



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date:
WAC 06 104 50350

DEC 04 2009

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

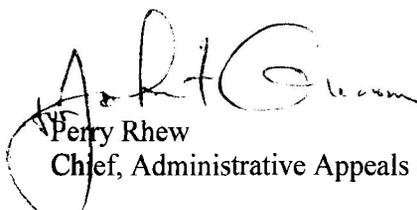
ON BEHALF OF PETITIONER:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


Perry Rhew
Chief, 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 beneficiary 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 her reasons therefore, and subsequently exercised her discretion to revoke the approval of the petition on May 12, 2008. In response to a subsequent appeal, the Administrative Appeals Office (AAO) remanded the matter for consideration under new regulations. The director again denied the petition and, following the AAO's instructions, certified the decision to the AAO for review. The AAO will affirm the director's decision.

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 pastor. The director determined that the petitioner had not established that the beneficiary was a member of the same denomination throughout the two-year period immediately preceding the filing of the petition and that it has the ability to pay the beneficiary.

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 un rebutted, 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 September 30, 2012, 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 September 30, 2012, 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 has established that the beneficiary has been a member of the religious denomination for the two full years immediately preceding the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(1) requires the petitioner to show that the beneficiary has been a member of a religious denomination that has a bona fide non-profit religious organization in the United States for at least the two years immediately preceding the filing of the petition. The petition was filed on February 13, 2006. Therefore, the petitioner must establish that the beneficiary was a member of its religious denomination throughout the two-year period immediately preceding that date.

In a February 11, 2006 "Letter of Invitation," the petitioner stated that the beneficiary had been ordained by the Korea Presbyterian Church Assembly and had worked as a pastor since March 1993. The petitioner submitted a copy of an August 15, 1992 "Certificate of Pastor Ordination" from the Korea Presbyterian Church Assembly in Incheon, Korea and a copy of a December 1, 2003 "Certificate of Church Membership" issued to the beneficiary certifying that he had "been received into the full membership of the Presbyterian Church Denomination Church of Los Angeles, California." The petitioner resubmitted these documents in response to the NOIR. In response to the director's Notice of Intent to Deny (NOID) issued pursuant to the AAO's remand, the petitioner submitted a letter from God's Hand Church, verifying that the beneficiary was employed with the church from December 2003 to May 2004 and that the beneficiary and the church were members of the Presbyterian denomination.

The evidence sufficiently establishes that the beneficiary has been a member of the religious denomination throughout the two-year period immediately preceding the filing of the visa petition, and we withdraw this determination by the director.

The second issue on appeal is whether the petitioner has established that it has the ability to pay the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(10) provides:

Evidence relating to compensation. Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS [United States Citizenship and Immigration Services]. If IRS [Internal Revenue Service] documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

In its "Letter of Invitation," the petitioner stated that the beneficiary would be compensated at the rate of \$1,700 per month. The petitioner submitted copies of the beneficiary's Form W-2 for 2004 and 2005, indicating that it paid the beneficiary wages of \$11,900 and \$20,400, respectively. The petitioner also submitted copies of its IRS Form 941, Employer's Quarterly Federal Income Tax Report, for the quarters ending September and December 2004 and for all quarters in 2005. The petitioner also provided copies of the State of California Forms DE 6 for these periods plus for the June 20, 2004 quarter. The petitioner provided copies of the beneficiary's IRS Form 1040A, U.S. Individual Income Tax Return, for the years 2004 and 2005, and copies of pay checks that it issued to the beneficiary for the months of August through September 2004 and July through November 2005. While the petitioner provided evidence that the 2005 checks were cashed, it provided no similar evidence for the 2004 checks. All of the documents are consistent with the petitioner's claim that it compensated the beneficiary in the amount of \$1,700 per month.

The credibility of these documents, however, is questionable. A site compliance review of the petitioning organization conducted by the USCIS Fraud Detection and National Security Unit (FDNS) in connection with another petition filed by the petitioner revealed that the "church" was a "single-level, 2 bedroom, one-bath apartment unit" occupied by the beneficiary, his wife and two children. In an interview during the site compliance review, the beneficiary's wife stated that church membership stood at eight, including the beneficiary and his family and the second pastor of the church and his family.¹ She further stated that services were held only on Sunday mornings. In its December 31, 2007 response to the NOIR, the petitioner, through the beneficiary, stated that

¹ The second pastor of the petitioning organization was also the representative for the petitioner who signed the Form I-360. The petitioner states that he died in December 2007.

membership in the organization currently stood at "33 active members." In response to the NOID, the petitioner stated that it now had 41 members and had moved to a new address. However, the letterhead still lists the petitioner's old address, which as discussed, is also the beneficiary's home. Furthermore, a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. §§ 103.2(b)(1) and (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). As the petition was filed on February 13, 2006, any evidence of compensation paid to the beneficiary subsequent to that date is irrelevant in establishing his eligibility for this immigrant visa petition.

In revoking approval of the petition, the director determined that the petitioner had failed to submit any of the documentation required by the regulation to establish its ability to pay the beneficiary. On certification, the director stated that the petitioner had failed to submit "such documents as bank statements, audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other verifiable evidence." We withdraw these statements by the director. The petitioner clearly submitted documentation (income tax returns, Forms W-2 and statements signed by a bank representative) permitted by the regulation. The regulation does not require the petitioner to submit all of the documentation in the regulation. While the director could have requested additional specific documentation, the record does not reflect that she did so.

Nonetheless, as the documentation submitted by the petitioner is questionable, it has failed to establish that it has the ability to compensate the beneficiary. At the time of filing the petition, the petitioning organization had eight members, consisting of the beneficiary and his family and a second pastor and his family. The petitioner submitted a budget for 2006 indicating weekly offerings of \$25,000, tithes of \$63,000 and total income of \$122,500, with payment of wages of \$62,400 and other expenses totaling \$122,500. The petitioner provided no documentation of how, considering that the church membership consisted only of the pastors and their families, the church received offerings of \$25,000 and tithes of \$63,000. 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). If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Given that the petitioner has provided no credible documentation of any income, it cannot be determined that it has compensated the beneficiary in the past or has the ability to pay the beneficiary in the future.

Beyond the decision of the director, the petitioner has not established that the beneficiary worked 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)(4) requires the petitioner to show that the beneficiary has been working as a minister or in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States,

continuously for at least the two-year period immediately preceding the filing of the petition. The petition was filed on February 13, 2006. Therefore, the petitioner must establish that the beneficiary was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

The record reflects that the beneficiary entered the United States pursuant to a B-2 visitor's visa on August 4, 2003 and was approved for an R-1 nonimmigrant religious worker visa, valid from December 1, 2003 to November 30, 2006, to work for God's Hand Church. A subsequent R-1 visa, valid from June 1, 2004 to June 1, 2006, was approved for the beneficiary to work for the petitioning organization. In its February 11, 2006 "Letter of Invitation," the petitioner stated that the beneficiary would work 40 hours per week and would be compensated at the rate of \$1,700 per month. The letter indicated that the beneficiary's duties are leading Worship by sermon, preaching, leading Bible classes . . . , performing Baptisms and Wedding & funeral services, leading prayer meetings, visitation, spiritual counseling, leading special revival meeting, and many other Pastoral services."

The petitioner submitted a copy of a Form W-2 indicating that God's Hand Church paid the beneficiary \$8,500 in 2004. The petitioner also provided copies of checks written by God's Hand Church to the beneficiary in the amount of approximately \$1,600 for the months of December 2003 through May 2004. We note that the checks issued in March and April do not reflect that they have been processed by the bank. Evidence of the petitioner's alleged compensation to the beneficiary is discussed above.

Of particular note is that the beneficiary incorporated the petitioning organization on December 19, 2003, and it appears that he and his co-pastor each filed a Form I-360 petition, with each signing as representative for the petitioner on the other's petition.² There is no clear evidence that the petitioning organization ever existed as a church as claimed by the petitioner. The record does not indicate the source of the petitioner's income during the two-year qualifying period and therefore does not indicate the source of the beneficiary's, the founder of the petitioning organization, income. Accordingly, the petitioner has not established that the beneficiary was continuously engaged in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa petition.

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.

² A Form I-360 petition, WAC 04 147 51554, was filed by the petitioner on behalf of [REDACTED] seeking his classification as a minister. The petition was signed by the beneficiary of this petition [REDACTED] signed the instant petition.