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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: NOV 26 2004
WAC 97 002 51095

IN RE: Petitioner: [redacted]
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:

SELF-REPRESENTED

PUBLIC COPY

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

Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 appeal will be dismissed.

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 soloist. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a soloist immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary.

On appeal, the petitioner indicates that a brief will be forthcoming within 30 days. To date, over a year after the filing of the appeal, the record contains no further substantive submission from the petitioner. We therefore consider the record to be complete as it now stands.

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Attorney General 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 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 membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on October 2, 1996. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a soloist throughout the two years immediately prior to that date.

In a letter accompanying the initial filing, [redacted] of the petitioning church states that the beneficiary "did part of his student practical training at our church. He was our church soloist and a member of the choir since November 1995. His student practical training has expired and we wish to employ him for ministry in the area of music."

Chester P. Jenkins, executive secretary of the Full Gospel Fellowship of Churches & Ministers International (FGFCMI), states:

> [The beneficiary] is an Ordained Minister under the . . . FGFCMI since May 5th, 1992. . . .
>
> After his ordination in May of 1992, [the beneficiary] transferred to Oral Roberts University (ORU), Tulsa, Oklahoma, on a full scholarship to further enhance his ministry in music. . . . Part of his scholarship comes from ministering with the ORU Television singers. . . . He graduated summa cum laude from ORU in May of 1995.

On March 3, 1997, the director requested evidence of the beneficiary's employment and work schedule during the two-year qualifying period. In response, the petitioner submitted a "Job Description for Soloists," indicating that soloists attend Sunday worship services, holiday observances, and "regular rehearsals once a week [for] 1 ½ hours." During the summer, "[s]oloists will not be expected to come to weekday rehearsals," and "can expect compensation for the Sunday performance only." Soloists are expected to perform one solo a month, apart from group singing with the choir.

The beneficiary, in a personal statement, indicated that he was enrolled in "a graduate music program at California State University of Long Beach (CSULB), and that "[s]tudies prevent me from being actively involved with ministries." The beneficiary added that he was "also working on campus at CSULB as the

graduate assistant in the Research and Development Office." The beneficiary began his graduate studies at CSULB in August 1996, shortly before the petition was filed.

The director approved the petition on September 25, 1997. Subsequently, on January 21, 1998, the beneficiary filed a Form I-485 Application to Adjust Status. As part of the adjustment application, the beneficiary submitted Form G-325A, Biographic Information. Instructed, on that form, to list his employment over the past five years (1993-1998), the beneficiary listed employment at the petitioning church from November 1995 to May 1996. On an addendum to the form, the beneficiary listed several other jobs. The only job to fall during the 1994-1996 qualifying period was as a "Singer/Waiter" at Romano's Macaroni Grill in Tulsa, Oklahoma from July 1993 to June 1995.

Subsequently, in a letter dated March 30, 2000 stated that the beneficiary "spends approximately four to five hours each week" rehearsing and performing as a soloist, and also leads the choir "periodically throughout the year." In a separate letter, bearing the same date states that the beneficiary "has been employed by [the petitioner] since early in 1996. He serves as a paid soloist in our Chancel choir and as a paid assistant to our musical director." The assertion that the petitioner had employed the beneficiary "since early in 1996" is not consistent with the beneficiary's assertion, in January 1998, that he worked for the petitioner only until May 1996.

Documents in the record show that, at various times between 1998 to 2000, the beneficiary worked for singing troupes, a private school, and a music school, in addition to CSULB and the petitioner. The petitioner paid the beneficiary $1,045.00 in 1998 and $1,800.00 in 1999.

On July 7, 2003, the director issued a notice of intent to revoke, stating that the record does not establish that the beneficiary performed continuous religious work during the two-year qualifying period. The director also noted the beneficiary's numerous secular jobs and stated that the record does not establish the beneficiary's intent to perform qualifying religious work. The director found that the beneficiary's position with the petitioner is not full-time.

In response to the notice states that the beneficiary "continues to be in the employ of the [petitioning church] since 1995, and has served the church throughout the duration of the I-360 and I-485 petitions." Again, this is not consistent with the beneficiary's January 1998 assertion that his work for the church ended (at least temporarily) in May 1996, and own earlier assertion that the beneficiary's "practical training has expired." acknowledges that the beneficiary has worked for several other employers, and he does not appear to contest any of the director's assertions. Rather asserts that the beneficiary has become accustomed to living in California and thus "it would be of great injustice and hardship to [the beneficiary] should INS revoke his I-360 now."

The director revoked the approval of the petition on August 14, 2003. On appeal again asserts that the beneficiary "has already adjusted to a life in California." The issue at hand is the beneficiary's eligibility for the classification sought, rather than humanitarian consideration of claimed hardship to the alien. By law, an approved petition can be revoked "at any time" before the alien becomes a lawful permanent resident. It is not inherently a "great injustice" to revoke the approval of a petition which, from the evidence, should not have been approved in the first place. As noted above, the approval of a visa petition does not guarantee that an alien will become a lawful permanent resident; it merely gives the alien the right to apply for that status.

Rev. Boyd also repeats that the petitioner has worked for the church since 1995. This work, however, has been part-time, amounting to only a few hours a week, while the beneficiary has derived most of his income from other sources. During much of the qualifying period, the beneficiary was a full-time student. A full-time student, only engaged part-time in religious work, is not continuously engaged in a religious occupation. *See Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980). Also, the qualifying period began in October 1994, two years before the petition was filed in October 1996. The petitioner has never claimed to have employed the beneficiary prior to late 1995, and the beneficiary's studies at ORU did not amount to qualifying employment experience.

In *Matter of B*, 3 I&N Dec. 162 (CO 1948), in a discussion of whether an alien worked continuously as a minister, one consideration was that the alien did not take up any other occupation or vocation. Here, the beneficiary asserts that he worked as a singer and waiter in an Italian restaurant for several months during the qualifying period. Since that time, the beneficiary has undertaken numerous secular jobs, mostly singing and teaching. These jobs constitute the bulk of the beneficiary's livelihood. The petitioner has not contested the director's determination that the beneficiary's job with the petitioner is far from full-time. The AAO holds that an alien principally employed in a secular job or jobs is not entitled to status as a special immigrant religious worker merely by virtue of performing a small amount of work on behalf of a church or other religious entity.

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.