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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services

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MAY 08 2009

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:
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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:

[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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the Director, California Service Center (the director) determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The petitioner then appealed the revocation. The Administrative Appeals Office (AAO) remanded the matter to the director, following the promulgation of new regulations material to the proceeding at hand. The director subsequently issued a second notice of intent to revoke the approval of the petition, and then a second notice of revocation. The director certified the second notice of revocation to the AAO for review. The AAO will withdraw the director's decision and remand the petition to the California Service Center for further consideration and action.

To date, the AAO has received no response from the petitioner to the revocation notice, and therefore we proceed based on the record as it now stands.

The AAO notes that the initial petition was filed from the petitioner's address in Denver, Colorado. The official who signed the petition, however, is based in New York, New York and (as we shall illustrate) there has been some confusion regarding the beneficiary at the Denver site. The AAO will therefore issue its decision to the petitioner's New York address.

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Secretary 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 Dec. 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 approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 589.

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, 2009, 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, 2009, 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).

U.S. Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. § 204.5(m)(4) repeat the statutory requirement that the beneficiary must have worked in a qualifying religious occupation or vocation continuously for at least the two-year period immediately preceding the filing of the petition. 8 C.F.R. § 204.5(m)(2) requires that the beneficiary must be coming to the United States to work in a full time (average of at least 35 hours per week) compensated position that qualifies as a religious occupation or vocation.

The petitioner, using an address in Denver, Colorado, filed the petition on April 9, 2004. [REDACTED] the petitioner's Corporate Secretary, signed the Form I-360 petition. Form I-360 showed the same Denver address for the beneficiary as it showed for the petitioner. [REDACTED] also signed an "Affidavit of Church Worker Financial Support" accompanying the petition, but this document showed an address in New York, New York. In the affidavit, [REDACTED] stated that the beneficiary has been "a dedicated Church Worker . . . from December 21st, 1999 [the date the beneficiary entered the United States under an R-1 nonimmigrant religious worker visa] to the present," but did not specify the location(s) where the petitioner's claimed work took place. She did not state that the beneficiary had ever worked in Denver.

In a February 23, 2000 affidavit from [REDACTED] a director of the petitioning church, indicated that the petitioner has supported the beneficiary since December 1999. Under "Location," the affidavit reads "Dallas, TX, USA." [REDACTED] also indicated that the beneficiary took a seven-day training course in Dallas in August 2000.

The director approved the petition on September 1, 2004. The petitioner subsequently filed a Form I-485 adjustment application, listing an address in the Dallas suburb of Coppell, Texas. In conjunction with the application, the petitioner executed Form G-325A, Biographic Information on December 8, 2004. On that form, the petitioner indicated that he had resided in the vicinity of Dallas since February 2000 (he listed no earlier periods of residence), and that his employer was the Dallas branch of the petitioning church. A December 7, 2004 letter from [REDACTED], identified here as Regional Director in Dallas, stated "we hereby extend an offer of non-temporary, full-time employment to [the beneficiary] as a Church Worker."

The AAO notes that the present petition is not the first that the petitioning church has filed on the beneficiary's behalf. An earlier Form I-360, receipt number SRC 03 179 51757, was filed on June 13, 2003, using the address of the petitioner's Dallas branch. The petition placed the beneficiary in Dallas. [REDACTED] signed the 2003 petition. The petition was denied and there is no appeal on record.

Documentation relating to the beneficiary's R-1 nonimmigrant status in 2002-2004 also refers to the petitioner's Dallas location.

On May 16, 2008, the director issued a notice of intent to revoke the approval of the petition, following conversations with [REDACTED] Senior Pastor of the petitioner's Denver church. In that notice, the director stated:

On June 6 and June 15, 2007, a site visit was conducted at [the petitioner's address in] Denver CO. The beneficiary was not located at the address. [REDACTED] was interviewed and stated that the beneficiary is no longer working for the church located in Denver and that he departed to Korea in December 2006. The investigator was given no evidence or documentation to show that the beneficiary was employed by the organization.

In response, the petitioner submitted an affidavit from [REDACTED], who stated:

I am the State Leader in Colorado with the [the petitioning church]. . . . I have held this position since the summer of 2006. Prior to then, from May 2003 to the summer of 2006, I served as Vice-Regional Director for the Church which covered the States of Colorado, Wyoming, and Nebraska.

As Vice-Regional Director, my main function was to support the work of the Regional Director, [REDACTED] . . .

When the CIS investigator visited the Church on two occasions in June 2007, he asked about several members, among them [REDACTED]. He may have said [REDACTED] [the beneficiary's name], I don't remember. However, I immediately thought of [REDACTED] under whom I had worked for three years. I candidly answered all questions about [REDACTED] meaning [REDACTED]. The answers I gave about [REDACTED] were accurate, including that he had returned to Korea in December 2006. I also told the investigator that he had obtained a green card. . . . I did not even know of [the beneficiary's] existence until I received the Notice of Intent to Revoke in May 2008. If he had worked in the Denver area, it would have been at a time when I was not here. His qualifying work for the Special Immigrant Religious Worker petition, as far as I understand, was in Dallas, Texas from 1999 to 2004. I did not handle any of the arrangements to offer [the petitioner] future employment as a Religious Worker in Denver. . . .

Finally, I explained to the investigator that compensation comes from Church headquarters in New York City, and not from the Church's state center. Now I would also add that if [the beneficiary] gained his qualifying employment in Dallas, Texas, for that reason as well there would be no records of his employment in Colorado.

[REDACTED] of the Korean Evangelical Association, a subsidiary organization of the petitioning church in Dallas, stated:

My pastoral duties cover the Dallas area and sometimes other regions as the need arises. I have been in this position since September 2006, and I have known [the beneficiary] since then. From 2006 to the present, [the beneficiary] has done volunteer work about 8 hours per week for the Church. . . .

While the Church in its original I-360 offered future employment to [the beneficiary] in Denver, we have decided to change the location of that employment, effective on the approval of his permanent residence, to Dallas, Texas. . . . WE HEREBY OFFER EMPLOYMENT, WITH PAY, UNDER THE SAME TERMS AND CONDITIONS AS WAS STATED IN OUR I-360 SPECIAL IMMIGRANT RELIGIOUS WORKER PETITION, TO [THE BENEFICIARY] EXCEPT THAT THE LOCATION OF THE EMPLOYMENT SHALL BE DALLAS, TEXAS, AND NOT DENVER, COLORADO. . . .

From the time that I assumed my duties in Dallas in September 2006, I know that [the petitioner] has never left the United States.

(Emphasis in original.) The beneficiary himself, in his own affidavit, stated:

I held R-1 status continuously from December 21, 1999 through December 20, 2004. Throughout that time, I was employed full-time, with pay, at the [petitioning church] in

Dallas, Texas. In 2004, the Church in Denver, Colorado filed the Special Immigrant Religious Worker petition on my behalf. However, I never worked in Denver because the offer of employment in that city was conditioned upon receipt of my permanent residence, which I don't yet have. So I am not surprised that [REDACTED] confused me with another man. . . .

I HAVE NEVER LEFT THE UNITED STATES SINCE ARRIVING IN THIS COUNTRY IN DECEMBER 1999.

(Emphasis in original.) The petitioner submitted copies of processed checks showing that various subdivisions of the petitioning church in the Dallas area paid the beneficiary \$1,400 per month for services rendered from April 2003 to November 2004. There are no checks showing payment for services rendered during February, March or October 2004. The numbers on two checks [REDACTED], dated September 5, 2003, and [REDACTED] issued April 30, 2004) are out of chronological sequence, but the processing dates stamped on each check are consistent with the written dates thereon.

We note that the petitioner did not claim that the checks described above constituted a complete record of the beneficiary's past employment. Indeed, counsel had stated: "The Notice of Intent to Revoke was not very clear about the documentation which you wanted to see." The checks were submitted as evidence of employment by the petitioner in the Dallas area, not necessarily as a comprehensive or exhaustive chronicle of that employment.

The director issued a notice of revocation on June 30, 2008. In the notice, the director repeated the information put forth in the notice of intent to revoke, and added:

On June 13, 2008 the petitioner responded to the Intent to Deny [*sic*]. They state that they mixed up the beneficiary with another person named [REDACTED]. The church in Dallas claims that the beneficiary has been volunteering about 8 hours a week and that they will employ him in the future. The petitioner provided some canceled checks dated in 2003. The petitioner has not explained what the beneficiary has been doing for the past five years or why he has not been working at the church even though he is eligible for employment authorization. The petitioner has not established that there is a valid job offer. The petitioner has not established that the beneficiary qualifies for the approved classification.

The director acknowledged the claim that [REDACTED] "mixed up the beneficiary with another person named [REDACTED]" but did not discuss the merits of that claim.

On appeal, counsel stated:

[The beneficiary] continued to work for the Petitioner until the expiration of his R-1 status, which could no longer be renewed, until 12/20/2004. Thereafter he had to stop and he did. When his employment authorization card was approved on 5/03/2005, he

resumed employment with us until June 2005. Thereafter he volunteered his time. The Service Center Director implies that because he has not worked for pay with the Church since June 2005, he does not intend to serve as a religious worker upon the approval of his permanent residence. This is an impermissible conclusion, given the facts. There is no legal requirement to work for the Petitioner after the filing of the I-360 and after the expiration of the R-1.

On October 1, 2008, before the AAO had adjudicated the appeal, the statutory authorization for immigrant visas for non-minister religious workers expired. Subsequently, Congress renewed the statutory provisions through March 5, 2009 (later extended to September 29, 2009), contingent upon the promulgation of new regulations to reduce or eliminate fraud in the special immigrant religious worker program. See section 2(b)(1) of the Special Immigrant Nonminister Religious Worker Program Act, Pub. L. No. 110-391 122 Stat. 4193 (2008). In keeping with instructions published alongside the new regulations at 73 Fed. Reg. 72275, 72285 (Nov. 26, 2008), the AAO remanded the petition to the director on December 15, 2008, for a new decision based on the revised regulations. The AAO, in its remand order, did not address the merits of the petition or the grounds for revocation. Instead, the AAO, quoting the above-cited passage from the *Federal Register*, indicated that the petition must “be adjudicated under the standards of this rule. If new documentation is required under this rule that was not required before, . . . the petitioner will be allowed a reasonable period of time to provide the required evidence or information.”

The director issued a second notice of intent to revoke on December 30, 2008. In that notice, the director essentially repeated the assertions found in the first notice of intent to revoke, with no discussion of the petitioner’s prior response to that first notice. The petitioner’s response to the second notice consisted, in counsel’s words, of “the same documentation as what we submitted previously,” including affidavits and copies of processed checks.

The director issued a new notice of revocation on February 4, 2009 and certified the decision to the AAO for review. In the revocation notice, the director acknowledged that “the petitioner responded to the Intent to Revoke,” but did not discuss the evidence in that response. The director found “there is no indication that the petitioning organization had any intention to employ the beneficiary. . . . [T]he head of the organization stated that they had no knowledge of the individuals sponsored by the organization.”

The evidence available in the record supports the sequence of events described by counsel and the various witnesses quoted previously. While the petitioner provided a Denver address for the intending employment, the petitioner never claimed that the beneficiary had previously worked in Denver. The Form I-360 showed a Denver address for the beneficiary, but it was the same Denver address provided for the church itself, and so clearly it was not a private residential address. It appears, instead, that the petitioner intended for the beneficiary to receive mail at the church’s address. This is consistent with the petitioner’s insertion of the phrase “attn: [REDACTED]” in both the Denver and Dallas addresses, even though [REDACTED] was in New York. Neither the petitioner nor the beneficiary ever claimed that the beneficiary had worked in Denver. Therefore, the lack of evidence placing the beneficiary in Denver does not warrant revocation of the petition.

As for the interview with [REDACTED] the director did not contest [REDACTED] assertion that he told the interviewing officer that the [REDACTED] he had in mind “had obtained a green card.” This supports the claim that [REDACTED] had confused one [REDACTED] with another, because the beneficiary has not yet adjusted status; he has not “obtained a green card.” If the [REDACTED] that [REDACTED] had in mind “had obtained a green card,” then he was thinking of a different [REDACTED] than the beneficiary. [REDACTED] is, as counsel notes, “a common Korean name.” The petitioner had never identified [REDACTED] as a point of contact for the petition, and [REDACTED] himself, in his affidavit, specified that he would not have been involved in extending a job offer in Denver to the beneficiary, “since the application was prepared by the Church’s staff in New York” and [REDACTED] was not, at the time, directly in charge of the Denver church.

The record does not support the principal stated ground for revocation, which appears to have stemmed from mistaken identity on the part of [REDACTED]. The director’s decision, therefore, cannot stand. Counsel contends that, because the AAO withdrew the revocation in its remand order, the approval of the petition has been restored. There remain, however, other issues that have yet to be addressed.

The revised regulations at 8 C.F.R. § 204.5(m) include several new evidentiary requirements. Pursuant to the *Federal Register* passage identified elsewhere in this decision, the present petition is subject to those requirements. To date, no request for evidence has instructed the petitioner to supply the required evidence.

Before a determination of eligibility can be made, the petitioner must provide evidence pertaining to the following regulatory requirements:

8 C.F.R. § 204.5(m)(7): *Attestation*. An authorized official of the prospective employer of an alien seeking religious worker status must complete, sign and date an attestation prescribed by USCIS and submit it along with the petition. If the alien is a self-petitioner and is also an authorized official of the prospective employer, the self-petitioner may sign the attestation. The prospective employer must specifically attest to all of the following:

- (i) That the prospective employer is a bona fide non-profit religious organization or a bona fide organization which is affiliated with the religious denomination and is exempt from taxation;
- (ii) The number of members of the prospective employer’s organization;
- (iii) The number of employees who work at the same location where the beneficiary will be employed and a summary of the type of responsibilities of those employees. USCIS may request a list of all employees, their titles, and a brief description of their duties at its discretion;

- (iv) The number of aliens holding special immigrant or nonimmigrant religious worker status currently employed or employed within the past five years by the prospective employer's organization;
- (v) The number of special immigrant religious worker and nonimmigrant religious worker petitions and applications filed by or on behalf of any aliens for employment by the prospective employer in the past five years;
- (vi) The title of the position offered to the alien, the complete package of salaried or non-salaried compensation being offered, and a detailed description of the alien's proposed daily duties;
- (vii) That the alien will be employed at least 35 hours per week;
- (viii) The specific location(s) of the proposed employment;
- (ix) That the alien has worked as a religious worker for the two years immediately preceding the filing of the application and is otherwise qualified for the position offered;
- (x) That the alien has been a member of the denomination for at least two years immediately preceding the filing of the application;
- (xi) That the alien will not be engaged in secular employment, and any salaried or non-salaried compensation for the work will be paid to the alien by the attesting employer; and
- (xii) That the prospective employer has the ability and intention to compensate the alien at a level at which the alien and accompanying family members will not become public charges, and that funds to pay the alien's compensation do not include any monies obtained from the alien, excluding reasonable donations or tithing to the religious organization.

The petitioner has addressed some but not all of the above requirements.

8 C.F.R. § 204.5(m)(10): *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. If IRS 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.

Thus far, the petitioner has offered only general assertions relating to the beneficiary's intended future compensation and/or support. The petitioner must provide further details and evidence, consistent with the regulations.

8 C.F.R. § 204.5(m)(11): *Evidence relating to the alien's prior employment.* Qualifying prior experience during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work, must have occurred after the age of 14, and if acquired in the United States, must have been authorized under United States immigration law. If the alien was employed in the United States during the two years immediately preceding the filing of the application and:

- (i) Received salaried compensation, the petitioner must submit IRS documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of income tax returns.
- (ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.
- (iii) Received no salary but provided for his or her own support, and provided support for any dependents, the petitioner must show how support was maintained by submitting with the petition additional documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS.

The petitioner has submitted partial evidence of past compensation in the form of copies of processed checks. Additional evidence appears to be required in order to meet the above requirements.

8 C.F.R. § 204.5(m)(12): *Inspections, evaluations, verifications, and compliance reviews.* The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

As the record shows, the petitioner conducted an on-site inspection at the petitioner's Denver church, but this inspection appears to have focused on the attempts to verify the beneficiary's past employment at that site. The petitioner has indicated that it intends to employ the beneficiary at its Dallas church,

instead of Denver. In order to verify this job offer, and claims of the beneficiary's past employment in Dallas, an on-site inspection at the Dallas church is strongly advised, as is an interview with [REDACTED] in New York, whose signature has appeared on both petitions filed on behalf of the beneficiary.

ORDER: The matter is remanded to the director, California Service Center, for the issuance of a comprehensive request for evidence and a new decision in accordance with the requirements of the current regulations at 8 C.F.R. § 204.5(m). If the new decision is adverse to the petitioner, it shall be certified to the Administrative Appeals Office for review.