

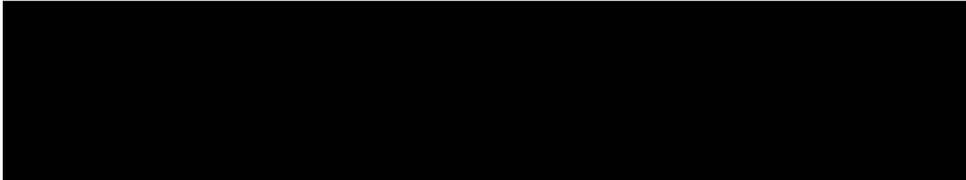
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



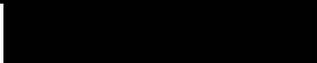
U.S. Citizenship
and Immigration
Services

C1

PUBLIC COPY



FILE:



Office: NEBRASKA SERVICE CENTER

Date: JUL 01 2008

WAC 06 093 51815

IN RE:

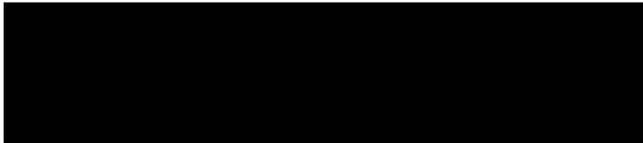
Petitioner:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska 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 an Eritrean Orthodox Christian 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 priest. The director determined that, because of the beneficiary's secular employment, the petitioner had not established the existence of a valid job offer or that the beneficiary had the requisite two years of continuous work experience as a priest immediately preceding the filing date of the petition.

On appeal, counsel contests the director's interpretation of a key statutory clause.

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 Dec. 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 589.

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 . . . ; 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 term “solely” in the above statutory language is the key to the director’s findings regarding the beneficiary’s past and intended future work. The Citizenship and Immigration Services (CIS) 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 1, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a priest (*i.e.*, a minister) throughout the two years immediately prior to that date. In terms of future employment, 8 C.F.R. § 204.5(m)(4) requires the prospective employer to establish that the alien will be solely carrying on the vocation of a minister.

In a March 25, 2005 letter accompanying the initial filing, [REDACTED],¹ Chairman of the petitioner’s Board of Elders, stated that the beneficiary “has been appointed to serve our church” “[s]ince December 2003.” In describing the job offer, Mr. [REDACTED] stated that the beneficiary “will be acting solely to carrying out the duties of a pastor” [*sic*] for “at least 40 hours per week,” but he did not indicate whether the beneficiary had previously worked such a schedule with the petitioning church. Mr. [REDACTED] asserted that the beneficiary “will be receiving a compensation package in the amount of \$2000.00 a month, which include[s] approximately \$750.00 housing allowance and \$550.00 food allowance and other miscellaneous expenses.”

On his 2004 income tax return, the beneficiary identified his occupation as “priest” and claimed no income except a “Religious Service Fee” of \$6,000, which is equivalent to only \$500 per month. The beneficiary later filed an amended tax return, not to add previously unclaimed income but to recalculate the tax due.

The petitioner’s initial submission included additional information about the beneficiary’s work in Eritrea, which we will address in the context of the appeal.

¹ The record contains variant spellings of this surname. For consistency, the AAO has used the spelling shown on the Form I-360 petition. The record also contains several variations on the name of the petitioning church. The AAO has used the version of the name shown on the Form I-360 petition and the petitioner’s articles of incorporation.

The director approved the petition on July 7, 2006. Subsequently, the director issued a notice of intent to revoke the approval on November 17, 2007. In that notice, the director stated that “an inquiry with the [California] Employment Development Department [revealed] that the beneficiary has held employment [with] at least three other U.S. employers besides the petitioning organization.” The director stated that the beneficiary held part-time jobs with Schade & Schade from December 7, 2004 to April 11, 2006; with Aztec Coin Laundry from April 11, 2006 to May 31, 2006, and A.S. Investment Ltd. since October 2006. The director concluded that this secular employment interrupted the continuity of the beneficiary’s past employment with the petitioner. The director also expressed doubt that the beneficiary intends to work solely as a minister in the future.

In response, the petitioner stated, in a December 12, 2007 letter:

In April 2005, we were overjoyed to reunite [the beneficiary] with his wife and six children, whose ages now range from four to eighteen years old. . . . As a church, our intent and best efforts were designed to support [the beneficiary] and his family, through the monetary donations we received from our members. We have always been able to take care of [the beneficiary] and his family’s living expenses. However, our membership is small but growing, and our members are primarily in the lower to middle socio-economic population. It retrospect it seems that our monthly financial stipend was not sufficient to care for the growing needs of a family of eight. . . .

As parents know, having school aged children always presents unforeseen expenses. [The beneficiary] did not want to burden his church with these school related expenses for his children. [The beneficiary] worked because he needed to provide academic supplies. . . . [The beneficiary] worked less than three hours a day, thus showing his intent was to cover loose ends, not pursue a career or full time job outside his position as a priest at the Church.

The petitioner also submitted several letters attesting to the beneficiary’s personal character, the Eritrean expatriate community’s desire for the beneficiary’s continued services, and the academic performance of the beneficiary’s children. The petitioner also submitted a copy of an article describing deteriorating conditions in Eritrea. These materials do not address the matter at hand, and therefore do not warrant extended discussion.

The director revoked the approval of the petition on December 26, 2007, noting the petitioner’s stipulation that the beneficiary’s “monthly financial stipend was not sufficient to care for the petitioner’s family” and stating:

While an explanation has been provided, the Service is bound within the framework of the statute, regulation, and precedent decisions. The statute states at section 101(a)(27)(C)(ii) that the alien must be coming “solely” for the purpose of carrying on the vocation of a minister of the religious denomination. It also states at 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work “continuously” for the two years immediately preceding the time of application. The term

“continuously” was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

As the petitioner has taken up outside employment, both within the two year period immediately prior to the filing of this petition and continuing to the present, this petition must be and is hereby revoked.

On appeal, counsel states:

The sole legal question on appeal is whether [the beneficiary’s] extra-curricular employment violated the INA [Immigration and Nationality Act], either literally or in spirit, such that the approved special immigrant petition should be revoked. . . .

Neither the INA nor the government regulations specifically preclude a religious worker/special immigrant from working gainfully outside the scope of the religious work upon which the petition filing is based. Rather, the statute and regulations both speak to the fact that the religious worker must establish that he is coming to the United States for the sole purpose of carrying out the duties and responsibilities provided for in the petition. The beneficiary’s subjective and objective purpose in coming to the United States . . . was to serve the petitioning Church as its Minister and spiritual leader. . . .

Thus, the reasonable conclusion that the government should make in this matter is that the beneficiary’s sole purpose in coming to the U.S. was to serve the Church in an official capacity as its full-time Minister and spiritual leader. The fact that [the beneficiary] was forced to supplement the income that he earned from Church employment . . . should not be used against him.

We reject counsel’s interpretation of the statutory term “solely.” Such interpretation is directly contrary to the regulation at 8 C.F.R. § 204.5(m)(4), which expressly requires the religious organization to “state how the alien will be solely carrying on the vocation of a minister.”

With respect to precedent decisions, counsel notes that *Matter of B*, cited by the director, “stands for the proposition that if [the beneficiary] was forced to seek part-time employment outside the Church employment . . . , such employment, by itself, does not render him unqualified as a special immigrant religious worker under statute, regulation, or case law.” The statute, regulations and case law have all changed since *Matter of B*, which, as counsel observes, “was reached more than 60 years ago.” Counsel claims “Patel’s Citations fails to note a single subsequent case . . . that contradicts or overturns the above-referenced analysis in *Matter of B*.” A more recent (and therefore superseding) precedent decision, however, included the finding that an alien minister who worked a second job “is precluded from special immigrant classification, which requires the minister to have been and intend to be engaged solely as a minister of a religious denomination.” *Matter of Faith Assembly Church*, 19 I&N 391, 393 (Commr. 1986). We note that the Ninth Circuit Court of Appeals has upheld the AAO’s interpretation of the two-year experience requirement. *See Hawaii Saeronam Presbyterian Church v. Ziglar*, 2007 WL 1747133 (9th Cir., June 14, 2007).

Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change. *Lorillard v. Pons*, 434 U.S. 575, 580 (1978) (citing *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 414 n.8 (1975); *NLRB v. Gullett Gin Co.*, 340 U.S. 361, 366 (1951); *National Lead Co. v. United States*, 252 U.S. 140, 147 (1920); 2A C. Sands, *Sutherland Statutory Construction* § 49.09 and cases cited (4th ed. 1973)). In this light, it is relevant to note that Congress has repeatedly revisited the special immigrant religious worker statute since 1986, but has not clarified the “solely” clause to overrule the finding in *Matter of Faith Assembly Church*.

The above arguments demonstrate that the law (comprising not only the statute, but also regulations and precedent decisions) clearly requires the beneficiary to engage solely in the vocation of a minister to the exclusion of other employment. There is no support for counsel’s alternate theory that the beneficiary need only place more importance on his church work than his secular employment.

Whatever the reason for the beneficiary’s supplementary employment, the statute requires the beneficiary to enter solely as a minister. The regulations and case law consistently interpret this to mean that the beneficiary must have been engaged solely as a minister throughout the two-year period immediately prior to filing, and must continue to be engaged solely as a minister.

The petitioner has claimed that church members are willing to increase their contributions toward the beneficiary’s compensation. Even if the petitioner were to increase the beneficiary’s compensation so that outside employment would be unnecessary, the job offer, as stated at the time of filing, was a stipend of \$2,000 per month, including housing and other expenses. The petitioner cannot now establish that the petition is approvable by changing those terms after the fact. An immigrant visa petition must be amenable to approval at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Therefore, a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Commr. 1998).

The appeal will be dismissed 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 appeal is dismissed.