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

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUN 23 2005
WAC 03 133 53867

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:

SELF-REPRESENTED

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. 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 October 27, 2004. 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 a music director and pianist. 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. The director also determined that the petitioner had not established that the position qualified as that of a religious worker, that the petitioner had extended a qualifying job offer to the beneficiary, or that the petitioner had the ability to pay the proffered wage.

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 BIA 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.*

On appeal, the petitioner submits a letter.

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
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> (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 on appeal is whether the petitioner established that the beneficiary was continuously engaged in a qualifying vocation or occupation for two full years immediately preceding the filing of the visa petition.

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 a Form 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 March 21, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a music director and pianist throughout the two-year period immediately preceding the filing date of the petition.

In its letter of March 17, 2003, the petitioner stated that, as music director and pianist:

> [The beneficiary's] duties will include directing and coordinating all musical activities. This includes selecting the appropriate music for various religious ceremonies, services and religious holidays. Further she will conduct the church choir for all religious holidays . . .

> Further, [she] will be responsible for organizing the choir group rehearsals and selecting the appropriate religious music to be used in various religious ceremonies.

The petitioner stated that the beneficiary had been working in the proffered position since March 2001 at a salary of $1,600 per month.

The petitioner submitted a schedule that it stated reflected the beneficiary's weekly work responsibilities. The schedule indicated that the beneficiary worked approximately 41.5 hours per week, primarily with the choir, either conducting or rehearsing, and performing piano accompaniment during worship services. Other duties reported by the petitioner included selecting music for the choir, logging in new music, inventorying and updating records, attending church staff meetings and meetings for "conductors and pianists," contacting absent members, sending letters to potential members, preparing media releases, working with the annual budget, administrative work for the choir, and promoting "the total music ministry thru internet research."

With the petition, the petitioner submitted copies of Form W-2, Wage and Tax Statements, that it issued to the beneficiary in 2001 and 2002, reflecting wages of $9,000 and $18,600, respectively.[1] The petitioner also submitted copies of canceled checks drawn on the petitioner's account and made payable to the beneficiary for the period September 15, 2002 through January 19, 2003, averaging $1,600 per month. The petitioner also submitted copies of the beneficiary's Form 1040A, U.S. Individual Income Tax Return, for 2001 reporting wages of $9,000.

In response to the director's request for evidence (RFE) dated August 6, 2003, the petitioner submitted a copy of another Form W-2 that it allegedly issued to the beneficiary in 2001, reflecting wages paid of $16,500, and a copy of a different year 2001 Form 1040A filed by the beneficiary and her husband, reporting wages of $16,500. The petitioner submitted no evidence to explain the two 2001 Forms W-2 or the two Forms 1040A. 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. 582, 591-92 (BIA 1988).

In response to the RFE, the petitioner also submitted a copy of the beneficiary's Form 1040A for 2002, reporting wages of $18,600. We note that the latter 2001 Form 1040A is dated in September 2003, and the 2002 Form 1040A is dated by the accountant in May 2003. The record contains no evidence that any of the beneficiary's income tax returns were filed with the Internal Revenue Service (IRS). In a letter dated August 14, 2003, the petitioner now claims that the beneficiary was paid $1,500 per month for her services.

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.

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[1] The Forms W-2 show the name of the employer as "Church of Peach" at the petitioner's address. We take this to be an uncorrected error by the petitioner's accountant, as the same mistake is repeated on the petitioner's tax returns.

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 response to the director's Notice of Intent to Revoke approval of the visa petition (NOIR) dated August 27, 2004, the petitioner submitted copies of California EDD Forms DE-6, quarterly wage reports, for the quarters ending March 31, 2001 through June 30, 2004. The petitioner also resubmitted a copy of the Form W-2 that it initially submitted with the petition reflecting wages paid of $9,000.

We note that the Forms DE-6 for the quarters ending March 2001 and June 2001 reflect wages paid only to the beneficiary and are not dated by the accountant. The remaining Forms DE-6 are dated by the accountant and reflect wages paid to other individuals. The wages reported by the beneficiary for the last two quarters of 2001 are consistent with the total wages reported on the Form W-2 originally submitted. The Forms DE-6 submitted for the first two quarters of 2001 are therefore questionable. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

Assuming that the Form W-2 originally submitted by the petitioner for 2001 reflects wages actually paid to the beneficiary, the document does not establish that the beneficiary began working for the petitioner in March 2001 at a wage of $1,600 per month. The reported wages reflect that the beneficiary began working for the petitioner in June 2001 at the rate of approximately $1,500 per month. Further, the wages reported for the year 2002 do not indicate that the petitioner paid the beneficiary $1,600 per month as it originally alleged. The evidence indicates that it paid her, at most, $1,500 per month for the first half of the year and $1,600 for the remainder of the year. While the difference in the rate of the salary is not significant for purposes of determining the beneficiary's prior work experience, the fact that the petitioner failed to provide truthful and

accurate information is significant, especially within the context of the other conflicting tax returns and inconsistent statements. *Id.*

The evidence does not establish that the beneficiary has worked continuously as a music director and pianist for two full years preceding the filing of the visa petition.

The second issue on appeal is whether the petitioner established that the position qualifies as that of a religious worker.

According to the regulation at 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 as a religious worker.

The proffered position is that of a full-time music director and pianist. The petitioner states that, in the position, the beneficiary would also travel with the pastors and church choir "on religious outings to the homeless shelters and orphanages, etc." The petitioner stated that the duties will include directing and coordinating all musical activities and that compensation would be at the rate of $1,600 per year.

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 (CIS) 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.

In response to the NOIR, the petitioner stated that it believed that the position of music director and pianist "are the very important ministry personals [sic] who have been defined and recognized by the governing body of the denomination of the Presbyterian Church." The petitioner then quotes from presumably a book by David J. Cho, *A Study Manual on Administration in the Local Church.* The petitioner, however, failed to provide copies of the quoted material and provided no further identifying information for [redacted] his qualifications as a source of authority for the Presbyterian Church.

The petitioner asserted that the proffered position "must have a traditional religious function because her job is not primarily administrative, humanitarian, or secular but bona fide sacred," and that music has traditionally been a way of communicating religious texts throughout history." While we do not dispute the relationship of music to religion in general, the petitioner has not established the significance of music to the Presbyterian Church in particular. The record contains no evidence that the position of music director or pianist is defined and recognized

by the Presbyterian Church as a religious occupation or that it is traditionally a permanent, full-time, salaried occupation within the denomination. Merely because a position is not primarily administrative or humanitarian does not make it a religious occupation, and merely stating that it is not secular does not make it so.

The petitioner also stated that the beneficiary had been employed full time in the position since March 2001 and that she was paid a salary for her work. However, the evidence does not substantiate this statement by the petitioner. In its previous petition filed on behalf of the beneficiary (WAC 00 203 54078), the petitioner stated that the beneficiary had worked as a pianist with the First Presbyteri Church of Daegu in Korea from 1990 to 1999, and had served in a voluntary capacity with the petitioning organization prior to the filing of the earlier visa petition.

On appeal, the petitioner states that liturgy "is the important part of Presbyterian church worship." However, it again fails to submit corroborative documentary evidence in support of its statements. 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)).

The evidence is insufficient to establish that the proffered position is a religious occupation within the meaning of the statute and regulation.

The third issue is whether the petitioner established that it had extended a qualifying job offer to the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

> *Job offer.* The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

The director noted that the petitioner initially stated that the position would require the beneficiary to work 41 hours per week. However, in response to the NOIR, the petitioner stated that the position would require 38.5 hours per week. The director further noted that the beneficiary's work schedule lists church services and activities not listed on the copy of the petitioner's church guide submitted as evidence. We further note that the petitioner's description of the duties to be performed by the beneficiary differs in significant aspects from the initial submission to the petitioner's response to the RFE. For example, in its original submission, the petitioner indicated that the beneficiary would serve as piano accompaniment at Sunday evening worship service from 5:00 pm to 6:30 pm, direct choirs at the Wednesday evening worship services from 6:00 pm to 8:00 pm, serve as piano accompaniment at early morning worship on Thursday from 6:00 am to 7:30 am, and direct choir and "accompaniment" at Friday overnight worship services from 8:00 pm to 11:00 pm.

In response to the RFE, the petitioner added requirements that the beneficiary would serve as piano accompaniment at early morning worship services on Tuesday from 6:00 am to 7:30 am and on Saturday from 6:00 to 7:30 am. In response to the NOIR, the petitioner omitted the Tuesday and Thursday early morning services, the Sunday evening service and the Friday overnight worship services, but added a new three-hour bloc of work on Thursday for the "Thursday Church of Revived Spirit."

The petitioner does not explain these differences in the beneficiary's work schedules. *See Matter of Ho*, 19 I&N Dec. at 591. We concur with the director that the petitioner's failure to resolve these inconsistencies make it impossible to determine the actual scope of the proposed job. The record is unclear as to whether the petitioner is offering the beneficiary full-time employment. Part-time employment is not a qualifying job offer for purposes of this employment-based visa petition.

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

The final issue is whether the petitioner established that it 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.

The petitioner stated that it would pay the beneficiary either $1,500 or $1,600 per month for her services. As evidence of its ability to pay this wage, the petitioner submitted copies of Forms W-2 that it issued to the beneficiary in 2001 and 2002. However, as discussed above, the year 2001 Forms W-2 and the supporting California quarterly wage reporting documentation are questionable, and the petitioner failed to resolve the inconsistencies in that documentation. *Matter of Ho*, 19 I&N Dec. at 591. Although this evidence is prior to the filing of the visa petition, and therefore outside of the period established by the regulation, this questionable documentation mandate careful scrutiny of the documents submitted by the petitioner for 2003, the year the petition was filed. *Id.*

The petitioner submitted copies of 10 checks made payable to the beneficiary during the period September 15, 2002 to January 19, 2003. However, it submitted no similar evidence for any period subsequent to January 19, 2003. As discussed previously, the petitioner also submitted copies of what has been identified as quarterly wage reports for the state of California (Forms DE-6), for the quarters ending March 31, 2001 through June 30, 2004. The copies of the Forms DE-6 for the quarters ending March and June 2003 reflect that the beneficiary was paid an average of $1,600 per month. The copies of the Form DE-6 for the remaining quarters in 2003 and through June 30, 2004 reflect that she was paid an average of $1,800 per month. A copy of the beneficiary's 2003 Form W-2 indicates she was paid $20,400 during 2003.

However, for the reasons discussed above, these documents lack sufficient indicia of reliability. The record contains no evidence that the quarterly wage reports were ever filed with the state of California, or that the Forms W-2 were ever filed with the IRS. Further, there is no evidence that the beneficiary filed an income tax return with the IRS at any time.

The petitioner also submitted copies of its Form 941, Employer's Federal Tax Return, for all quarters of 2002 but did not submit copies of any of its federal tax returns subsequent to that time. As this documentation falls outside of the prescribed time period, it is not sufficiently probative of the petitioner's ability to pay the

proffered wage as of the filing date of the petition. Further, the petitioner submitted no evidence to indicate that these returns were ever filed with the IRS.

The petitioner also submitted copies of its monthly checking account statements for the periods July 2002 to January 2003, and August 2004.

The above-cited regulation states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The record contains no evidence that the tax returns of either the petitioner or the beneficiary or the beneficiary's Forms W-2 were ever filed with the appropriate authorities. Further, the record contains conflicting evidence of wages reported by the petitioner as paid to the beneficiary. Other evidence in the record has not resolved this conflicting evidence.

Therefore, the petitioner has not established by competent evidence that it had the continuing ability to pay the beneficiary the proffered wage as of the filing date 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.