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

U.S. Citizenship
and Immigration
Services

[redacted]

MAY [illegible]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date:
SRC 96 257 50620

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

Sr 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 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 director of the youth organization. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a director of the youth organization immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established its ability to pay the beneficiary.

On appeal, the petitioner indicates that a brief will be forthcoming within 30 days. To date, nearly one year later, the record contains no further submission from the petitioner. We therefore consider the record to be complete as it now stands.

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 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 18, 1996. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a director of the youth program throughout the two years immediately prior to that date.

In a letter accompanying the initial filing, , co-pastor of the petitioning church, states that the beneficiary "has been performing the . . . duties [of director of the youth program] with our Church since July of 1994 . . . ." further states that the beneficiary's position "has normally been an unpaid position since our policy has been that only the Head Pastor, Co-Pastor and Assistant Pastor should receive a salary and thus no salary has been paid to [the beneficiary]."

The director approved the petition on September 24, 1996. Subsequently, on June 23,1997, the beneficiary filed a Form I-485 Application to Adjust Status. As part of the adjustment application, the beneficiary submitted Form G-325A, Biographic Information. In accordance with the instructions on that form, the beneficiary listed employment as a "nursing ass[istant] from Aug[ust] 1989" to the present and as a "volunteer" youth director with the petitioning church from July 1994 to the present.

On May 7, 2004, the director issued a notice of intent to revoke, stating that the record does not establish that the beneficiary performed continuous religious work during the two-year qualifying period. The director also noted the beneficiary's continuous secular job as a nursing assistant and stated that the record does not establish the beneficiary's intent to perform qualifying religious work.

In response to the notice, restates the duties of the beneficiary's position and the petitioner's job offer but does not contest any of the director's assertions regarding the beneficiary's outside employment or voluntary employment with the petitioner.

The director revoked the approval of the petition on June 15, 2004. On appeal, counsel for the petitioner explains that because the petitioner "is a small church [it] simply does not have the payroll records, audits, etc." Counsel states that the petitioner "provided everything that they could provide," that the director has

made "unreasonable demands," and that the petitioner and beneficiary "substantially complied with the requests" of the director.

Counsel's statements are not persuasive. Regardless, of its size, the petitioner is required to meet the eligibility requirements stipulated by law and regulation. It is incumbent on the petitioner to provide documentary evidence to establish that the beneficiary's work has been continuous, full-time, paid employment. Regardless of whether the petitioner has actual payroll records or other similar evidence, the petitioner has not even submitted a work schedule that shows the petitioner's duties are full-time. The petitioner's assertion that the duties of the beneficiary's position require "at least 40 hours per week" is not supported by any other documentary evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In addition to the lack of evidence related to the beneficiary's full-time employment, the record reflects that the beneficiary was an unpaid volunteer during the qualifying period and that the beneficiary's income derived from her job as a nursing assistant. Although the record contains copies of the beneficiary's Form W-2 Wage and Tax Statements for 2001 and 2002 showing the petitioner paid the beneficiary $15,600, there is no evidence the beneficiary was paid prior to 2001. In *Matter of B*, 3 I&N Dec. 162 (CO 1948), in a discussion of whether an alien worked continuously as a minister, one consideration was that the alien did not take up any other occupation or vocation. Here, the beneficiary has indicated that she worked as a nursing assistant during the entire qualifying period. The petitioner has not contested the director's determination that the beneficiary's job with the petitioner was not full-time. The AAO holds that an alien principally employed in a secular job or jobs is not entitled to status as a special immigrant religious worker merely by virtue of performing a small amount of work on behalf of a church or other religious entity.

The remaining issue is whether the petitioner has the ability to pay the beneficiary the proffered wage. 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.*

[Emphasis added].

As evidence of the petitioner's ability to pay, the petitioner submitted copies of bank statements, a balance sheet, and a profit and loss statement. As previously noted, the record also contains copies of the beneficiary's 2001 and 2002 W-2 Wage and Tax Statements.

The regulation at 8 C.F.R § 204.5(g)(2) states that evidence of the 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 has not submitted any of the required types of evidence. The non-

existence or other unavailability of required evidence creates of presumption of ineligibility. *See* 8 C.F.R. § 103(b)(2)(i).

While the determination of an individual's status or duties within a religious organization is not under the purview of CIS, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee,* 16 I&N Dec. 607 (BIA 1978).

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.