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

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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 2 6 2005
WAC 02 172 52964

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.

Marie Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California 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 a Notice of Intent to Revoke the approval of the preference visa petition and his reasons therefore, and subsequently exercised his discretion to revoke the approval of the petition on January 20, 2004. The petition is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

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 worship director. The director determined that the petitioner had not established that the position of choir director qualified as that of a religious worker.

Counsel for the petitioner timely filed a Form I-290B, Notice of Appeal to the Administrative Appeals Unit. Counsel indicated on the Form I-290B that a brief and/or additional evidence would be forwarded to the AAO within 30 days. As of the date of this decision, more than a year after the appeal was filed, no further documentation has been received by the AAO. Therefore, the record will be considered complete as presently constituted.

Section 205 of the Act, 8 U.S.C. § 1155, states that 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)).

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).

With its petition, filed on April 29, 2002, the petitioner indicated that the proffered position was that of worship director. According to the petitioner, the duties of the worship director are as follows:

> Assist the Senior Pastor and the Associate Pastors in planning and conducting worship and other services; coordinate the activities of lay participants, organists and musicians, readers, choirs and ushers. Arrange for the preparation of the worship facility including ensuring that adequate supplies of needed worship material are readily available. Lead the Worship Committee in planning annual, seasonal and weekly worship services and other meetings. Assist pastors and lay teachers in selecting books and materials for classes and services. Assist the choir directors in selecting music that will enhance the worship service experience. Coordinate committees that oversee social, educational and charitable events and recreational programs sponsored or co-sponsored by the Church. Report to the Senior Pastor and attend weekly Church meetings.

Although the petitioner stated that the beneficiary had previously served as choir director and the petitioner had submitted a prior petition on behalf of the beneficiary to serve in that position, the evidence clearly indicates that the position that is the subject of the instant petition is that of worship director. In its previous petition, the petitioner described the duties of choir director as follows:

> Will prepare weekly music program including instrumental and choir presentation for service. Also, prepare annual music services for Easter, thanksgiving, Christmas, Graduation, and Summer Music Service. Develop and direct church music programs and workshops, and Christian Youth summer camp, coordinate religious and charitable music related events, activities, and programs sponsored or co-sponsored by [the petitioner]. Accompany pastor of the church to visit the poor and sick; lead monthly services and bible classes for choir members.

The record reflects that the duties of the two positions differ in significant respects. The director's determination, therefore, that the position of choir director within the petitioning organization did not qualify as that of a religious worker, is clearly not an issue in these proceedings.

Therefore, the petition will be remanded to the director to request further evidence and to enter a new decision.

According to 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work in a religious occupation. 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 states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions would reasonably be expected to perform services directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

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.

On remand, the director should address whether the petitioner has established that the position of worship director is a religious occupation within the meaning of these proceedings.

Additionally, the regulation at 8 C.F.R. § 204.5(m)(1) 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 therefore requires the alien to be continuously working in the occupation for which entry is sought for two full years prior to the filing of the visa petition. In a "certificate of employment," the petitioner stated that the beneficiary worked for the petitioning organization in the position of choir director from January 2000 to December 2001, and in the position of worship director since January 1, 2002. In an April 17, 2002 letter, the petitioner stated that the beneficiary "also performed the duties of Worship Director for the church on an interim basis for the last two years." The petitioner submitted no evidence to resolve this inconsistency. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any

attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

On remand, given the fact that the petitioner has previously claimed the beneficiary was its choir director, the director should also address whether the petitioner has established that the beneficiary has continuously worked as a worship director for two full years prior to the filing of the visa petition.

This matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.