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U.S. Citizenship
and Immigration
Services

C1

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: [illegible]
SRC 00 276 50885

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

DISCUSSION: The Director, Texas 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 self-petitioner[1] 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 self-petitioner seeks classification 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 (imam). The director determined that the self-petitioner had not established that he had the requisite two years of continuous work experience as a minister 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 [self-petitioner], 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--

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[1] The record reflects that the Form I-360 petition was signed by [redacted] under penalty of perjury. The record further reflects that [redacted] also signed the petition, declaring that he prepared the petition on behalf of [redacted] Accordingly, [redacted] is considered to be a self-petitioner and any reference to [redacted] as the beneficiary by either the director or [redacted] is erroneous.

(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 September 20, 2000. 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, from September 20, 1998 through September 20, 2000.

In a letter accompanying the initial filing, the mosque with which the self-petitioner seeks employment submitted an unsigned letter documenting its intent to hire the self-petitioner. The mosque, however, did not indicate the specific position in which it seeks to employ the self-petitioner, and instead referred to the self-petitioner with the generic term of "[s]pecial [i]mmigrant [r]eligious [w]orker." As it relates to the self-petitioner's work during the requisite period, the letter stated:

> The [self-petitioner] had been employed as the Imam for the two years [preceding] the filing of this petition, and currently, [sic] is employed by the [mosque] as an R-1 Religious Worker. Accordingly, he has the authorization to conduct the above-referenced worship and religious duties.

The director approved the petition on December 26, 2000. Subsequently, on January 24, 2001, the self-petitioner filed a Form I-485 Application to Adjust Status. As part of the adjustment application, the self-petitioner submitted Form G-325A, Biographic Information. The instructions on that form require the petitioner to list his employment over the past five years (2001-1996). The self-petitioner listed employment as "Pastor" at the [redacted] mosque from November 1998 to the present and as a religious teacher at Brunei Durassalam from 1994 through 1998.

In a letter submitted in support of the Form I-485, [redacted], president of the mosque with which the self-petitioner seeks employment, provides further details of the self-petitioner's work during the requisite period. [redacted]

> [The self-petitioner] began working with us from November 1998 without salary till January 11, 2000 and then has been employed by us as an R-1 Religious worker since January 11, 2000 to present and his duties have been same as listed above.

The record contains the self-petitioner's 2000, 2001, and 2002 W-2 Wage and Tax statements and federal tax returns demonstrating the self-petitioner's employment with during these years.

On November 7, 2003, the director issued a notice of intent to revoke, stating that the record does not establish that the self-petitioner performed continuous religious work during the two-year qualifying period.

In response to the notice, states that "neither the [s]tatue nor the regulations require the employment prior to the filing [sic] of I-360 be in paid position." We are not persuaded by statement and note the legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 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 immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate the he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca,* 10 I&N Dec. 712 (Reg. Com. 1963) and *Matter of Sinha,* 10 I&N Dec. 758 (Reg. Com 1963).

The term "continuously" also is discussed in a 1980 decision where 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 line with these past decisions and the intent of Congress, it is clear, therefore that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who, in accordance with their vocation, live in a clearly unsalaried environment; the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and salaried. To hold otherwise would be contrary to the intent of Congress.

further argues that "people go into [r]eligious vocations for improving their spiritual life as well as their communities and not to improve their own financial situation." We are not persuaded by argument that the self-petitioner need not be employed in a paid position because he is engaged in a vocation. The self-petitioner's position, in which he has clearly been paid a salary for a least a portion of the qualifying period and beyond, is not similar to that of a nun or a priest, who live in an unsalaried environment.

Finally, argues that "this case was approved more than two years ago and for the [director] to take this position that this case was improperly approved . . . is a miscarriage of justice . . . [and because] as of today, the [self-petitioner] has been employed in a paid position as a religious worker for the preceding two years . . . the district director will simply force the [self-petitioner] to file a new Form I-360 which is immediately approvable.

By law, an approved petition can be revoked "at any time" before the alien becomes a lawful permanent resident. It is not inherently a "miscarriage of 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. The fact that the self-petitioner may be *currently* eligible for approval is irrelevant as the issue at hand is whether the self-petitioner was eligible for the benefit at the time the petition was filed. A visa petition may not be approved based on speculation of future eligibility or after the petitioner becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

The director revoked the petition on December 17, 2003 noting that the self-petitioner was a volunteer for the majority of the two-year period preceding the filing of the petition. Accordingly, the director concluded that the record contained no evidence to support a finding that the self-petitioner was employed on a full-time basis during the requisite period.

On appeal, counsel states:

> The evidence submitted with Form I-360 and I-485 has clearly demonstrated that [the self-petitioner] is not a "lay worker." The [self-petitioner] received formal education from in Holy Quran Memorization in 1989 . . . Subsequent to completion of this formal education, [the self-petitioner] was employed by Jamia Masjid Sajunpur from 1992-1994 . . . After working as a Minister or Imam for two years, the [self-petitioner] was employed by Pakistan Diplomatic Mission in Brunei where he was engaged in religious teachings. Finally, the [self-petitioner] came to the United States and provided services as Minister of a volunteer basis from November 1998, to January 2000, a period of less than fifteen (15) months. Since January 2000, [the self-petitioner] has provided paid services to as an Imam . . . [the self-petitioner] has been a Professional Religious Worker since 1989 who simply provided volunteer Religious Worker services for a short period to [Madrasah Islamiah] due to his immigration status.

On appeal, counsel fails to dispute the director's finding that because the self-petitioner was employed as a volunteer, he does not have the requisite two-years continuous experience in essentially the same position as the proffered position. Although counsel correctly notes that the self-petitioner's voluntary service, which covered the period from November 1998 through January 2000, was for "a period less than fifteen (15) months," this fact does not support a finding of the self-petitioner's continuous employment as for half of the requisite period the self-petitioner was an unpaid, volunteer. Although there may limited circumstances in which unpaid volunteer work may constitute qualifying experience, the burden of proof remains on the petitioner to establish that the claimed work took place continuously. Such continuous work has not been shown here. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Further, although counsel makes reference to a CIS memo about continuous employment, he does not provide any argument or make any assertion that the beneficiary's "break" in full-time, salaried employment was beyond his control. We note that the record does not reflect any circumstances which prevented the self-petitioner from returning to his country to continue his work as an Imam while awaiting approval of his nonimmigrant visa. Thus, even if counsel had made such an argument, we would not find that the beneficiary's lack of employment was caused by "circumstances beyond his control" as it was his choice to remain in the United States and await approval of his R-1 nonimmigrant visa rather than return home.

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.