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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

C1

[redacted]

DATE: DEC 21 2011 Office: CALIFORNIA SERVICE CENTER [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (VSC), initially approved the employment-based immigrant visa petition. On further review, the Director, Nebraska Service Center, determined that the petition had been approved in error. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke (NOIR) approval of the petition and his reasons for doing so and subsequently revoked the approval of the petition on April 28, 2008. The petitioner filed a timely appeal on May 16, 2008. On December 10, 2008, the Administrative Appeals Office (AAO) remanded the matter for consideration under new regulations. The Director, California Service Center, 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 April 28, 2008 decision.

On November 26, 2008, the U.S. Citizenship and Immigration Services (USCIS) issued new regulations for special immigrant religious worker petitions. Supplementary information published with the new rule specified:

> All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule. If documentation is required under this rule that was not required before, the petition will not be denied. Instead the petitioner will be allowed a reasonable period of time to provide the required evidence or information. 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008).

As the instant petition was not pending on November 26, 2008, it is not subject to the evidentiary requirements of the new regulation. Accordingly, the petition must be adjudicated based on the regulations in effect at the time the petition was filed. Therefore, the AAO's remand for application of the new regulation was in error. As such, for purposes of this certification, the AAO will focus its review on the original decision of the Director, VSC, which was correctly based upon the regulations in effect at the time the petition was originally approved. As the AAO conducts appellate review on a *de novo* basis, all of the evidence of record will be considered.

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 deacon. The director determined that the petitioner had not provided the required initial documentation and 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.

On appeal, counsel argued that the approval of the petition was "improperly revoked," that the revocation "is a clear abuse of discretion and violation of USCIS policy," that "the Director clearly shows a discriminatory animus against the Catholic Religion and its holy orders," and that the "Service Center Director utilizes irrelevant regulations and unsupported interpretations of them as the reason for revoking the I-360." Counsel indicated on the Form I-290B, Notice of Appeal or Motion, that he would submit a brief and/or additional evidence to the AAO within 30 days. No additional documentation was received by the AAO in support of the appeal. Counsel

submitted a brief in connection with the Notice of Intent to Deny (NOID) issued after the AAO's remand and submitted a brief with the same arguments on certification.

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.*

Counsel argues that the Director of the Texas Service Center (TSC) had no authority to revoke approval of a petition approved by the director of the Vermont Service Center (VSC). Nothing in the record indicates that the Director, TSC was involved in any aspect of the adjudication of the petition, including its revocation. Counsel cites to a 2002 memorandum from the Office of the Commissioner regarding district office revocations of approvals under the Violence Against Women Act (VAWA). Counsel asserts without any supporting authority that the reasoning behind the policy memorandum would be similarly applicable to a petition for a religious worker. The AAO notes that the memorandum refers specifically to revocations by district offices. It does not apply to service center directors or in cases other than VAWA petitions. USCIS maintains the authority to redistribute its work load as it deems necessary to accomplish its mission.

Counsel further asserts: "There never has been a citation of authority for the reason for this revocation that is required: either a mistake was made by USCIS that means that the law was not followed or that a fraud or misrepresentation occurred. It is insufficient reason to revoke the petition that an adjudicator or clerk is not Catholic or decides to overstep his authority." Counsel's argument is specious and without any support in the record. The director stated that the revocation was based on the petitioner's failure to provide evidence of a job offer as required by the regulation and its failure to establish the beneficiary's qualifying work experience. Additionally, nothing in

the record suggests any bias against any religion, and counsel cites to no specific instance of such bias.

Counsel references a January 5, 2005 memorandum from the Director of Service Center Operations, stating that petitions should not be denied based on failure to produce evidence not required by the statute or regulation, asserting that the director's decision was based on evidence not required by the regulation. As discussed further below, the director's NOIR did not require the petitioner to submit any documentation that was not required by the regulation to establish the beneficiary's eligibility for the visa classification.

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 presented is whether the petitioner has provided evidence of a qualifying job offer.

The regulation in effect at the time the petition was filed provided at 8 C.F.R. § 204.5(m)(4) 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 record contains a May 30, 2001 letter from the Most [redacted], bishop of the [redacted] notifying the beneficiary that he was assigned to the pastoral staff of the petitioning organization. In an unsigned letter dated December 31, 2003, [redacted] the petitioner's previous pastor and the individual who signed the petition on behalf of the petitioner, stated that he was writing to "substantiate" that the beneficiary was a deacon for the Diocese of Paterson and was assigned to the petitioning organization. He further stated that the beneficiary had "been working, as a full-time Deacon in this predominately Spanish Parish for over 2½ years." The petitioner provided a similar letter dated November 17, 2006, in which Reverend [redacted] stated that the beneficiary had "been working, as a full-time ordained Deacon . . . for over 5½ years."

The petitioner failed to provide a written job offer as required by the above-cited regulation. Nonetheless, the director, VSC approved the petition. In his NOIR of November 7, 2007, the director, NSC cited the applicable regulation and advised the petitioner that:

> A letter from the petitioner dated March 4, 2004 makes reference to the beneficiary serving the parish as a Deacon, but does not provide sufficient detail about the proffered position or provide any information about the terms of payment for services or other remuneration. The job offer should be from an authorized official of the religious organization in the United States stating how the beneficiary will be solely carrying on a vocation, or working in a religious occupation. It should list the specific location where the beneficiary will work, the duties, and the time he/she will spend on each. The letter should also include any terms of payment for services or other remuneration.

The petitioner failed to submit the documentation requested by the director. Counsel asserted in a December 6, 2007 letter that the petitioner had responded to a request for evidence (RFE) from the Director, VSC that only sought evidence regarding the petitioner's bona fides as a nonprofit religious organization and its ability to pay the beneficiary the proffered wage. Counsel further asserted:

> There are multiple documents which qualify as a job offer for a religious worker in your file. [redacted]bmitted a lengthy letter stating all that is required under these regulations dated March 4, 2004. Additionally there are other letters and explanations forwarded by [redacted] showing the hours spent in the ministry and explaining his responsibilities to the Diocese, not only to the specific parish. Further, letters exist from [redacted] an official of the [redacted] the head of the Catholic School and others that would more than satisfy to show the duties and responsibilities of the beneficiary. A term of payment is NOT REQUIRED in the regulation or the operation instruction. What is required is that proof exists that the beneficiary DOES NOT REQUIRE

> outside employment to survive. This has been satisfied as mentioned above, by the response to the RFE issued by the Vermont Service Center. (Emphasis in the original.)

In revoking the approval of the petition, the director stated:

> As noted in USCIS' letter of intent, the March 4, 2004 letter from [redacted] makes reference to the beneficiary having served the parish as a Deacon, but does not contain an actual job offer and does not provide any information about the terms of payment for services or other remuneration. The response to the RFE contains no explanation of whether or not the beneficiary will be remunerated, no evidence of the petitioner's ability to pay the proffered wage if he will be, and no explanation regarding how he will be supported if he will not be remunerated for his services. Counsel does not address whether or not the beneficiary has had outside employment, he simply notes that payment of the beneficiary is not required and the petition only need evidence that the alien will not be dependent on outside employment to survive. The record contains no such evidence.

In his brief submitted on certification, counsel argues:

> There is no authority to deny a petition because an individual has outside employment. Nothing in the statute or regulations state that a beneficiary cannot have such employment. The meaning of "solely" has always been that the primary focus of the beneficiary must be that of the religious vocation, or in plain English, the religious job must come first. It is the purpose of the petition. It does not mean that there cannot be any other employment, as the conveyance of Lawful Permanent Resident Status does not limit a beneficiary to one single job.

As the proffered position is not that of a minister, counsel is correct. Counsel errs, however, in his argument that the regulation requires the petitioner to establish only that the beneficiary will not be dependent on outside employment for support. The regulation clearly requires the petitioner to establish how the beneficiary "will be paid or remunerated." The petitioner submitted no documentation of any remuneration that it will provide to the beneficiary as required by the regulation at 8 C.F.R. § 204.5(m)(4). In response to the director's NOID issued after the AAO's remand, the petitioner's current pastor stated that the beneficiary "was secularly employed prior to ordination, and continued that employment for a short time during his first years as a deacon." As the director stated, there is no evidence in the record to establish that the beneficiary will not be dependent on outside employment or the solicitation of funds for support.

The petitioner has failed to provide a job offer as required by the regulation, has failed to establish any payment or remuneration that the beneficiary will receive from the petitioner, and has failed to establish that the beneficiary will not be solely dependent on outside employment for his support.

The second issue presented is whether the petitioner has established that the beneficiary worked continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the visa petition.

The regulation in effect at the time the petition was filed provided at 8 C.F.R. § 204.5(m)(1) 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 states that "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) stated, 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 17, 2005. Therefore, the petitioner must establish that the beneficiary worked continuously as a deacon throughout the two-year period immediately preceding that date. In his December 31, 2003 and November 17, 2006 letters, [redacted] listed the beneficiary's schedule as follows:

1. Baptismal Instruction – 3 hours a month
2. Marriage and Family – Family Retreats – 6 hours a year.
3. Pre-Cana – 10 hours a year.
4. Marriage Counseling & Marriage Preparation – 12 hours a month
5. Liturgical Assistance at all Spanish Masses – 16 hours a month.
6. Religious Education – 10 hours a month.
7. Adult Ed. – 10 hours a month.
8. Hospital Visitation – 10 hours a week
9. Diocese of Paterson – Rep. to Hisp. Commission – 5 hours a month.
10. Cursillo – Cursillo Retreat Weekend – 8 hours a month.
11. Spanish Baptism – 4 hours a month.

12. Minister Preparation – 5 hours a month.

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 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. This interpretation is also consistent with the USCIS regulations promulgated on November 26, 2008.

The petitioner submitted no evidence of any payment or other remuneration that the beneficiary received for his work with the petitioning organization. The petitioner submitted letters of reference or recommendation from individuals who attested that the beneficiary was a deacon with the petitioning organization; however, it provided no documentation to corroborate any specific

hours worked by the beneficiary. Additionally, the hours as outlined in [redacted] letters do not establish that the beneficiary worked in a full time capacity.

The petitioner has failed to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing date 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 director's April 28, 2008 decision to revoke the approval of the petition is affirmed.