U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

C1

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: OCT 13 2004

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:

[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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

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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 on appeal. The appeal will be dismissed.

The petitioner is a multidenominational Protestant theological seminary. 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 its manager of student ministry services. The director determined that the petitioner had not established that (1) the petitioner is a qualifying tax-exempt religious organization; (2) the position relates to a traditional religious occupation; or (3) the beneficiary had the requisite two years of continuous work experience in the occupation immediately preceding the filing date of the petition.

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 first issue in this proceeding concerns the petitioner's tax exemption. 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 (the Code) as it relates to religious organizations.

According to documentation from the Internal Revenue Service, the petitioner's tax-exempt status derives from classification not under section 170(b)(1)(A)(i) of the Code, which pertains to churches, but rather under section 170(b)(1)(A)(ii) of the Code, which pertains to schools. Based, in part, on this classification, the director issued a notice of intent to revoke on December 6, 2003.

In response to that notice, the petitioner's associate director of International Student Services, stated that an entity need not be a church in order to qualify as a tax-exempt religious organization. asserts that the religious nature of the petitioning seminary is readily evident from the school's activities, articles of incorporation, and other materials in the record.

The director revoked the approval of the petition, stating that the petitioner has not established that its tax-exempt status derives from its status as a religious organization. On appeal, the petitioner submits various documents showing that the Internal Revenue Service does not restrict the term "religious organizations" to churches alone. The petitioner also submits a memorandum that specifies that an entity need not be classified under section 170(b)(1)(A)(i) of the Code in order to qualify as a tax-exempt religious organization (Memorandum from Associate Director of Operations, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003)), hereafter emorandum."

The emorandum states, in pertinent part:

> Qualifying as a religious organization "church" under section 170(b)(1)(A)(i) of the IRC [Internal Revenue Code] is only one method of determining if the petitioner is a qualifying organization. Other organizations classified under section 170(b)(1)(A) of the IRC may qualify if it can be established that this classification is due to religious factors and that they are organized for religious purposes and operate under the principles of a particular faith, rather than solely for educational, charitable, scientific and other 501(c)(3) qualifying purposes.

In instances where the exemption letter from the Internal Revenue Service does not clearly indicate the basis for the exemption, the Memorandum requires the following documentation to establish "the religious nature and purpose of the organization":

(1) A properly completed IRS Form 1023;

(2) A properly completed Schedule A supplement, if applicable;
(3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization;
(4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The Memorandum does not state that the petitioner must provide one item from the above list. Rather, *all* the listed documents, "at a minimum," are necessary to establish that the entity has represented itself to the IRS as being primarily a religious organization, in instances where the religious nature of the exemption is not readily apparent from the IRS exemption letter.

The petitioner's appellate submission includes a copy of the Memorandum, demonstrating that the petitioner and counsel are, or reasonably should be, aware of its contents, including the above list (which the Memorandum calls the "minimum" necessary evidence). The appellate submission does not, however, include all of the above documentation (for example, the Form 1023 is absent). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

It is overly restrictive to assert that only churches, classified under section 170(b)(1)(A)(i) of the Code, can qualify as religious organizations. At the same time, the burden is on the petitioner to establish the religious character underlying the exemption. We stress, here, that each appeal must be adjudicated on its own merits, based on its own individual record of proceeding. In this particular instance, the petitioner has not submitted anything from the IRS to establish the religious basis for the exemption, nor has the petitioner submitted the materials required in Memorandum (even though the petitioner possesses a copy of this memorandum, and the list that it contains). Whatever other documentation the petitioner may possess that would more clearly establish that the IRS considers the petitioner to be a religious organization, the petitioner did not choose to submit that documentation for consideration, either in response to the notice of intent to revoke or on appeal.

We also stress that the dismissal of the appeal rests in part on factors unrelated to the petitioner's tax-exempt status. Therefore, even if the petitioner had submitted other documentation to overcome this one particular finding, the other grounds for dismissal would remain.

The next issue 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 statute is silent on what constitutes a "religious occupation" and the regulation at 8 C.F.R. § 204.5(m)(2) states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function," but it 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.

identified above, states that, as manager of student ministry services, the beneficiary's "specific duties will include the following":

- Developing and implementing a comprehensive orientation program for international students aimed at acclimatizing them to seminary life in general, the culture and habits of the United States, and relevant immigration matters;
- Organizing and conducting quarterly orientation seminars;
- Organizing and leading all-campus quarterly prayer groups and meetings;
- Organizing, coordinating and supervising Donation and Food Distribution programs;
- Conducting regular house visits to students, upon request and on an ad hoc basis, for the purpose of assessing their physical and spiritual needs; praying with students and their families; providing pastoral care as required or desired; and determining, and, to the extent possible, meeting, physical needs;
- Coordinating a program of friendship evangelism in partnership with International Students, Inc. with a view to ministering to non-Christian students and their families;
- Serving as a resource for the spouse and/or dependents of students with regard to community resources and adjusting to their living environment;
- Acting as a liaison between local churches and students, with regard to matching students' pastoral needs with available church and ministry resources;
- Evaluating, assessing and mentoring theology students, interning at various churches, with their goals and progress, including one-on-one discussions with these students to help them set goals and to ensure that they are on track to meet such goals;
- Providing pastoral care for such interns in order to better enable them to meet the challenges they face of study, work, setting and meeting goals;
- Assigning and overseeing work of other staff members and volunteers in the Office of the International Student Services.

asserts that the beneficiary's "work is essentially that of student ministry, and thus would be considered a religious occupation." asserts that the job "requires a minimum of a Bachelor's Degree in Theology, and ordination as a minister," and that the beneficiary "possesses the minimum qualifications required for the position and more."

In the notice of intent to revoke, the director stated "[t]he beneficiary's duties do not relate to a traditional religious function." In response asserts that the beneficiary's "position . . . may be likened to that of a Chaplain." discusses the role of a chaplain, but does not explain why, in an institution that appears to be staffed largely by ordained ministers, this particular beneficiary would be the one fulfilling a chaplain-like role provides a new job description, placing emphasis on the religious nature of the duties. For instance, she states that the beneficiary's work involving food donations "is a witness to the spirit of Christianity in action, serving the physical needs of the community."

in her response to the notice of intent to revoke, refers to the duties that the beneficiary *will* perform, and "the position he is offered" rather than the position that the beneficiary *occupied at that time*. This distinction is relevant to the third ground for revocation, discussed elsewhere in this decision.

The director revoked the approval of the petition, stating "the petitioner has not established that the duties of the beneficiary's prospective occupation relate to a traditional religious function." On appeal, counsel repeats the prior assertion that the beneficiary's position is, essentially, that of a chaplain.

Upon careful consideration of the position description provided by the petitioner, it appears that the position can be said to be religious in nature. Several of the beneficiary's duties are clearly religious in nature, and other duties, while possessing administrative elements, have an obvious and direct connection to the religious training of prospective clergy, which, in turn, is indisputably a traditional religious function. The petitioner has indicated that this position would be a paid, full-time position, rather than a part-time assignment delegated to a student or an ancillary function of a staff member otherwise employed within the seminary. The position, as described, appears to constitute a qualifying religious occupation.

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 November 22, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a manager of student ministry services throughout the two years immediately prior to that date.

Eva Peters describes the beneficiary's work during the qualifying two year period:

> From 1992 to date [the beneficiary] has been the Executive Secretary of the Missions Board of the Independent Presbyterian Church of Brazil ("IPC Brazil"). Until 2000 [the beneficiary] was actively involved in the pastoral care of missionaries. . . . Once he arrived in the United States in February 2000, his responsibilities as Executive Secretary included representing IPC Brazil at different conferences and congresses in the U.S. In addition, from 2000 to date, [the beneficiary] has been the US delegate of the Independent Presbyterian Church of Brazil . . . organizing and conducting missions meetings, organizing and attending conferences aimed at missionaries of the Brazilian church, and in fundraising for the church in Brazil. . . . [The beneficiary] had the opportunity of preaching in local churches. . . . [The beneficiary] performed duties which could only be undertaken by an ordained minister, such as preaching, communion, [and] benediction. He has also let house meetings of prayer, worship and Christian fellowship.
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> In January 2001, [the beneficiary] joined [the petitioning seminary] as an exchange visitor enrolled in the Masters of Theology program with the School of World Mission. During this period, his religious worker duties have included his continuing work for the Missions Board of the IPC Brazil; Donations Coordinator for [the petitioner's] International Student Services office, and conducting various workshops and conferences for Churches and Ministries throughout the United States. . . .
>
> His work has been voluntary, in the interests of Christian ministry, and not for financial gain.

The above information indicates that the beneficiary has been studying for his master's degree throughout most of the 2000-2002 qualifying period. The beneficiary's own resume does not mention his position as

manager of student ministry services. Rather, it lists his position as "Donation Coordinator, International Students Services."

Subsequent to the approval of the petition, the beneficiary applied for adjustment to lawful permanent resident status. As part of this application, the beneficiary submitted Form G-325A, Biographic Information. This form instructed the beneficiary to list his employment over the preceding five years (i.e., 1998 to 2003). On the form, dated June 13, 2003, the beneficiary indicated that he was a pastor in Brazil until January 2000, and a donations coordinator for the petitioner from August 2001 onward. He did not mention the position of manager of student ministry services. Furthermore, on this form, the beneficiary claimed no employment at all between January 2000 and August 2001. The beneficiary indicated that he resided in Spokane, Washington, for most of the year 2000. The record contains no evidence from any source in the Spokane area to shed light on the beneficiary's activities during that time (which includes the earliest weeks of the qualifying period).

The director, in the notice of intent to revoke, stated that there is no evidence that the beneficiary has served as the petitioner's manager of student ministry services throughout the 2000-2002 qualifying period. In response, asserts that, although the beneficiary's duties varied during the qualifying period, the beneficiary was nevertheless engaged in religious work throughout that period. Counsel repeats this contention on appeal, and we shall address it in that context.

knowledges that the beneficiary was a student for much of the qualifying period, but she asserts that the beneficiary "continued to perform the duties of a minister of religion during his period of study" and that those studies were consistent with ministerial work. cites several unpublished appellate decisions, which have no force as precedent. adds that the beneficiary's work was "not full-time" during the qualifying period.

In terms of binding precedent decisions, we note that the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980). In *Varughese*, as in the present proceeding, the alien's studies *were* interruptive and inconsistent with continuous religious work, because the extent of those studies prevented full-time work.

With regard to the beneficiary's remuneration, the petitioner submits a letter from second secretary of the General Assembly of IPC Brazil a states that the beneficiary "has been financially compensated for his services through our denomination in Brazil, and he has been paid only in Brazil." The petitioner asserts that this shows that the beneficiary has received payment for his work. Nevertheless, the assertion that the beneficiary "has been paid only in Brazil" is not self-evidently compatible with the claim that the Brazilian church compensates the beneficiary for his activities *in the United States* (although this may merely be a hazily-worded assertion that the *source* of the beneficiary's remuneration is in Brazil). Furthermore, there is no indication that the denomination in Brazil is compensating the beneficiary *for his work at the petitioning seminary*. Rather, the beneficiary has, while studying at the seminary, undertaken various activities on behalf of the denomination in Brazil. Any remuneration from that source would appear to be in compensation for his work for that church, rather than for the petitioner. Rev. assertion that the Brazilian church has provided "support" for the beneficiary does not translate into remuneration for services. It appears that the beneficiary is not primarily a seminary employee who happens to take courses there. Rather, it appears that he is at the petitioning seminary first and foremost as a *student*, and that his work at the seminary is incidental student employment. This latter scenario is consistent with his limited work hours and the terms of his nonimmigrant exchange visitor visa.

In the notice of revocation, the director indicated that the petitioner had failed to establish the beneficiary's continuous employment in the position offered. On appeal, the petitioner submits copies of previously submitted documents, and counsel maintains that the beneficiary worked for, and was paid by, IPC Brazil during the qualifying period. We note, here, that the beneficiary did not mention continued employment by the Brazilian church when he completed his Form G-325A. Rather, he indicated that IPC Brazil employed him only until January 2000. The record contains no first-hand, contemporaneous documentation of these payments; there is only an after-the-fact letter from an IPC Brazil official, who does not provide specific dates or information regarding the claimed compensation.

Counsel asserts that the wording of the statute and regulations demonstrate that the beneficiary need not have worked in the position offered, so long as the beneficiary engaged in some kind of religious work during the qualifying period.

Leaving aside the inconsistencies and gaps already discussed above, we do not share counsel's interpretation of the statutory and regulatory language. The regulations at 8 C.F.R. § 204.5(m)(1) and (3)(ii)(A) require that the beneficiary must have carried on *the* vocation or occupation, rather than *a* vocation or occupation, indicating that the work performed during the qualifying period should be substantially similar to the intended future religious work. The underlying statute, at section 101(a)(27)(C)(iii), requires that the alien "has been carrying on such . . . work" throughout the qualifying period. An alien who seeks to work in occupation A has not been carrying on "such work" if employed in occupation B for the past two years.

Here, the beneficiary has apparently never worked as a manager of student ministry services, either for the petitioner or for any other seminary. The beneficiary's past work for the petitioner has been limited to working as a "donations coordinator." The exact nature of this work is not clear from the record, but the petitioner stipulates that it was part-time, unpaid student work. Furthermore, 8 C.F.R. § 204.5(m)(2) specifically states that fund-raisers and persons solely involved in the solicitation of donations do not work in religious occupations. Given the beneficiary's title of "donations coordinator," it appears that this exclusion may apply to the beneficiary's past work for the petitioner (although, again, details are sparse regarding the beneficiary's past work for the petitioner). Seminary study is not a religious vocation or occupation; rather, it is academic training for *future* religious work. The documentation regarding the beneficiary's work for IPC Brazil is fragmentary at best, and once again this work does not appear to involve the same basic duties as those of the position offered by the petitioner.

For the above reasons, we affirm the director's finding that the petitioner has not established that the beneficiary has met the requirement of two years of continuous experience immediately preceding the filing of the petition. This, by itself, suffices to justify the revocation of the approval of the petition. Also, as noted above, the petitioner has not, in this particular proceeding, provided sufficient evidence to establish that its tax-exempt status derives from its status as a religious organization (rather than as an educational institution).

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.