U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAR 10 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. Upon further review, the director determined that the petition had been approved in error and that the beneficiary was not eligible for the classification sought. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The petitioner appealed the revocation. The Administrative Appeals Office (AAO) remanded the matter for a new decision pursuant to new regulations. The director again revoked the approval of the petition on notice, and certified the notice of revocation to the AAO for review. The AAO affirmed the revocation. The matter is now before the AAO on a motion to reconsider. The AAO will affirm its prior decision.

The petitioner is described as an "American Dependency" of the Orthodox Church in Italy. 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 an assistant priest. The director determined that the individual who signed the Form I-360 petition lacks hiring authority. The director also found that the petitioner had not established the existence of a qualifying full-time job offer, noting the beneficiary's secular employment and the lack of evidence that the petitioner has consistently paid the beneficiary at the proffered rate of compensation. The AAO reversed the director's finding regarding the petitioner's standing, but affirmed the finding regarding the job offer.

On motion, counsel argues that the AAO's decision rests on "obvious error."

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 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 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 . . . ; 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 AAO set forth the procedural history of this matter in its previous decision of April 30, 2009, and we will not repeat all the details here. To summarize, the petitioner filed the petition on September 12, 2005. The director approved the petition on December 21, 2005 and revoked the approval on February 4, 2009.

As the AAO explained more fully in its prior notice of 2009, the beneficiary obtained employment authorization in April 2007 and began working for a roofing company, apparently at the expense of his work schedule for the petitioner. The director, in a notice of intent to revoke the approval of the petition, held that the beneficiary "no longer receives pay from the church." In response, the petitioner submitted copies of nine processed checks and four petty cash receipts, showing payments totaling $11,250 from [redacted] the beneficiary between January 2007 and February 2008. The AAO found: "The processed checks rebut the claim that the beneficiary has been entirely unpaid since he obtained employment authorization in 2007. At the same time, the documents listed above show only $11,250 paid to the beneficiary over thirteen months, an amount that is not readily consistent with full-time employment."

On motion, counsel states that the petitioner had submitted the checks and receipts specifically to rebut the assertion that the beneficiary "was not paid at all" (counsel's emphasis), and were "never intended to be a complete accounting of [the beneficiary's] total payments from the church." We acknowledge this assertion. Nevertheless, counsel's protests do not show that the petitioner did, in fact, pay the beneficiary's full stated compensation during that period. At no subsequent point in this proceeding, up to and including the present motion, has the petitioner supplemented the record with evidence of additional compensation. Because the extent of the beneficiary's continued employment is very much at issue in this proceeding, the omission is not a trivial one.

Counsel argues: "the fact that a person may be paid a lower wage, even below the prevailing wage, *up until the time they take up the certified employment*, is not a basis to deny the application. *Maysa Inc.*, 98 INA 259 (BALCA May 21, 1999)." Counsel has cited a decision from the Department of Labor's Board of Labor Certification Appeals, which is not binding on USCIS and which is irrelevant for a proceeding that does not involve labor certification. Also, if the petitioner had actually been paying the beneficiary's full rate of compensation, then it is not clear why counsel would even need to raise an argument that serves no purpose except to justify the underpayment of the beneficiary's salary.

More importantly, the issue is not whether the petitioner is required to have already begun paying the beneficiary's full rate of compensation. Rather, the issue is the truth of the petitioner's own assertions.

In a letter dated August 24, 2005, Bishop [redacted] of the petitioning organization stated that the beneficiary's "*current compensation package* includes salary $25,000.00 per year for his services to our Church. In addition, we provide room, board, transportation and medical insurance. This will continue to be his compensation for the purpose of the I-360 Immigrant Visa" (emphasis added). [redacted] did not merely state that the petitioner intended to compensate the beneficiary at that rate in the future, or that the rate would take effect upon approval of the petition. He stated that the above was the beneficiary's "current compensation package."

Bishop [redacted] signature appears at Part 9 of the Form I-360 petition, beneath a legend that reads, in part: "I certify . . . under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it is all true and correct." Section 204(b) of the Act, 8 U.S.C. § 1154(b), provides for the approval of immigrant petitions only upon a determination that "the facts stated in the petition are true." False, contradictory, or unverifiable claims inherently prevent a finding that the petitioner's claims are true. *See Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Systronics Corp. v. I.N.S.*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001); [redacted], 705 F. Supp. 7, 10 (D.D.C. 1988).

If the beneficiary's "current compensation package" was less than $25,000 per year, then the petition contains a false statement from the petitioner. Because that statement is material to the petition, its falsity would be intrinsically disqualifying. Counsel, on appeal, repeats the claim that the "Beneficiary's compensation is provided at a salary of $25,000.00 per year," but no new evidence supports this claim. Significantly, while Bishop [redacted] had stated that the petitioner paid the beneficiary $25,000 per year *plus* room, board, transportation and medical care, counsel now asserts that the beneficiary receives "$25,000.00 per year *including* room, board, transportation and medical insurance." This change is not an insignificant semantic quibble. To change the $25,000 sum from the beneficiary's base salary before benefits to the total value of his entire compensation package amounts to a significant reduction in the beneficiary's overall compensation.

With respect to the uncontested finding that the beneficiary has been working as a roofer, counsel had previously argued:

> Beneficiary continued his role at St. [redacted] pursuant to his status *in addition to* being lawfully employed as a roofer. . . . Beneficiary essentially took it upon himself to work a second job per the advice of his former counsel that he is entitled to work elsewhere. . . . If anything, the Service should applaud Respondent for his diligent and hardworking disposition that is a vital characteristic of our American value system.

(Counsel's emphasis.) In response, the AAO stated:

> Section 101(a)(27)(C)(ii)(I) of the Act requires that the alien seeks to enter the United States "*solely* for the purpose of carrying on the vocation of a minister" (emphasis added). This same language appears in the regulation at 8 C.F.R. § 204.5(m)(2)(i). The definition of a "minister" at 8 C.F.R. § 204.5(m)(5) likewise includes the requirement that the alien "[w]orks solely as a minister." 8 C.F.R. § 204.5(m)(7)(xi) requires the prospective employer to attest, under penalty of perjury, "[t]hat the alien will not be engaged in secular employment."
>
> The petitioner has stipulated that the beneficiary is not engaged solely as a minister. This is a disqualifying factor, sufficient by itself to warrant denial of the petition, or revocation of a petition already approved. The AAO affirms the director's undisputed finding that the beneficiary engages in secular employment, which is inherently disqualifying for an intending special immigrant minister.

On motion, counsel argues that the beneficiary's obligation to work solely as a minister would not commence until the beneficiary becomes a lawful permanent resident of the United States. Counsel claims: "[t]he Beneficiary's intent following his adjustment has never been at issue in this matter." This argument presumes that the beneficiary's observed actions are irrelevant to his intentions. We would argue, to the contrary, that the beneficiary's actions are an indication of those intentions. We find that the beneficiary's actual, acknowledged employment with a roofing company demonstrates his intent to work for a roofing company. There is no credible indication that this employment is arbitrary or temporary in nature.

More importantly, as the AAO has already observed, we cannot consider the beneficiary's roofing work in isolation from the other facts of the proceeding. The beneficiary's acknowledged secular work coincides with a period when the petitioner has documented payments to the beneficiary well below his claimed "current" rate of pay. When the AAO noted the underpayments, the petitioner did not submit evidence to make up the difference. Instead, counsel argued that the petitioner does not have to pay the full rate yet – an argument that ignores the petitioner's claim that it has, in fact, already begun paying that higher rate. The low payments and secular work, taken together, are entirely consistent with the findings by the director and the AAO that the continued existence of the petitioner's full time job offer is in doubt. The petitioner has not overcome the AAO's prior conclusions.

The AAO had noted that a USCIS officer spoke directly to Bishop [redacted], and identified them as the source of the findings that the beneficiary had reduced his work schedule with the church. Counsel's statements on motion do not address this significant issue at all.

The AAO will affirm its prior decision for the above stated reasons, with each considered as an independent and alternative basis for revocation. 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. The petitioner has not sustained that burden.

ORDER: The motion is dismissed. The AAO's decision of April 30, 2009 is affirmed.