion, states that the beneficiary “worked as Minister for this church starting on 01/99 to 12/00, he was paid cash, he worked 40 hrs. per week.”

Notwithstanding [REDACTED]’s reference to what the petitioner “specified in the past,” the petitioner had not previously specified that the beneficiary worked at Casa de Oracion in Compton. In a letter dated February 22, 2002, [REDACTED] stated that the beneficiary “has been working at Iglesia Betabara from April 1999 to the present. . . . Iglesia Betabara collects an offering to pay him for his services.” The previously submitted IRS Forms 1099-MISC (as well as the subsequent paychecks) identify the payer as Iglesia Betabara, [REDACTED]. This directly contradicts the new claim that the beneficiary worked full-time in Compton while volunteering part-time in Inglewood. These contradictions place both claims in doubt. 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.

[REDACTED] observes that 8 C.F.R. § 204.5(m)(3)(ii) requires only “a letter from an authorized official of the religious organization”; it “does not mention that we have to show any check stubs, taxes or money receipts for the salary of the alien.” This is a correct reading of that specific regulatory clause. However, 8 C.F.R. § 204.5(m)(3)(iv) states that, in appropriate cases, the director may request appropriate additional evidence relating to the eligibility under section 203(b)(4) of the Act of the religious organization, the alien, or the affiliated organization. We find that the director was justified in requesting additional documentation in this instance, a conclusion that is only amplified by the fact that [REDACTED] on appeal, contradicts his own prior claims. 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* at 592.

The petitioner, on appeal, does not address the director’s findings regarding the petitioner’s ability to pay the beneficiary’s proffered salary of \$1,200.00 per month (\$14,400 per year). We consider, here, some of the financial documents submitted previously. The Form 990-EZ returns contain the following information:

	2003	2004
Total Revenue	\$65,273.73	\$91,143.00
Benefits paid to or for members	[blank]	[blank]
Salaries, other compensation, and employee benefits	11,900.00	12,000.00
Payments to independent contractors	[blank]	[blank]
Net revenue after expenses	2,206.08	2,400.00

Elsewhere on the 2004 returns, the petitioner lists its compensated officers, stating that President [redacted] received \$9,600.00, and Secretary [redacted] received \$2,300.00. A sheet of paper attached to the copy of the 2004 return indicates that the officers’ compensation should have been included under “Benefits paid to or for members.” If this amount was not included in the petitioner’s total expenses, then the petitioner would have had a substantial net loss in 2004.

More significantly, the Forms 990-EZ do not pertain to Iglesia Betabara specifically, but to the parent organization in Los Angeles, Iglesia Evangelica de Jesucristo. The beneficiary’s annual salary is \$14,400, and Iglesia Evangelica de Jesucristo paid less than that amount in 2003 and 2004. The petitioner has not established that the Los Angeles parent organization is financially responsible for its constituent churches, or that the beneficiary is the only salaried employee within the entire multi-church organization. Thus, the Forms 990-EZ are of questionable value, and on their face do not establish the required ability to pay.

The petitioner has also submitted a “Receipts and Expenses Statement” taken from the California Franchise Tax Board’s Form 3500 Application for Exemption. The statement contains the following information:

	2005	2004	2003	2002
Total Receipts	\$12,600.00	\$46,500.00	\$39,025.00	\$40,111.00
Disbursements to or for member benefit	[blank]	[blank]	[blank]	[blank]
Compensation of officers	3,900.00	15,600.00	15,600.00	15,600.00
Other salaries and wages	[blank]	[blank]	[blank]	[blank]
Other	3,350.00	10,200.00	2,625.00	4,990.00
Excess of receipts over expenses	250.00	300.00	1,000.00	321.00

The excerpt of the Form 3500 in the record does not identify the organization to which the above information pertains. The figures on the Form 3500 do not match those on the Form 990-EZ returns. Therefore, if the Form 3500 relates to the parent church organization, then the petitioner has presented two entirely different sets of numbers regarding its finances. If the Form 3500 does not relate to that organization, then the document has no probative value because the petitioner has not identified the organization to which it does

pertain. Either way, the petitioner's submission of two completely different sets of numbers relating to 2003 and 2004 does not permit the conclusion that the petitioner has credibly established that it has been able to pay the beneficiary since April 2001.

We acknowledge the petitioner's prior submission of IRS Forms 1099-MISC and the beneficiary's income tax returns, but the petitioner's contradictory claims about where the beneficiary worked and who paid him raise questions of credibility. The petitioner has not provided any contemporaneous evidence from 1999-2001 to document that the beneficiary actually received the payments reported on those forms. We reiterate that the petitioner amended his tax returns because, when he initially filed his tax returns, he did not report this income. The evidence, therefore, is consistent with after-the-fact revision of the petitioner's and the beneficiary's claims in order to account for the beneficiary's newly-claimed compensation as a religious worker. Given the petitioner's inconsistent and contradictory accounts of where the beneficiary worked and how and by whom he was paid, we cannot find that the IRS Forms 1099-MISC constitute unchallengeable evidence of remuneration and experience.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.