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FILE:

EAC 97 032 50341

Office: VERMONT SERVICE CENTER

Date: MAY 24 2007

IN RE:

Petitioner:

Beneficiary:

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:

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.

Maura Deadrick

Robert P. Wiemann, Chief
Administrative Appeals Office

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DISCUSSION: The Director, Vermont 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 Seventh-day Adventist church. It initially sought 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 an evangelist. The director determined that the petitioner had not established that the beneficiary has worked, or will work, in a qualifying religious occupation.

On appeal, the petitioner's senior pastor asserts that the denial of immigration benefits to the beneficiary will adversely affect the petitioning church.

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 1154 [section 204 of the Act] of this title."

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. *Id.* 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).

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

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Citizenship and Immigration Services therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

The petitioner filed the petition on November 12, 1996. In an October 12, 1996 letter submitted with the initial filing, [REDACTED] Minister at the petitioning church, stated:

In June of 1992, [the beneficiary] became a registered volunteer worker in this church and we have truly been blessed by his outstanding ministry. . . .

[The beneficiary] came to this country with a determination to continue and expand his religious portfolio. . . . I became impressed with his preaching during one of our community evangelistic meetings which left me convinced that he is definitely called to be an evangelist among other things. . . .

He serves in the following areas:

Evangelist
Assistant Director of the Men's Ministries
Christian Counselor
Coordinator of Pathfinders (Youth Ministries)

(Emphasis in original.) In a separate letter, [REDACTED] described the beneficiary's claimed duties in greater detail, stating, for instance, that the beneficiary "Conducts Bible Studies with men," "Structures curriculum for Youth Department," "Prepares sermons" and "Submits quarterly report to Pastor." A Certificate of Ordination, dated June 9, 1988 and attributed to the Grenada Mission of Seventh-Day Adventists, states that the beneficiary "satisfied all the Biblical requirements for ordination as [an] Evangelist."

The director approved the petition on November 18, 1996, less than a week after it was filed. On January 17, 1996, the beneficiary applied for adjustment to permanent resident status. In furtherance of that application, the beneficiary submitted a May 19, 2003 letter from [REDACTED], Senior Pastor of the petitioning church. [REDACTED] stated:

[The beneficiary] has been working for [the petitioner] for the past eleven (11) years. . . . He spends well over thirty-five (35) hours weekly and beyond performing his religious duties in the capacity as Deacon and receives a weekly salary of \$500.00 per week.

Duties as Deacon

1. Assist the Pastor in matter[s] pertaining to the church as care and upkeep
2. Receiving offerings
3. Stand in [to] bring forth the Word in the absence of the Pastor, if necessary. . . .

[The beneficiary] also holds the title of Janitorial Technician at [the petitioning church]. I have observed him in this capacity for approximately five years. . . .

Janitorial Duties

1. Repair bathrooms, toilets
2. Repair plumbing
3. Installation of hot water tanks
4. Repair walls, plastering
5. Refurbish hardwood floors
6. Repair leaks
7. Maintains outer façade of church building
8. General cleaning: vacuuming, dusting, mopping, etc.

On December 23, 2005, the director issued a notice of intent to revoke, stating that the beneficiary "was not previously (prior to his entry) and is not currently employed in a qualifying capacity as a bona fide religious

worker.” To support this conclusion, the director cited information from a September 25, 2003 memorandum from a supervisory district adjudications officer in Garden City, New York. The memorandum reads, in part:

On May 6, 2003 [the beneficiary] was interviewed by a Service officer. During the course of the interview, [the beneficiary] testified under oath that he is working as a Janitorial Technician for 35 hours a week in the Church. The Service also received a letter from the church stating his job descriptions, that also states he is a Janitorial Technician. According to his sworn statement he indicated he was a handyman/plumber before he came in [to the] United States and his current occupation with the church includes cleaning and repairing bathrooms, fixing toilets and leaks, cleaning church yards, cleaning [the] kitchen, refurbishing hardwood floors, maintenance of the outer façade of the church and general cleaning such as vacuuming, dusting, mopping and other maintenance works. It should also be noted that it appears . . . [the beneficiary is] not literate. Therefore, the Service has concerns [about] whether he is capable of performing the employment [described in the petition].

The 2003 memorandum did not mention Pastor [REDACTED] assertion that the beneficiary worked as a deacon as well as a janitorial technician.

In response, counsel noted that the beneficiary “was ordained a missionary . . . on the 9th day of June 1988,” as shown by the photocopied certificate submitted previously. Counsel asserted that the petitioner “made [the beneficiary] a deacon in 1994. He has functioned since then as an ordained missionary/deacon.” Counsel contended that the beneficiary, during his adjustment interview, attempted to discuss his religious duties as a deacon but that the interviewing officer “refused to listen to testimony from the deacon on details of these religious aspects.” Counsel provided a list of the beneficiary’s claimed functions:

- Disposing of any bread or wine left over . . . after communion service . . . ;
- Care and maintenance of the church property;
- Ensuring that the water for baptism is the right temperature, catching the baptized in the water, praying and ministering to new members before and after baptism;
- Visitation of church members in their homes, for purposes of edification, prayer and follow up;
- Care and visitation of the sick in homes and hospitals;
- Street and home evangelism.

Counsel asserted that the director unfairly focused on the beneficiary’s secular duties, to the total exclusion of his more clearly religious functions.

The petitioner submitted a May 3, 2005 letter from [REDACTED] stating: “Since May 1996 [the beneficiary] has been serving the Church faithfully as Deacon and fulfills many other duties in the up keep of the Church facilities.” This letter is not consistent with counsel’s claim that the petitioner “made [the beneficiary] a deacon in 1994.” Accompanying this letter, the petitioner submitted another copy of the beneficiary’s 1988 Certificate of Ordination as an evangelist, a photograph of the beneficiary assisting at a

baptism, and a photocopied excerpt from the religious denomination's *Church Manual*, describing the duties of deacons, including "Assistance at Services and Meetings," "Visitation of Members," "Preparation for Baptismal Services," "Assistance at the Communion Service," "The Care of the Sick and the Poor," and "Care and Maintenance of Church Property." The *Manual* also indicates that "Deacons Must be Ordained."

Whether the beneficiary became a deacon in 1994 or May 1996, it is significant that the petitioner never referred to the beneficiary as a deacon in its November 1996 submission, even though the *Church Manual* shows that the diaconate is an office unto itself, with specified duties. The petitioner, at that time, submitted documentation identifying the beneficiary as an evangelist, but not as a deacon. We note that, although the denomination required deacons to be ordained as deacons, the record does not contain evidence of the beneficiary's ordination in that capacity.

The director revoked the approval of the petition on April 24, 2006, stating that the petitioner submitted "[n]o additional primary evidence," without which counsel's "letter has little probative value." On appeal, [REDACTED] states that the beneficiary would be difficult to replace, having established and maintained a relationship with the church through "three separate pastoral administrations," *i.e.*, those of [REDACTED] and [REDACTED]. When determining the beneficiary's eligibility for the classification sought, we may consider only how the petitioner and the beneficiary have or have not conformed to the various statutory and regulatory requirements. If the beneficiary is not eligible for the benefit sought, then the petition is unapprovable, regardless of how the denial of benefits might affect the petitioning church.

[REDACTED] states that, at the time of filing, the petitioner was under the impression that the "Elder and Deacon Categories of function" were qualifying religious occupations. [REDACTED] implies that the petitioner no longer believes this to be the case. The appeal marks the first reference to [REDACTED]. The petitioner had never before referred to the beneficiary as an elder, and even on appeal this is only implied by the context of [REDACTED]'s statement.

The petitioner has not been particularly consistent in its description of the nature of the beneficiary's duties. At first, the petitioner never called the beneficiary a deacon, nor made any mention of the beneficiary's janitorial duties. The initial filing indicated that the beneficiary was responsible for Bible studies, but on appeal [REDACTED] does not contest the finding that the beneficiary "appears to be illiterate." Pastor Joseph states that the beneficiary "works directly with me as pastor in receiving guest[s], preparing the baptistery for our monthly baptisms, preparing the sanctuary for weddings, funerals, and all weekly services, ordering supplies, keeping facilities in a tidy manner at all times." These tasks have little resemblance to the description the petitioner originally provided in 1996, although the petitioner has since claimed that the beneficiary was a deacon at the time of filing.

Because the petitioner has chosen to introduce the *Manual* into evidence, we note here that the *Manual* never refers to deacons as paid church workers. They are church *officers*, discussed in chapter 7 of the *Manual*, as opposed to church *workers* (such as pastors) who are discussed in chapter 10. The *Manual* indicates that "the church board may authorize the deacons to employ a janitor." The *Manual* never uses the verb "employ" in relation to deacons, instead indicating that deacons are "elected to office, serving for a term of one or two years." All in all, the *Manual* depicts deacons as dedicated volunteers rather than paid employees.

From the available evidence, it appears that the beneficiary's paid employment with the petitioner is in the capacity of a janitor, and that he has undertaken religious duties of some sort as a volunteer. The exact nature of those duties is difficult to determine, given the petitioner's inconsistent descriptions of those duties. It further appears that the petitioner initially portrayed the beneficiary as a counselor and instructor in order to cast the petition in a favorable light, rather than to present an accurate depiction of the beneficiary's functions. Section 204(b) of the Act, 8 U.S.C. § 1154(b), provides for the approval of immigrant petitions only upon a determination that "the facts stated in the petition are true." False, contradictory, or unverifiable claims inherently prevent a finding that the petitioner's claims are true. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). 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*, 19 I&N Dec. 582, 586 (BIA 1988).

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.