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

U.S. Citizenship and Immigration Services

[redacted]

PUBLIC COPY

MAY 26 2005

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:
WAC 01 132 55327

IN RE: Petitioner:
Beneficiary: [redacted]

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.

Mari 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 (NOIR) the approval of the preference visa petition and his reasons therefore, and subsequently exercised his discretion to revoke the approval of the petition on June 2, 2004. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Simultaneously with the appeal, the petitioner submitted a motion to reconsider. The director dismissed the motion on August 30, 2004.

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 an ordained religious instructor and evangelist. 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 further determined that the petitioner had not established that the position qualified as that of a religious worker, that the beneficiary was qualified for the position, that it had the ability to pay the proffered wage or that it had extended a qualifying job offer to the beneficiary.

On appeal, counsel submits a brief and copies of previously submitted documentation.

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)).

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.*

The director stated that the beneficiary came to the United States as a tourist, and that the record contained no evidence that the beneficiary came to the United States "solely for the purpose of carrying on the vocation or working for the church as a Religious Instructor." The director, therefore, determined that the petitioner had "failed to establish its intent to engage the beneficiary" in the position offered.

The regulation does not require that the alien's initial entry into the United States to be solely for the purpose of performing work as a religious worker. "Entry," for purposes of this classification, would include any entry under the immigrant visa granted under this category or would include the alien's adjustment of status to the immigrant visa. We withdraw this determination by the director.

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 issued on appeal is whether the petitioner has established that the beneficiary was continuously employed in a qualifying religious vocation or occupation for two full years 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 12, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as an ordained religious instructor and evangelist throughout the two-year period immediately preceding that date.

In a letter dated February 1, 2001, the petitioner stated that the beneficiary had served as a "full time Evangelist and Religious Instructor at the ARPC [Associated Reformed Presbyterian Church] Evangelical Presbyterian Church since July of 1998. She has led religious services and prayer sessions as well as taught religious classes." The petitioner did not submit any documentation from the ARPC Evangelical Presbyterian Church describing the beneficiary's duties; however, it did submit copies of apparent pay stubs, reflecting that the beneficiary received $2,000 per month from the Evangelical Presbyterian Church from January 1999 to March 2002.

Additionally, in a letter dated April 1, 2002, the petitioner stated:

> This letter will confirm the following: [The beneficiary] is an ordained religious instructor and evangelist and has served the ARPC Evangelical Church since the approval of her R-1 Visa. From March 13, 1999 to March 12, 2001, the beneficiary worked a minimum of forty (40) hours a week and received a monthly salary of $2000.00.

The record reflects that the beneficiary was approved for an R-1 nonimmigrant religious worker visa, petitioned on her behalf by the ARPC Evangelical Presbyterian Church in West Hills, California, and which was valid from December 18, 1998 to August 31, 2000. The record also reflects that her R-1 nonimmigrant status was subsequently extended until August 31, 2002. The record further reflects that the ARPC Evangelical Presbyterian Church filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on behalf of the beneficiary, which was subsequently denied for abandonment on January 19, 2001.

The petitioner submitted no documentation from the ARPC Evangelical Presbyterian Church verifying any work performed by the beneficiary for that organization. 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)).

We note that on the Form G-325A, Biographic Information, signed on November 11, 2002 and submitted by the beneficiary in connection with her application for adjustment of status, the beneficiary stated that she worked for the ARPC Evangelical Presbyterian Church from July 1998 to August 2000 as a religious instructor, and for the petitioning organization from September 2000 as a missionary. The petitioner submitted no evidence to explain if or why the beneficiary was paid by this organization after she stopped working for it. 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. 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. 582, 591 (BIA 1988).

On appeal, counsel asserts that the ARPC Evangelical Presbyterian Church is an affiliate of the petitioning organization. Documentation submitted in response to the director's NOIR reflects that, although apparently sharing the same president, the ARPC Evangelical Presbyterian Church and the petitioner are two separate legal entities.

The record contains copies of the beneficiary's Form 1040, U.S. Individual Income Tax Return, which she filed jointly with her husband, for the years 1999, 2000 and 2001. The beneficiary and her husband reported her "compensation from church" on line 21 of the Form 1040 as $14,400 for each of these years. The director determined that as the petitioner indicated that the beneficiary's salary would be $24,000 plus housing, the income reported reflected that the beneficiary worked only part-time employment during this period. We reiterate, however, that the evidence reflects that the beneficiary received monetary compensation from the ARPC Evangelical Presbyterian Church during the qualifying two-year period, and the record contains no evidence of the nature of the work she performed for that organization or the terms of her employment.

We further note that the beneficiary's occupation on her 2001 Form 1040 is listed as "homemaker." The record contains no copy of a Form W-2, Wage and Tax Statement, or Form 1099-MISC reflecting nonemployee compensation, issued to the beneficiary by any employing organization.

The record contains no corroborative documentary evidence of any work performed by the beneficiary during the two years immediately preceding the filing of the visa petition and does not establish that the beneficiary was continuously employed in a qualifying religious occupation or vocation for two full years prior to the filing of the visa petition.

The second and third issues on appeal are whether the petitioner has established that the position qualifies as that of a religious worker and whether the beneficiary qualifies for the position. As the director's discussion and determination of these two issues are interrelated, our analysis will focus on both in a single discussion.

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. 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.

The director stated that the job title indicates that the position is that of a religious professional, and, therefore, the evidence must establish that the beneficiary holds the equivalency of a U.S. baccalaureate degree. Counsel acknowledges that the position does not qualify as that of a religious profession within the meaning of the regulation and asserts that the petitioner had not represented it to be such.

We withdraw this determination by the director. The title of the proffered position is not evidence, in and of itself, that it is a religious profession within the meaning of the regulation. Further, the evidence does not indicate that the petitioner held the position out to be that of a religious professional.

In its letter of February 1, 2001, the petitioner stated that the beneficiary had been a full-time evangelist and religious instructor at the ARPC Evangelical Presbyterian Church and that the petitioner sought approval of the petition so that the beneficiary could "continue to work as a Missionary and Religious Instructor at our church." The petitioner implied, therefore, that the duties of the proffered position are the same as those of the position that the beneficiary held at the ARPC Evangelical Presbyterian Church.

According to the petitioner in its April 1, 2002 letter, those duties included conducting church service five days a week, leading three weekly prayer meetings, delivering sermons, leading worship, providing religious instruction, and working within the youth ministry. In response to the NOIR, the petitioner submitted a weekly schedule of the daily duties of the position, which included prayer service and preparation, Christian education, leading morning worship and prayer meeting, and mission fieldwork. The director concluded that the duties as outlined by the petitioner were not directly related to the religious creed of the organization, and that they could be performed by a participant or volunteer and did not require the services of a full-time employee.

Counsel argues that certain aspects of the proffered position, such as delivering services and leading worship are "clearly reserved for members of the clergy," and cannot be performed by any participant or volunteer of the congregation. Counsel further argues that the proffered position requires formal instruction and ordination, both of which the beneficiary possesses. In its February 2001 letter, the petitioner stated that the requirements for the position included the minimum of a bachelor's degree and prior work history as a

religious worker. The petitioner submitted a copy of the beneficiary's 1998 graduation certificate from the Soong Eui Women's College in Seoul, Korea with a major in childhood education, a copy of a January 1, 1994 "letter of ordination" ordaining the beneficiary as a deaconess and accompanist of the church choir in the Cho Won Church, and a copy of a December 17, 2000 certificate ordaining the beneficiary as a missionary in the Presbyterian Church.

The evidence reflects that the position is directly related to the religious creed of the organization, and that it is recognized and defined within the petitioner's denomination.

The evidence sufficiently establishes that the position is a religious occupation within the meaning of these proceedings and that the beneficiary is qualified for the position within the petitioning organization.

The fourth issue to be addressed on appeal is whether the petitioner has 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 indicates that it will pay the beneficiary $24,000 per year plus housing. As evidence of its ability to pay this wage, the petitioner submitted a copy of a document labeled "Balance Sheet of the Year 2001 & Budget of the Year 2002." The petitioner also submitted copies of its monthly checking account statements for December 2001 through March 2002.

In response to the NOIR, the petitioner submitted copies of its monthly bank statements for the period January 2001 through April 2004, and a November 7, 2003 letter from Outreach North America, "the home missions agency of the General Synod of the Associate Reformed Presbyterian Church," indicating that it had authorized a $200,000 loan to the petitioning organization.

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 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.

On appeal, counsel argues that, as the petitioner "has paid the beneficiary $2,000 continuously since 1998 to the present time," this constitutes evidence of its ability to pay the proffered wage. However, there is no evidence in the record to reflect that the petitioner has paid the beneficiary at any time. As discussed above,

the petitioner submitted copies of apparent pay stubs reflecting that the beneficiary had received $2,000 per month from the ARPC Evangelical Presbyterian Church. Also as discussed above, the evidence reflects that the petitioner and the ARPC Evangelical Presbyterian Church are two separate legal entities. Although counsel refers to the ARPC Evangelical Presbyterian Church as an affiliate of the petitioning organization, there is no evidence in the record that confirms this. Further, the regulation requires that the petitioner must establish that the prospective U.S. employer has the ability to pay the proffered wage. The prospective U.S. employer in the current petition is the petitioner.

The evidence does not sufficiently establish that the petitioner had the ability to pay the beneficiary the proffered wage as of the filing date of the petition.

The final issue on appeal is whether the petitioner has established that it has 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 petitioner stated that the duties of the proffered position would entail at least 40 hours per week and that it would compensate the beneficiary at the rate of $24,000 annually plus lodging. The list of daily duties proposed by the petitioner reflects that the position is expected to be a full-time occupation.

The director determined, that as the beneficiary reported income of $14,000 on her federal income tax returns for her religious work, the petitioner had not established that the position offered full-time employment. However, the record does not clearly reflect that the beneficiary has worked for the petitioner in any capacity prior to the filing of the visa petition, or that the petitioner has ever compensated the beneficiary in any amount.

The evidence sufficiently establishes that the petitioner has extended a qualifying job offer to the beneficiary. However, as the petitioner has not established that the beneficiary worked continuously in a qualifying religious occupation for two full years preceding the filing of the visa petition or that it had the ability to pay the beneficiary the proffered wage, the petition can not be approved.

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.