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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

MAR 0 3 2005

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:
WAC 02 058 53343

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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 Christian youth education director and counselor. The director determined that the petitioner had not established that the position offered to the beneficiary qualifies as a religious occupation, or that the beneficiary had the requisite two years of continuous work experience in the position offered 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 concerns the nature of the proffered position. 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.

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.

Rev. Hae Jin Jung, pastor of the petitioning church, states that beneficiary's "duties for our church require him to create, plan, organize, direct, analyze, counsel, instruct, and develop each level of the religious education and language project." The petitioner indicates that the beneficiary follows the following work schedule:

Sunday:	8:00 a.m. – 10:00 a.m.	Sunday School Worship Service
	11:00 a.m. – 1:00 p.m.	Sunday School Worship Service
	1:00 p.m. – 3:00 p.m.	Evaluation
Monday:	OFF DAY	
Tuesday:	10:00 a.m. – 5:00 p.m.	Checking the absentees. Weekly report education. Visiting church members.
Wednesday:	10:00 a.m. – 5:00 p.m.	Preparation for instruction for education department of church (Schedule check, selecting hymns & gospel songs, copy materials)
Thursday:	10:00 a.m. – 5:00 p.m.	Bible study instructing & counseling. Visiting church members.
Friday:	10:00 a.m. – 5:00 p.m.	Preparation for Korean school instructing and signing gospel songs
	7:00 p.m. – 9:00 p.m.	Youth group worship service & counseling.
Saturday:	10:00 a.m. – 1:00 p.m.	Korean school instructing counseling

In a later supplement to the record, states that the beneficiary must also "provide consultation for our youth, based on religious principles" and "teach the importance of high moral standards."

The director approved the petition on October 29, 2002, but subsequently issued a notice of intent to revoke on August 8, 2003. In that notice, the director stated that "the duties of the [beneficiary's] position are those of an education director/counselor of a non-profit organization. This is considered a wholly secular position and not qualifying as a religious occupation for the purpose of special immigrant classification."

In response, states: "The Christian Youth Education Director and Counselor is responsible for the continuity of the religious function as it pertains to the Nicene Creed. . . . Religious education is the core foundation of the church." states that the *Book of Order* of the Presbyterian Church (USA) defines and discusses "Christian educators" at G-14.0700, thereby establishing denominational recognition of the beneficiary's position.

The director revoked the approval of the petition, stating that the petitioner had not established that the majority of the beneficiary's typical work day involved instruction on religious subjects, as opposed to secular academic subjects. On appeal, counsel argues "the Department of Labor clearly recognizes [the proffered position] as a full-time position and this job is a common [one] in churches across the United States." Documentation from the Department of Labor's Employment and Training Administration shows that the job title "Directors, Religious Activities and Education" is recognized as requiring "[e]xtensive skill, knowledge, and experience."

The petitioner submits copies of five job announcements for positions which, counsel claims, are comparable to that offered to the beneficiary. The applicability of these announcements is questionable, because they cover a variety of religious denominations, with none of them apparently relating to the petitioner's and the beneficiary's denomination. One of the announcements does not specify whether the position is full-time or part-time. Of the remaining four announcements, two of them indicate that the job is half-time rather than full-time. Thus, the announcements contradict the claim that the position is routinely full-time.

Only two of the announcements specify salaries. The salary specified for a full-time position is $40,000. A half-time position has a base salary of $18,200 per year, which exceeds the petitioner's offer to the beneficiary of $1,400 per month ($16,800 per year). Thus, the beneficiary's proffered salary conforms much more closely to a part-time position than a full-time one, according to the materials submitted by the petitioner and cited by counsel. If the position offered to the beneficiary is truly full-time, then the petitioner has offered the beneficiary a substantially lower salary than those shown in what counsel portrays as typical job offers. We note, also, that many of these employers require (or strongly prefer) a degree in education, which the beneficiary does not appear to hold.

According to the Department of Labor database cited by the petitioner (http://www.flcdatacenter.com), the prevailing "Level I" or beginning wage for the position is over $21,000 per year in the Los Angeles Area. For "Level II" employees with sufficient experience in the occupation to be considered "fully competent" and able to work without close supervision, the local prevailing wage is nearly double that amount, consistent with the $40,000 offer described in one of the announcements submitted on appeal. Thus, we are left with one of three possibilities. Either (1) the petitioner has offered the beneficiary a full-time position as described in the database, at far less than the prevailing wage; or (2) the petitioner has offered the beneficiary a part-time position at a rate approaching the prevailing hourly wage; or (3) the position offered to the beneficiary is

not, in fact, of the type described in the cited database, making the information from that source largely irrelevant to this proceeding.

The duties ascribed to the beneficiary appear to relate to qualifying, traditional religious functions, but the petitioner has not adequately addressed the director's concerns as to whether the beneficiary's religious duties would be full-time. The job announcements and government data submitted on appeal indicate that the beneficiary's proffered salary is considerably more in line with part-time than full-time employment. We therefore conclude the petitioner has not established a valid offer of qualifying full-time employment in a religious occupation.

The other issue concerns the beneficiary's past experience. 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 experience in the religious vocation, professional religious work, or other religious work. The petition was filed on December 5, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a Christian Youth Education Director & Counselor throughout the two years immediately prior to that date.

In a letter submitted with the initial filing, [redacted] states that the beneficiary "has been serving our church as Christian Youth Education Director & Counselor without pay, while attending school, and has been supported financially by his family in Korea."

To establish the beneficiary's means of support, the petitioner submits documentation of wire transfers from various senders in Korea. Five of the transfers, totaling $11,544, occurred during the qualifying period, specifically in April and June of 2000, and July, August and September of 2001.

The director requested additional information about the beneficiary's work schedule. In response, Rev. Jung states "[t]he beneficiary worked as a full-time Christian Youth Education Director and Counselor at the petitioning church as of May 1998 to the present, 6 days a week, 8 hours a day." This assertion contradicts the previously submitted schedule (submitted again with the above letter), which shows only one day (Friday) in which the beneficiary works more than seven hours. In the same letter, Rev. Jung states "the beneficiary served without pay" but will receive a salary after the approval of the petition.

Other documents in the record at the time of approval show that the beneficiary studied at two institutions during the two-year qualifying period. The petitioner has submitted a copy of a commencement program from K.P.C.A. Presbyterian Theological Seminary dated June 2, 2001. Also, a certificate dated December 23, 1999 indicates that the beneficiary "is a full time student" studying English as a Second Language at Pacific Gateways English Academy (PGEA). Visa documentation in the record indicates that the beneficiary was still at PGEA in September 2000, and was expected to complete his studies in December 2001. Thus, the above evidence suggests that the beneficiary was a full-time student at two different institutions (the academy and the seminary) simultaneously, while also purportedly working a 42-hour week for the petitioner. The academic documents submitted with the initial filing do not show the beneficiary's class schedule.

The director stated that the beneficiary's status as a full-time student (for which there exists contemporaneous documentary support) appears to contradict the petitioner's unsupported claim that the beneficiary worked full-time for the church during the 1999-2001 qualifying period. The director also stated that unpaid volunteer work is not qualifying experience in an occupation.

In response, cites the Foreign Affairs Manual: "Activities considered acceptable for fulfilling the two-year requirement include seminary study, teaching, at a religious academy, spiritual/pastoral counseling, etc." 9 FAM 42.32(d)(1) N8. When read in context, this cited passage refers to aliens who are *already* working as ministers, not students who seek eventually to *become* ministers. Furthermore, the Foreign Affairs Manual is an advisory guide for Department of State employees, rather than a set of rules binding on Citizenship and Immigration Services adjudicators.

asserts "the beneficiary fulfilled the two-year requirement through his activities of full-time spiritual/pastoral counseling. He worked as a postgraduate seminary student engaged in full-time church work." states that there is no conflict between the beneficiary's work and his studies, because "[t]he beneficiary worked full-time during the daytime and attended classes full-time in the evenings." director of PGEA, reaffirms that the beneficiary "was a full time evening student. . . . Our evening classes took place from 5:30 PM to 9:30 PM Monday through Friday. The student's attendance status was satisfactory."

states that the beneficiary "was not working on a 'voluntary' basis. This is false." Rather, claims "the beneficiary was working towards fulfilling the requirements for ordination." general secretary of the General Assembly of the Korean Presbyterian Church in America, states that the beneficiary "is currently a candidate for the ministry, and that he has fulfilled our prescribed two-year covenant relationship through his work at the [petitioning church]."

The director revoked the approval of the petition, stating that the beneficiary's class schedule (indicating studies from 5:30 to 9:30 every weeknight) conflicts with the beneficiary's work schedule (which shows religious work from 7:00 to 9:00 every Friday night). The director concluded that the beneficiary's work and study schedules, taken together, were not credible. The director repeated the assertion that unpaid work is not qualifying experience.

On appeal, the beneficiary observes that, in the letter from of PGEA, the reference to class hours "was written as a general statement of the class time schedule." This is a reasonable interpretation of Mr. letter. The beneficiary then claims that he "attended classes from 5:30 p.m. to 9:30 p.m. Tuesdays through Fridays. . . . I attended the day classes on Mondays, only, from 9:00 a.m. to 12:00 p.m. in lieu of the Friday evening classes because of my commitments with the church." The petitioner submits no evidence to corroborate this claim. The beneficiary asserts that "the school closed" and he has, therefore, been unable to obtain such documentation. It remains that in his letter, never mentioned that the beneficiary took any day classes at PGEA. The lack of corroboration for the revised claim is explained only by the equally uncorroborated claim that PGEA is "closed."

Furthermore, beyond the beneficiary's classes at PGEA, the petitioner has also indicated that the beneficiary was studying for the ministry during the qualifying period. Because PGEA is a language school, not a theological seminary, the beneficiary must have been studying at another facility, in addition to PGEA. As noted before, the petitioner has submitted an untranslated commencement program from K.P.C.A. Presbyterian Theological Seminary, dated June 2, 2001. It appears, therefore, that the beneficiary was a student at this seminary until June 2001. The petitioner offers no other explanation as to why this document would be at all relevant to the proceeding at hand. Our finding is consistent with counsel's assertion on appeal that the beneficiary "worked as a postgraduate seminary student" during the qualifying period. The question, therefore, still remains as to when the beneficiary was pursuing *seminary* studies if he devoted his days to church work and his evenings to language classes.

If the beneficiary seeks to become an ordained minister, as the above evidence demonstrates, then experience in non-ministerial religious work cannot count toward the two-year requirement. It cannot suffice simply to accumulate two years of some kind of service to the church; the alien must have experience performing the same duties that he or she seeks to perform in the future. 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 as an ordained pastor has not been carrying on "such work" if he has worked as an education director and counselor for the past two years.

Furthermore, 8 C.F.R. §§ 204.5(m)(1) and (4), requires that the alien must seek to enter the United States *solely* to work as a minister (defined at 8 C.F.R. § 204.5(m)(2) as an authorized member of the clergy). This requirement reflects the language of the statute at section 101(a)(27)(C)(ii)(I) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(I). Here, the beneficiary apparently seeks to enter the United States to work as an education director/counselor until such time as he has completed his ministerial credentials, at which time he intends to become an ordained pastor. We can find no statutory or regulatory justification to allow an alien who seeks to become a pastor to immigrate on the basis of his (poorly documented) past work as a youth education director and counselor. At best, the petition appears to have been filed prematurely. Under the circumstances, we find that the director was justified in revoking the approval of the petition.

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.