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

U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

APR 15 2005

FILE: [redacted] Office: TEXAS SERVICE CENTER Date:
SRC 00 102 52362

IN RE: Petitioner:
Beneficiary: [redacted]

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.

Marie Johnson

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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.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 a minister. The director determined that the petitioner had not established its ability to pay the beneficiary's proffered wage.

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Secretary 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. *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 . . . ; 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(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.

The petitioner filed the petition on February 8, 2000. [redacted]enior pastor of the petitioning church, stated that the church "has recently expanded to Colombus [sic], Texas. The congregation as well as the Office of the State Overseer, located in San Antonio, Texas, make ourselves responsible for [the beneficiary's] support of $1,200.00 per month. In addition, we will provide housing for the family. . . . We hope to place [the beneficiary] as the Senior Pastor for the Colombus church located at [redacted]

The petitioner's initial submission did not include any of the types of documentation required by 8 C.F.R. § 204.5(g)(2). Instead, the petitioner submitted a copy of a bank statement, showing a balance of $1,485.39 as of November 30, 1999. The bank statement was addressed to Iglesia de Dios, 10256 Valley Wood Drive, Houston, Texas. This address is not the address shown on the Form I-360 petition.

The director approved the petition on March 9, 2000, and the beneficiary filed a Form I-485 adjustment application on February 21, 2003. On Form G-325A, Biographic Information, the beneficiary indicated that he had worked since March 1998 at the First Spanish Church of God [redacted]Houston, Texas. (The March 1998 starting date cannot be correct, as the beneficiary did not arrive in the United States until December 1998.) Subsequently, on May 15, 2003, the director requested additional information relating to the adjustment application. The director quoted the regulation at 8 C.F.R. § 204.5(g)(2), including the list of acceptable types of documentation, and instructed the beneficiary to submit "evidence for 2000, 2001 and 2002 showing that [the petitioner] has the ability to pay a salary" to the beneficiary.

In response to that notice, [redacted]dministrative bishop of the Church of God, South Central Hispanic Region, states that the beneficiary "is currently serving as a minister to the Church [redacted] in Houston, Texas. [The beneficiary] was assigned to the Renacer congregation in January 2000. Originally [the beneficiary] came to the country to assist [redacted] in the [petitioning church]; soon thereafter he was assigned to the Renacer church." As noted above, the beneficiary's aforementioned Form G-325A makes no mention of any change of assignment in January 2000. Bishop [redacted]oes not mention the beneficiary's compensation at all, and therefore his letter does not corroborate the claim that the Office of the State Overseer is responsible, in part or in full, for paying the beneficiary's salary.

Counsel asserts "Iglesia de Dios-East Houston does have the ability to pay [the beneficiary]. Attached are the **ORIGINAL AUDITED FINANCIAL STATEMENTS** for **2000, 2001 and 2002**" (counsel's emphasis). These statements cover the period from September 1, 2000 to December 31, 2002.

The director issued a notice of intent to revoke, stating that the financial statements do not establish *the petitioner's* ability to pay the proffered wage. The director allowed the petitioner 30 days to respond. The director's notice was dated August 17, 2003, but the initial mailing was returned as undeliverable. The notice

was re-mailed, postmarked September 11, 2003. The director received the petitioner's response on October 9, 2003, less than 30 days after the successful mailing. The director stated that this response was untimely, but a notice is not considered served until it is mailed. *See* 8 C.F.R. § 103.5a(b).

The petitioner submits an unaudited "balance sheet," dated November 9, 2002, showing that the petitioning church has $20,000 in "current assets," of which $17,000 consists of "Sound equipment" and "Chairs and equipment." An accompanying table indicates that the petitioner paid out $1,400 per month in "Wages/Salaries/Benefits" during 2001 and 2002. The petitioner also submits copies of bank statements from December 2001 through May 2003. The petitioner also submits "Income Expences [sic] Report[s]" from "[redacted]" the [redacted] church. The 2000 report indicates that the beneficiary received $4,800 in salary that year. The phrase "6 mount" is inserted in parentheses after the beneficiary's name. Another named pastor received the same amount, again with "6 mount" added in parentheses. Assuming "mount" to mean "month" (the reports contain other misspelled words as well), this report indicates that the petitioner paid the beneficiary only $800 per month in 2000, substantially less than the proffered salary of $1,200 per month.

The director revoked the approval of the petition on January 2, 2004, stating that the financial documents for "[redacted]" do not document the finances of the petitioning church. The director added that the figures shown in the unaudited reports from the "Restauración" church do not match the figures in the audited reports from the "East Houston" church. This latter conclusion is unremarkable, as the record plainly shows that "Restauración" and "East Houston" are two different churches at two different addresses.

The director also observed that some materials place the beneficiary at "Renacer" and others place him at "East Houston." On appeal, counsel shows that these two terms apply to the same church, which we shall call "East Houston."

The director based the revocation, at least in substantial part, on the assertion that the *petitioner*, not the *employer*, must establish ability to pay. This finding, however, is inconsistent with the plain wording of 8 C.F.R. § 204.5(g)(2), which requires "evidence that the prospective United States employer has the ability to pay the proffered wage." In this instance, the petitioner is a church, but not the church where the beneficiary has worked or intends to work.

It is crucial for the petitioner to establish and confirm the actual source of the beneficiary's past and intended future wages. The available evidence is unclear in this regard. On the one hand, the petitioner has submitted financial statements from the East Houston church, including "Pastor's Draw." On its face, such evidence certainly implies that the East Houston church pays its own clergy. On the other hand, however, the petitioner has submitted unaudited statements from the Restauración church, identifying the beneficiary by name as having received wages from that church in 2000.

The materials in the record are not entirely in agreement as to when the petitioner left one church to work at another. It would be in order, therefore, for the petitioner to produce some type of documentary evidence to establish definitively when the beneficiary left the Restauración church for the East Houston church, in addition to documentation that specifically identifies the entity responsible for paying the beneficiary's salary.

With regard to the audited financial statements from the East Houston church, those statements cover all of 2001 and 2002, but only the last four months of 2000, and thus the statements do not establish the church's financial status as of the petition's February 2000 filing date. As of September 1, 2000, the church operated at a net deficit of $2,866.38. The church ended each year with current assets between $1,800 and $2,600.

The church's expenses include a "Pastor's Draw" of $6,690.00 in 2000, $22,350.00 in 2001, and $24,400.00 in 2002. These amounts exceed the beneficiary's proffered salary of $1,200 per month, although the report does not specify whether the "Pastor's Draw" went to a single pastor or was shared among two or more. Without some information as to which individual(s) received the "Pastor's Draw," we cannot determine whether these audited financial statements establish ability to pay. If the "Pastor's Draw" amounts do not include payments to the beneficiary, then it does not appear that sufficient funds remained for the beneficiary's salary. If, on the other hand, the petitioner can demonstrate that the "Pastor's Draw" included the beneficiary's salary in full, then such evidence would show that the petitioner not only could, but *did*, pay the beneficiary's proffered wage during the time in question.

On appeal, counsel states:

> In the case of a minister, the standard for ability to pay is not the general standard at 8 C.F.R. § 204.5(g)(2) cited in the denial, but the more specific one that applies only to petitions for ministers under sections 204(b)(4) and 101(a)(27)(C)(ii)(I) of the Act.
>
> The standard that should have been applied is that found in the regulations at 8 C.F.R. § 204.5(m)(4). It is a more generous standard than the standard at 8 C.F.R. § 204.5(g)(2). Under the correct standard for a minister, the job offer itself in most cases will be sufficient if it indicates clearly that the beneficiary will not rely exclusively on outside employment or solicitation for support. 8 C.F.R. § 204.5(m)(4). If the job offer letter itself is not clear, then the regulation states that bank letters, membership figures and list of other paid employees may be requested. *Id.*

We are not persuaded by counsel's reasoning. There is no section 204(b)(4) of the Act. We assume that counsel meant to say section 203(b)(4) of the Act, which pertains to special immigrants. Neither that section nor the other cited section of the Act say anything about compensation at all, let alone establish a separate standard of documentation to show ability to pay.

With regard to 8 C.F.R. § 204.5(m)(4), that section reads, in full:

> Job offer. The letter from the authorized official of the religious organization in the United States must also state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration), or how the alien will be paid or remunerated if the alien will work in a professional religious capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support. In doubtful cases, additional evidence such as bank letters, recent audits, church membership figures, and/or the number of individuals currently receiving compensation may be requested.

This regulation requires the petitioner to specify "terms of payment for services or other remuneration," but it does not nullify or supersede 8 C.F.R. § 204.5(g)(2). Nothing in the cited regulation exempts religious organizations from the ability to pay requirements of 8 C.F.R. § 204.5(g)(2). 8 C.F.R. § 204.5(m)(4) governs the *terms of employment*, rather than the petitioner's ability to meet those terms. 8 C.F.R. § 204.5(g)(2), in contrast, specifically applies to "*Any* petition . . . which requires an offer of employment," as is the case here.

Counsel states "[a] fundamental canon of statutory interpretation holds that, when there is an apparent conflict between a specific provision and a more general one, the more specific one governs." The regulation at

8 C.F.R. § 204.5(m)(4) does not offer any particular documentary standard to take the place of the very specific requirements listed at 8 C.F.R. § 204.5(g)(2). Therefore, the requirements listed at 8 C.F.R. § 204.5(g)(2) are "the more specific one[s]."

Beyond the decision of the director, we note that 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. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a minister between February 1998 and February 2000. The record, at this point, is nebulous with regard to the beneficiary's work prior to the filing date.

Pursuant to the above, the petitioner must establish a complete chronology of the beneficiary's church assignments from February 1998 to the present, with corroboration from each of those churches. For each church where the beneficiary has worked since February 2000, the petitioner must show that the church was able to pay (or, ideally, *did* pay) the beneficiary the full proffered wage of $1,200 per month during the time that the beneficiary was working at that church. The regulation at 8 C.F.R. § 204.5(g)(2), quoted above, lists the acceptable forms of evidence that can show ability to pay.

If the petitioner cannot show that the beneficiary worked continuously as a minister throughout the two-year qualifying period prior to the filing date, or that the churches where the beneficiary has worked have consistently been able to pay the beneficiary his full wage, then such grounds would justify the revocation of the approval of the petition.

Therefore, 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 Administrative Appeals Office for review.