identifying data deleted to **prevent** clearly unwarranted **invasion** of personal privacy

PUBLIC COPY

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]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAR 09 2011

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, California 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 (NOIR) approval of the petition and her reasons therefore, and subsequently exercised her discretion to revoke approval of the petition on August 11, 2009. The matter 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 a religious instructor and religious education director. The director determined that the petitioner had not established that the position qualifies as that of a religious worker and that the beneficiary is working in the capacity claimed in the petition.

On appeal, counsel asserts that the petitioner submitted documentation to rebut the director's findings. Counsel submits a brief and additional documentation in support of the appeal.

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 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 established that the proffered position qualifies as that of a religious occupation.

In its March 9, 2006 "intention letter," the petitioner stated that the beneficiary would work 40 hours per week as a religious instructor and religious education director and would be paid $1,800. The petitioner further stated:

> The main duty of the Religious Instructor and Religious Education Director is to educate church members to deal with their personal, social and spiritual life based on the Word of God. She will be required to lead bible studies and other religious activities that will nurture the believer so that she comes to understand God's will in their lives. She will confer with parents and adolescent children to work out family problems. She does plan religious mission studies and activities. She is responsible to communicate with youth groups and to make educational program for them. She does create religious study courses and programs, provide spiritual counseling and guidance and assistance to church members. Also, she manages making Bible study book on text, and other material for Sunday Bible School and Youth group.

The petitioner also provided a scheduled for the beneficiary:

Monday	Day Off

Tuesday	7:00 am – 9:30 am	Prepare Report & Develop Religious Program
	3:00 pm – 5:50 pm	Program for After School with Religious Activities
Wednesday	7:00 am – 9:30 am	Pray Meeting all instructor study with pastor and preacher
	3:00 pm – 5:30 pm	Program for after school with religious activities
	7:00 pm – 9:00 pm	Worship & teaching the bible
Thursday	3:00 pm – 5:30 pm	Program for after school Group study and discussion
	5:45 pm – 8:00 pm	Prepare study material Make phone for sticker Visiting student
Friday	3:00 pm – 5:30 pm	Staffs pray meeting Prepare Friday praise night
	6:00 pm – 9:00 pm	Open special pray & Sing with bible study
Saturday	7:00 am – 12:00 pm	Teaching Korean language & arts
	1:00 pm – 6:00 pm	Special Activities (Sports, Game, Contest and Field Trip)
	6:30 pm – 8:00 pm	Prepare Sunday worship
Sunday	8:00 am – 12:30 pm	Morning prayer meeting Prepare youth worship First & second worship
	2:00 pm – 4:30 pm	Afternoon bible study
	5:00 pm – 8:30 pm	Visiting church member

The director approved the petition on May 30, 2006. On May 14, 2008, an immigration officer (IO) visited the petitioner's premises for the purpose of verifying its claims in the petition. The

IO reported that another individual, [redacted] for whom the petitioner had filed a petition, was working at a trucking company located in the same building as the petitioning organization. The pastor, [redacted] who signed the petition on behalf of the petitioner, and the beneficiary were not present; however, [redacted] called [redacted] and he arrived in approximately 20 minutes. [redacted] told him that the beneficiary was visiting church members. The IO also reported that the petitioning organization had a total of 40 church members of which eight were children. The IO stated that record searches revealed that the beneficiary's spouse "is the owner of [redacted] located at [redacted]" and that the beneficiary "is also a licensed cosmetologist valid until December 31, 2009." The IO also questioned the beneficiary's address as listed on the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant.

The director informed the petitioner of the IO's findings in her NOIR dated June 17, 2009 and advised the petitioner that the petitioner had not established that the beneficiary "worked or will work in a religious occupation." In response, the petitioner submitted a July 6, 2009 letter from [redacted], who acknowledged that the petitioner's membership now stood at 40 to 45 members and stated that membership had declined after the church moved in 2009.

[redacted] also stated that the beneficiary had used the address of a church officer as a mailing address to facilitate receiving "immigration notices." He further stated that the beneficiary's husband did not own a business called [redacted] and that the beneficiary obtained a cosmetology license to "provide free haircut service" and that she had "never used that license to make money." [redacted] stated that the beneficiary "has the freedom to do whatever she wants in her spare time" and has never violated her immigration status. He further stated that Mr. [redacted] had "wanted to withdraw" as a religious worker, and the petitioner did not renew its petition for his services.

The director denied the petition, finding that the petitioner had not established that the beneficiary worked and would work in a religious occupation and that the beneficiary did not work in the capacity claimed on the petition.

On appeal, counsel asserts that the petitioner had provided an explanation for all of the grounds on which the director based her decision.

The regulation in effect at the time the petitioner filed the petition provided, at 8 C.F.R. § 204.5(m)(1), that the alien must be coming to the United States at the request of the religious organization to work as a religious worker. Therefore, 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 stated only that it was an activity relating to a traditional religious function. The regulation did not define the term "traditional religious function" and instead provided a brief list of examples. The list revealed 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 stated 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 reflected that nonqualifying positions were those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derived from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

Accordingly, under the previous regulation, the U.S. Citizenship and Immigration Services (USCIS) interpreted the term "traditional religious function" to require a demonstration that the duties of the position were 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 petitioner submitted no documentation to establish that the position of religious instructor or religious education director is defined and recognized as a religious occupation within its denomination or that it is traditionally a permanent, full-time, salaried occupation within the denomination. A review of the proposed duties of the proffered position and those listed in the beneficiary's work schedule do not provide a clear picture of her duties. While the petitioner stated in its intention letter that the beneficiary would confer with parents and children, the schedule submitted contains no such conferences. On the other hand, her duties on Saturday and Sunday include preparing for "worship" and "worship services." The petitioner did not explain the requirements for the beneficiary with worship or preparing for it. The petitioner also does not provide any information about the after school programs arranged by the beneficiary other than that they involve "religious activities."

The petitioner has submitted insufficient documentation to establish that the proffered position qualifies as a religious occupation.

The director also determined that the petitioner had failed to establish that the beneficiary worked in the capacity claimed in the petition. This determination is apparently based on the fact that the beneficiary is a licensed cosmetologist and according to information provided by the IO, her husband owns a business, [redacted]

The petitioner denies that the beneficiary's husband owns [redacted] It submitted a copy a 2008 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, reflecting that the beneficiary's husband received $28,105.57 in wages from [redacted] and an IRS Form 1099-MISC, Miscellaneous Income, reflecting that he received $22,465 in nonemployee income from [redacted] in 2008. The beneficiary's unsigned and undated IRS Form 1040, U.S. Individual Income Tax Return, identifies the beneficiary as a religious instructor and her husband as self-employed in "nail and skin care." Work in this business would be consistent with the beneficiary's cosmetology license. However, no documentation in the record indicates that the beneficiary works in the business with her husband. Furthermore, even if such documentation exists, the regulation does not prevent the beneficiary, as a non-minister religious worker, from performing secular work as long as it is not her primary source of income.

Nonetheless, 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 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 petition for "classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker . . . 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 applicable 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 March 28, 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.

In its March 9, 2006 letter submitted with the petition, the petitioner stated that the beneficiary had been employed by the petitioning organization as a religious instructor and religious educator since January 2004. The petitioner submitted a copy of an IRS Form W-2 indicating that it paid the beneficiary $19,491 in wages in 2005. The petitioner also provided a copy of the beneficiary's 2005 uncertified and unsigned IRS Form 1040, on which she listed the income. The Form 1040 does not list an occupation for the beneficiary's husband and no other income was reported. The petitioner also provided a copy of the beneficiary's IRS Form 1040X, Amended U.S. Individual Tax Return, for 2004; however, it did not provide a copy of the original return. The petitioner also submitted a March 6, 2006 "work experience verification," in which it certified that the beneficiary had worked for the petitioner since January 7, 2004. However, it submitted no other documentation to establish that the beneficiary worked during 2004. 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)).

On appeal, the petitioner submitted an uncertified copy of the beneficiary's unsigned and undated IRS Form 1040 for the year 2004. The form indicates that the beneficiary and her husband reported $18,000 in income derived from his unspecified business. No income was shown for the beneficiary

and her occupation is listed as "housewife." The petitioner submitted no verifiable documentation to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the petition.

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 Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review 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.