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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

C1

[redacted]

JAN 26 2005

FILE: [redacted] Office: TEXAS SERVICE CENTER Date:
SRC 01 010 52023

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: 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. On further review, the director determined that the petitioner was not eligible for the visa preference classification. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the preference visa petition and her reasons therefore, and subsequently exercised her discretion to revoke the approval of the petition on August 16, 2003. The petition 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 its director of education. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition or that it had extended a qualifying job offer to the beneficiary. The director also determined that the petitioner had not established that it had the ability to pay the beneficiary the proffered wage.

On appeal, counsel submitted additional documentation.

Section 205 of the Act, 8 U.S.C. § 1155, states that the Attorney General (now the Secretary of the Department 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 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. *Id.*

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) echoes the above statutory language, and states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States." The regulation 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."

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) 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 3, 2000. Therefore, the petitioner must establish that the beneficiary was continuously working in the religious occupation throughout the two-year period immediately preceding that date.

In a September 28, 2000 letter, the petitioner's senior pastor, [redacted] stated that the beneficiary had been "working as a full time education director since September 1999," and that he had worked as a "full time volunteer Bible Teacher at the Tulsa Korean United Methodist Church from September, 1998 to September, 1999." The petitioner submitted no evidence of the beneficiary's association with the Tulsa Korean United

Methodist Church. 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).

On appeal, the petitioner submitted a letter dated September 18, 2000 from the senior pastor of the Tulsa Korean United Methodist Church. The letter "certified" that the beneficiary "served our church as a full time Bible Teacher for twelve months" from 9/26/1998 to 9/27/1999." The pastor provided no further details of the beneficiary's association with the church or what the pastor considered to be "full-time." We note that counsel states that the beneficiary arrived in the United States as a visitor pursuant to a B-2 visa on September 26, 1998, the same date that he purportedly started volunteering full time with the Tulsa Korean United Methodist Church.

Reverend Lee stated that the beneficiary's duties "include preparing standard curriculum for each grade, interviewing every student and legal guardian for proper placement with the school, determining adequate teaching materials for the school, counseling for students, organizing, faculty meetings, and organizing special events for the school." The petitioner submitted no evidence of the beneficiary's work schedule or the nature of the school at which the beneficiary worked.

In her Notice of Intent to Revoke dated June 18, 2003, the director noted that the duties of the proffered position are common to any school and that the petitioner had submitted no evidence that the duties of the position were religious in nature. The director further noted that the petitioner had submitted no evidence that any of the beneficiary's prior experience had been compensated, and that the evidence did not establish that the beneficiary had been engaged continuously in a qualifying religious occupation for two full years prior to the filing of the visa petition.

In response, the petitioner reiterated that the beneficiary served as a "full time volunteer Education Director" since September 1999, and became a paid employee in December 2000 upon receipt of an R-1, nonimmigrant religious worker, visa. The petitioner stated further that the beneficiary's duties included "preparing standard, age related curriculum to each grade level of Sunday School. He interviews students for proper placement and counsels with students in need of counseling. He also organizes special events for the youth groups."

In his letter accompanying the response to the director's Notice Of Intent To Revoke, counsel stated that the beneficiary is working 40 hours per week and submits a purported work schedule for the beneficiary. No evidence in the record corroborates counsel's statements. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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 that 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 not 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. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 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 generally salaried. To hold otherwise would be contrary to the intent of Congress.

In the rare case where volunteer work might constitute prior qualifying experience, the petitioner must establish that the beneficiary, while continuously and primarily engaged in the traditional religious occupation, was self-sufficient or that his or her financial well being was clearly maintained by means other than secular employment.

On appeal, counsel asserts that in *St John the Baptist Ukrainian Catholic Church v. Novak*, N.D.N.Y. 00-CV-745 (2000), an unpublished decision, CIS "conceded that voluntary employment was acceptable" for the statutorily required two-year experience period. It is noted that the petitioner in *St John the Baptist Ukrainian Catholic Church v. Novak* was still required to establish that she worked continuously in the religious occupation for the required two-year period and that she qualified for the visa preference sought. The petitioner submitted no evidence of how the beneficiary supported himself financially from September 1998 to December 2000, when the petitioner began paying him a salary. The evidence does not establish that the beneficiary was not dependent upon secular employment for his financial well being during the qualifying two-year period.

The record does not establish that the beneficiary worked continuously in a religious occupation for two full years prior to the filing of the visa petition.

The director also determined that the petitioner had not established that he had been extended a qualifying job to the beneficiary.

In its letter accompanying the petition, the petitioner stated that the beneficiary would work full time at a salary of $1,200 per month. The petitioner indicated that the proffered position was that of director of education and listed the duties expected of the position. However, the petitioner provided no evidence regarding the school for which it was hiring the beneficiary, such as its size or the number of students or teachers involved, and provided no other evidence that the duties of the position would provide full-time, permanent employment to the beneficiary.

As noted above, although counsel outlined a work schedule for the beneficiary, the petitioner submitted no corroborating evidence to support counsel's assertions. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter Of Laureano*, 19 I&N Dec. 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

The evidence does not establish that the petitioner extended a qualifying job offer to the beneficiary.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

To establish its ability to pay the proffered wage, the petitioner submitted copies of its checking accounts statements for the months of June through August 2000. In response to the director's Notice Of Intent To Revoke, the petitioner submitted a copy of the Form W-2, Wage and Tax Statement that issued to the beneficiary in 2001 and 2002, showing wages paid of $10,800 and $14,400 respectively. The petitioner also submitted copies of its monthly checking account statements for December 2002 through April 2003.

The regulation states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. In this instance, the petitioner submitted none of the required evidence of its financially ability to pay the beneficiary in 2000, the year it filed the petition.

The evidence does not establish that the beneficiary had the ability to pay the proffered wage as of the date the petition was filed.

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.