U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: TEXAS SERVICE CENTER Date: AUG 09 2006

SRC 99 180 53523

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:

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, Chief
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 August 29, 2005. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The Form I-360, Petition for Amerasian, Widow or Special Immigrant, filed with Citizenship and Immigration Services (CIS), indicates that the New Baptist Church Emmanuel is the petitioner. The petition, however, appears to have been signed by [redacted]. Therefore, the New Baptist Church Emmanuel cannot be considered as having filed the petition on behalf of [redacted] shall be considered as the self-petitioner.

The petitioner seeks classification 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 that his prospective U.S. employer qualifies as a bona fide nonprofit religious organization, that the position qualifies as that of a religious worker, that the petitioner had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition or that the petitioner's prospective employer has the ability to pay him the proffered wage.

On appeal, the petitioner submits additional documentation. The petitioner indicated on the Form I-290B that he would submit a brief and/or additional evidence to the AAO within 30 days. As of the date of this decision, more than three months after the appeal was filed, no further documentation has been received by the AAO. Therefore, the record will be considered complete as presently constituted.

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.*

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 his prospective employer, the New Baptist Church Emmanuel, is a bona fide nonprofit religious organization.

The regulation at 8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

> (3) *Initial evidence*. Unless otherwise specified, each petition for a religious worker must be accompanied by:
>
> > (i) Evidence that the organization qualifies as a nonprofit organization in the form of either:
> >
> > > (A) Documentation showing that it is exempt from taxation in accordance with § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

> (B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

With the petition, the petitioner submitted a copy of a Texas Sales Tax Exemption Certificate issued to the First Baptist Church, Waco, Texas and a November 30, 1999 letter from the First Baptist Church indicating that the Nueva Iglesia Bautista Emmanuel was a "mission church" of that organization. The petitioner submitted no evidence of its tax-exempt status under section 501(c)(3) of the IRC.

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code (IRC) of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement, if applicable, and a copy of the organizing instrument of the organization, which contains a proper dissolution clause and which specifies the purposes of the organization.

The organization can establish eligibility under 8 C.F.R. § 204.5(m)(3)(i)(B) by submitting documentation that establishes the religious nature and purpose of the organization, such as brochures or other literature describing the religious purpose and nature of the activities of the organization. The necessary documentation is described in a memorandum from William R. Yates, Associate Director of Operation for CIS, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003):

> (1) A properly completed IRS Form 1023,
> (2) A properly completed Schedule A supplement, if applicable,
> (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization, and
> (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The above list is consistent with the regulatory requirement at 8 C.F.R. § 204.5(m)(3)(i)(B), cited above. The memorandum specifically states that the above materials are, collectively, the "minimum" documentation that can establish "the religious nature and purpose of the organization." Thus, for example, a petitioner cannot meet this burden by submitting only the articles of incorporation. Also, obviously, it is not enough merely for the petitioner to *submit* the documents listed above. The *content* of those documents must establish the religious purpose of the organization.

In her June 29, 2004 Notice of Intent to Revoke (NOIR) approval of the visa petition, the director instructed the petitioner to "Submit the Articles of Incorporation, Form 1023, and the US IRS 501(c)(3) certification . . . and/or evidence that the [prospective U.S. employer] is clearly, via legal documentation, under the affiliate/subordinate umbrella of a parent organization." In response, the petitioner submitted a letter dated July 26, 2004 from the

Nueva Iglesia Bautista stating that it is a legal organization registered in the state of Texas "religious department" and belonged to the Waco Baptist Association.

On appeal, the petitioner submits a copy of an August 23, 2004 certificate of incorporation for the Nueva Iglesia Bautista Emmanuel. The forwarding letter from the Texas Secretary of State informed the organization that "Corporations organized under the Texas Non-Profit Corporation Act do not automatically qualify for an exemption from federal and state taxes." The petitioner submitted no evidence that the organization was exempt from taxation under section 501(c)(3) of the IRC.

Accordingly, the petitioner has not established his prospective U.S. employer is a bona fide nonprofit religious organization.

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

Pursuant 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 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 initial submission, the petitioner identified no specific duties associated with the proffered position. An undated letter from Reverend [redacted], the petitioner's prospective employer, indicated that the petitioner had been authorized to perform religious ceremonies and liturgy, and that he would be performing meetings, visiting and counseling young people, and leading a new mission on Sundays and discipleship on Tuesdays. A copy of the petitioner's certification of ordination is not accompanied by an English translation as required by the regulation at 8 C.F.R. § 103.2(b)(3).

In her NOIR, the director instructed the petitioner to submit a detailed job description of the proffered position. The July 26, 2004 letter from Reverend [redacted] submitted in response did not specifically address the director's request, indicating instead that the petitioner was serving as a pastor with the [redacted] Pastor Baptist Church. According to Reverend [redacted] the petitioner "is [supposed] to begin as youth leader and be promoted to be Pastor." Reverend [redacted] letter indicates that the proffered position is that of a minister with all of the authority granted to ministers of the petitioner's denomination.

We find that the evidence sufficiently establishes that the proffered position is that of a religious occupation within the meaning of the statute and regulation.

The third issue is whether the petitioner established that he had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

The regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and 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 May 28, 1999. Therefore, the petitioner must establish that he was continuously working as a minister throughout the two-year period immediately preceding that date.

Reverend Gonzalez stated in his undated letter submitted with the petition that the petitioner came to Texas in 1996.

> He began preaching and teaching in Texas as soon as he came in 1996 and have [sic] been teaching since then in Nueva Iglesia Bautista Emmanuel (Emmanuel Baptist Church). I can assure this cause I have been the Pastor of this church since 1980 to date. He has more of [sic] two years actually in the ministry. He has responsibility with the youth Departament [sic] is Leader in Nueva Iglesia Bautista Emmanuel.

The petitioner submitted no other evidence of his qualifying experience. 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 her NOIR, the director instructed the petitioner to:

> Submit evidence of the [petitioner's] financial compensations, and detail of continuously performed religious work, with such documents as pay stubs or checks, tax forms, receipts for expenses or reimbursements, work assignments and signed contracts. All this

information requested must include proof for the entire two years preceding the filing of this petition.

In his letter submitted in response, Reverend [redacted] stated that the church provided the petitioner with church donations and gifts in cash, as well as a car and a mobile home. Reverend [redacted] further stated, "As these were gifts, The Church do [sic] not require receipts." The petitioner submitted no evidence such as verified work schedules or similar documentary evidence to corroborate his employment during the qualifying period. *Id.*

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.

In the rare case where volunteer work might constitute prior qualifying experience, the petitioner must establish that the beneficiary, while continuously and primarily engaged in the traditional religious occupation, was self-sufficient or that his or her financial well being was clearly maintained by means other than secular employment.

On appeal, the petitioner submits a copy of a calendar that purports to be his weekly schedule for 2005 and copies of his earnings statements from the Iglesia Evangelica Bethania for the period March 15, 2005 through August 11, 2005.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. The appeal will be adjudicated based on the record of proceeding before the director.

The record before the director does not establish that the petitioner was continuously employed as a minister for two full years preceding the filing of the petition.

The fourth issue on appeal is whether the petitioner established that his prospective employer has the ability to pay him 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.

According to Reverend [redacted] will pay the petitioner $500 per month, provide him with a furnished house and pay the utilities. As evidence of the church's ability to provide this compensation, the petitioner submitted a document that, according to Reverend [redacted] a "copy of [a] financial statement with Compass Bank in Waco Tx. [sic] that reflect[s] our economic evolutions." The document appears to be a webpage from the church's bank account and is dated December 9, 1999.

In response to the NOIR, the petitioner submitted a copy of a June 2004 monthly bank statement for [redacted] On appeal, the petitioner submits a copy of a Form 941, Employer's Quarterly Federal Tax Return, for the quarter ending June 2004; and a copy of minutes from a March 20, 2005 business

meeting for the church, indicating that income for the first quarter of 2005 was approximately $4,200 and that expenses for the same period was approximately $3,000.

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 submitted only a copy of a 2005 Form 941, which does not identify the names of the compensated employees.

Accordingly, as the petitioner has not established that he has been paid the proffered compensation in the past and failed to submit any other type of primary evidence, he has not established that his prospective employer has the ability to pay him the proffered wage.

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.