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

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[redacted]

U.S. Citizenship and Immigration Services

C1

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: NOV 28 2005
SRC 00 047 50342

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas 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 her reasons therefore, and subsequently exercised her discretion to revoke the approval of the petition on April 11, 2005. 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 an evangelist minister. 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 qualifies 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 and additional documentation.

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 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 November 24, 1999. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister throughout the two-year period immediately preceding that date.

The petitioner submitted no evidence of the beneficiary's prior work experience with the petitioner. Although, the petitioner submitted copies of several documents with the petition, none was accompanied by an English translation. The regulation at 8 C.F.R. § 103.2(b)(3) requires that documents submitted in a foreign language "shall be accompanied by a full English translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." Accordingly, these documents may not be considered.

In its July 2, 2004 response to the director's Notice of Intent to Revoke (NOIR) approval of the visa petition, the petitioner stated that the beneficiary served as an assistant pastor in Sagamoso-Boyaca [sic], Colombia

from 1993 to 1999. The petitioner also stated that the beneficiary joined the petitioning organization on October 20, 1999, and that as soon as he becomes a legal resident of the United States, he will be given the "promised salary for the position he will fulfill in our church." The petitioner submitted no documentary evidence to corroborate the beneficiary's work in Colombia. 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 petitioner also submitted a copy of a March 22, 2000 "certificate of recommendation" from the Peruvian God Assembly Peniel Evangelist Church, indicating that the beneficiary had been "an active member of our congregation during 8 years in the music and evangelistic Ministry. At the present time, he is working as [an] Evangelist Minister." The record also contains a March 22, 2000 document from the Bucaramanga Central Quadrangular Christian Church in Bucaramanga, Colombia "certifying" that the beneficiary and his wife were active members of the "community" and that the beneficiary served as an evangelist. The document does not indicate the time frame of the beneficiary's association with the church. A June 10, 2004 letter from the Iglesia Christian Cuadrangular indicates that the beneficiary had been an active member of the church and the FourSquare Church denomination in [redacted], serving as an assistant pastor from 1993 to 1999. The record reflects that the beneficiary entered the United States on June 29, 1999 pursuant to a B-2 nonimmigrant visa as a temporary visitor for pleasure.

The petitioner submitted no evidence to explain the beneficiary's alleged association with three difference churches during the same time frame and during the time that he was present in the United States. 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).

Further, the petitioner submitted no corroborative documentary evidence, such as canceled paychecks, pay vouchers, verified work schedules or similar evidence, of the beneficiary's employment with any of the organizations. *Matter of Soffici*, 22 I&N Dec. at 165.

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. 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.

The director noted that the beneficiary indicated on his Form G-325A, Biographic Information, signed on June 30, 2000 and submitted with the Form I-485, Application to Register Permanent Residence or Adjust Status, that he had not worked for the past five years. The petitioner asserts that this information is an error on the part of the person who assisted the beneficiary in completing the forms; however, the beneficiary signed the Form G-325A, which contains this printed warning: "Severe penalties are provided by law for knowingly and willfully falsifying or concealing a material fact."

On appeal, the petitioner submits an April 21, 2005 letter from the pastor of the [redacted] church who reiterates that the beneficiary worked for the church form 1993 to 1999. The pastor further states that the beneficiary received a monthly salary but did not indicate the amount of the salary and did not specify any other terms of the beneficiary's employment with the church. The petitioner submitted no other documentary evidence to corroborate the beneficiary's employment with the Iglesia Christiana Cuadrangular. *Matter of Soffici*, 22 I&N Dec. at 165.

The evidence does not establish that the beneficiary was continuously engaged as an evangelist or minister 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.

The proffered position is that of an evangelist minister. The regulation at 8 C.F.R. § 204.5(m)(2) defines minister as:

> [A]n individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

In its letter of November 20, 1999, the petitioner stated that, as an evangelist minister, the beneficiary would lead and counsel marriage groups and perform other duties assigned by the pastor. In its July 2, 2004 response to the NOIR, the petitioner stated that, in the proffered position, the beneficiary "will be traveling visiting churches of our denomination . . . and some other churches of the same faith. But when he is back in town, he will be doing some office work in our church." On appeal, the petitioner advised that the beneficiary would be

working out of a new church in Tampa, Florida, but would be helping with the daily operation of the Texas church "whenever he is in town."

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 duties as outlined by the petitioner do not reflect that the proffered position is that of a minister. Additionally, the details of the duties as provided by the petitioner fail to establish that the duties are primarily religious in nature, that the position is defined and recognized by its governing body, or that the position is traditionally a permanent, full-time, salaried occupation within the petitioner's denomination.

The evidence does not establish that the proffered position qualifies as a religious occupation within the meaning of the statute and regulation.

The third issue is whether the petitioner 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 states that the salary for the position is $250 per week and that the beneficiary will be expected to work eight hours per day in the church office. However, as the petitioner has not established that the position qualifies as that of a religious worker, it has not established that it has extended a qualifying job offer to the beneficiary.

The fourth 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.

As evidence of its ability to pay the proffered wage, the petitioner submitted copies of its monthly bank statements for the period January through March 2000 and February through April 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 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 submitted none of the required types of primary evidence.

Accordingly, the petitioner has not established that it has the ability to pay the beneficiary the proffered wage.

Beyond the decision of the director, the petitioner has not established that the beneficiary possessed the required two years membership in the denomination.

The regulation at 8 C.F.R. § 204.5(m)(1) and 8 C.F.R. § 204.5(m)(3)(ii) are clear in stating that the religious worker must have been a member of the same religious denomination as the petitioning organization for the two years immediately preceding the filing of the petition.

The petition was filed on November 24, 1999. The evidence reflects that the beneficiary was a member of the [redacted] church from 1993 to 1999. On appeal, the petitioner admits that there is no affiliation between its denomination, Assemblies of God, and t[redacted] of which the [redacted] a member.

The evidence does not establish that the beneficiary possessed the required two years membership in the petitioner's denomination for two full years immediately preceding the filing of the visa petition. This deficiency constitutes an additional ground for which the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.