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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  
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U.S. Citizenship  
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Services

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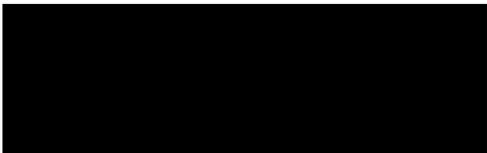
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DATE: **MAY 12 2011** OFFICE: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:   
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:



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. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is a congregation of the Korean-American Presbyterian 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 minister. The director determined that the petitioner had not satisfactorily completed the compliance review process, after site inspections and interviews cast doubt on the credibility of the petitioner's claims.

In the revocation notice, the director claimed that the petitioner had not submitted a timely response to the director's notice of intent to revoke the approval of the petition. On appeal, the petitioner submits a copy of its response to that notice, along with evidence of its timely delivery. It is not clear why the petitioner's response never reached the record of proceeding, but the AAO will give due consideration to the copy provided on appeal.

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, 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).

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); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988).

Any claim the petitioner makes in support of the petition is subject to verification by means of compliance review, as described in the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(12):

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.

The petitioner filed the Form I-360 petition on September 4, 2003. At that time, the petitioner submitted a July 10, 2003 letter from its senior pastor, [REDACTED], who stated:

Our congregation consists of approximately one hundred and ten (110) registered members including children who were born in the United States or who came with their parents from Korea. The congregation communicates in Korean for adult members and in both English and Korean for children members. . . .

Main services of our Church include Sunday Worship Services, Early Morning Services from Tuesday through Thursday, Friday Evening Service, Junior and High School Meetings, Saturday High School Activities, Sunday Youth Group Meetings, Bible Studies, and Disciple Training Classes. We also visit patients at hospitals to provide prayers and counseling.

. . . [The beneficiary] is responsible for leading the Korean and English worship services; he prepares and preaches sermons to the congregation; he teaches the Bible to Korean- and English-speaking congregations; he conducts weekly orientation classes for the newly registered members; and he provides personal religious and spiritual counseling.

[The beneficiary] makes himself available on short notice for consultation to individuals in need of spiritual guidance or support. He prays for the church members with sickness and problems, and he visits their homes to provide them with spiritual guidance. . . .

We are offering him the permanent religious worker position of Church Minister at a monthly rate of \$1,800.00.

[The beneficiary] has been, and will continue to be, responsible for assisting the Senior Pastor in performing the following duties:

1. Preparing for and conducting weekly services;
2. Preparing and delivering sermons;
3. Preparing for and leading Bible studies;
4. Providing orientation for the newly registered members;
5. Visiting church members at their homes to provide spiritual counseling;
6. Visiting patients in hospitals and engaging in other charitable works;
7. Developing and coordinating the church's youth ministry; and
8. Conducting the youth group mission and discipleship training.

[The beneficiary] will spend a minimum of forty (40) hours per week performing his general duties as outlined above. The weekly breakdown of his duties will generally be as follows:

**Sunday (8 hours):** Prepare and preside over Sunday main worship service, lead bible teaching sessions, respond to member's spiritual questions, hold a meeting for Sunday school teachers and staff members, welcome and conduct weekly orientation classes for the newly registered members after the main service.

**Monday:** Closed

**Tuesday (5 hours):** Lead dawn prayer service and deliver the sermon, conduct and preside over church meeting in order to delegate and share routine administrative matters, visit church members' homes to provide fellowship and spiritual guidance for their lives, and lead special prayer meetings.

**Wednesday (8 hours):** Lead dawn prayer service, take care of administrative matters such as updating the data of the church members, logistics, arranging weekly, monthly & yearly schedules, and so forth, visit older church members who were absent on Sunday worship service, visit hospitals and convalescent homes along with other pastors, and lead special prayer meetings.

**Thursday (7 hours):** Lead dawn prayer service, arrange and edit worship bulletin, arrange church members in order for prayer and offering times and do other related works, prepare for Friday praise worship service, prepare for delivering the sermon, praying, and so forth and consult with church members who need spiritual guidance about emerging matters.

**Friday (7 hours):** Lead dawn prayer service, teach the Bible, provide counsel and comfort to individuals in need of spiritual guidance and provide encouragement and support via phone, lead Friday praise and worship service and provide the sermon during the service, research and develop church programs for new members and pastoral works.

**Saturday (5 hours):** Administer and direct education department, provide guidelines to education director, participate in Saturday school teachers' meeting, deliver the sermon in Junior and Senior high school prayer meetings, visit newly registered members' home to encourage and invite them to attend Sunday worship service and prepare Lord's day.

The petitioner submitted a member list, showing 107 names. The petitioner also submitted an exterior photograph of a church building. An English-language sign for [REDACTED] is partially visible, beside a Korean-language sign.

A copy of the beneficiary's résumé showed classes in theology, along with two years of classes in English as a second language. That résumé also indicated that the beneficiary worked for Southern California Grace Mount Church from April 2000 to June 2001, and for the petitioner from July 2001 onward. Experience letters from the senior pastors of both churches also indicated that the beneficiary changed employers in July 2001.

The petitioner submitted a copy of the beneficiary's income tax returns and accompanying Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statement, and 1099-MISC Miscellaneous Income. The IRS forms show the following payments to the beneficiary:

Year	Form	Employer	Amount
2000	1099-MISC	Southern California Grace Mount	\$14,400
2001	1099-MISC	The petitioner	19,200
2002	W-2	The petitioner	21,600

The beneficiary, on his income tax returns, did not claim any income not reflected on the above IRS forms. The petitioner submitted copies of processed paychecks from the petitioner, the earliest of which dates from January 2002. Check number [REDACTED], dated February 25, 2002 and payable in the amount of \$1,618.10, shows a processing date of February 26, 2002 and a processing sequence number of [REDACTED]. Check number [REDACTED], also dated February 25, 2002 and payable in the amount of \$1,618.10, shows a processing date of February 26, 2002 and a processing sequence number of [REDACTED]. This appears to indicate that the bank processed both checks back-to-back.

On August 5, 2004, the director issued a request for evidence, asking the petitioner to "[p]rovide a detailed explanation" with supporting evidence to account for discrepancies in the initial filing:

The petitioner indicated that the beneficiary worked for [the petitioner] for only half of 2001. However, the wages listed on the beneficiary's IRS Form 1099 for 2001 suggest he worked the entire year. . . .

The experience letter for Southern California Grace Mount Methodist Church indicates the beneficiary worked for that church for half of 2001. However, the beneficiary's IRS Form 1040 (U.S. Individual Income Tax Return) indicates the beneficiary did not work for Southern California Grace Mount Methodist Church at all in 2001. . . .

IRS Form W-2 indicates the beneficiary was paid \$21,600 in 2002. However, the checks submitted indicate the beneficiary was paid \$20,717.32 in 2002. . . .

The checks submitted indicate the beneficiary was paid twice on February 25, 2002.

. . . The two checks for February 25, 2002 are 21 check numbers apart. Provide documentary evidence to show the remitter of checks numbered [REDACTED].

The director also asked the petitioner to provide the “[n]umber of volunteer and paid ministers and staff serving the petitioner’s church.” In response, ██████████ stated that the church had “two (2) ministers and three (3) evangelists,” but did not specify which of these individuals were paid employees or volunteers. Copies of the petitioner’s IRS Form W-3, Transmittal of Wage and Tax Statements, indicate that the petitioner paid a total of \$21,600 in wages each year in 2002 and 2003. This amount is consistent with a single salaried employee. Accompanying quarterly tax records confirm that the beneficiary was the petitioner’s only salaried employee in those years.

An audited financial statement indicated that the petitioner took in \$119,539 in calendar year 2003, with \$4,346 left over after \$115,193 in expenses including \$21,600 in salaries.

Regarding the discrepancies listed above, ██████████ repeated that claim that the beneficiary changed employers in July 2001, but did not explain why the IRS documents indicate that the petitioner paid the beneficiary nearly a year’s salary in 2001, with no evidence of any salary at all from the other church that year. ██████████ claimed that the 2002 paychecks do not match that year’s IRS documents because the petitioner withheld taxes from the beneficiary’s 2002 paychecks. According to the beneficiary’s 2002 IRS Form W-2, the petitioner withheld \$1,988.40 from the beneficiary’s salary that year, not including \$194.40 in payments for California State Disability Insurance. That sum does not match the \$882.68 discrepancy between the checks and the IRS Form W-2.

Regarding the beneficiary’s two February 25, 2002 paychecks, ██████████ stated that the beneficiary “got an advancement on payroll.” ██████████ did not explain why the two checks, issued the same day, were not consecutively numbered, nor did ██████████ account for checks numbered ██████████ to ██████████ as requested.

Despite the petitioner’s failure to resolve the above discrepancies, the director approved the petition on February 14, 2005. Shortly thereafter, the beneficiary filed Form I-485 to apply for adjustment of status.

At 12:00 noon on Thursday, October 18, 2007, USCIS officers visited the site of the petitioning church. The front door was locked but a preschool was in session. A preschool worker provided the officer with contact information for the pastor ██████████ who, in turn, stated that the petitioning church rents space from ██████████

The USCIS officers attempted a second visit at 2:00 p.m. on Tuesday, October 30, 2007. The church was empty. ██████████ pastor provided a mobile telephone number for ██████████. When contacted, ██████████ stated that he was at lunch, and he claimed to be at the church every day from 9:00 a.m. to 6:00 p.m. ██████████ pastor, however, “reported that ██████████ is never at the Church other than Friday evenings and Sundays.”

The officers then interviewed the beneficiary and ██████████ on Wednesday, November 14, 2007. The beneficiary spoke through an interpreter, and spoke no English during the interview. During the

interview, the petitioner claimed four paid employees: [REDACTED], the beneficiary, an associate pastor and an education evangelist, earning a combined total of \$6,800 per month.

At the interview, the petitioner presented a November 13, 2007 letter, unsigned but attributed to [REDACTED] which basically repeated [REDACTED] July 10, 2003 letter that had accompanied the initial filing. One change is the assertion that the petitioner's "congregation consists of approximately one hundred (100) registered members including children," a slight reduction from the original claim of approximately 110 members.

The petitioner also submitted a copy of a financial statement for 2007, indicating that the petitioner took in \$205,363.47 and paid out \$203,193.10 in expenses, including \$80,400.00 to pay four salaries, leaving net income of \$2,170.37 for the year. There is no evidence that the 2007 report, like the 2003 report, was the result of an audit. The petitioner did not explain why its annual income had nearly doubled since 2003, despite a decline in membership during that same period.

At the beginning of the interview, the beneficiary (through his interpreter) stated that all of his work took place at the church. After learning of the officers' repeated visits to the church during his scheduled work hours, the beneficiary revised that claim, stating that he sometimes visited members' homes. The beneficiary ultimately claimed to work half the time at the church, and half the time visiting members and holding services in their homes.

The officers visited the church for a third time at 1:30 p.m. on Sunday, November 18, 2007, during the petitioner's 1:00 Sunday services. The officers observed that [REDACTED] spoke for most of the service, with the beneficiary speaking for perhaps half an hour. The officers counted "33 people in the congregation including [REDACTED] and the beneficiary" and ten juvenile members, leaving 21 non-clergy adult members of the congregation. This is consistent with information from ERLC's pastor, who "said that the Korean congregation has around 30 attendees and that was a maximum estimate."

According to the officers, "[REDACTED] daughter said there are about 8-10 students in [the church's youth] group. Another member of the group said there were 4 students in attendance that morning." The officers also stated: "At the final site visit [REDACTED] daughter said services were always held in Korean and only Korean was spoken during Bible Study and Youth Group."

On February 14, 2009, the director issued a notice of intent to revoke the petition, because the findings from the site inspections and compliance review contradicted many of the petitioner's prior claims. The director made five main points: (1) the congregation's size appears to be much smaller than the 100+ members claimed earlier; (2) the claim of four full-time paid employees is not consistent with the observed size of the congregation, or with the absence of any church employees during either of the two October 2007 site visits; (3) the petitioner originally stated that the beneficiary would lead services and classes in both Korean and English, but the church appeared to operate exclusively in Korean, and the beneficiary's reliance on an interpreter indicated that he spoke no English; (4) the beneficiary's claimed duties appeared to overlap with those of other

claimed church workers, and other duties appeared unlikely. For instance, given the small size of the congregation, it is not clear why the beneficiary would need to run a weekly orientation class for new members; and (5) the beneficiary gave inconsistent answers about where he worked, changing his answer when it became clear that the USCIS officers had previously looked for him at the church during his scheduled hours.

On June 2, 2009, the director revoked the approval of the petition, stating that the petitioner had failed to submit a timely response to the notice of intent to revoke that approval. On appeal, as noted above, the petitioner submits a copy of its response to that notice. We will consider this material as part of the petitioner's appeal.

The petitioner submitted a letter dated March 20, 2009, which appears to be misdated, given documentation of a March 16, 2009 delivery date. The letter is attributed to [REDACTED], but unsigned. In the letter, the petitioner attempted to explain the low number of attendees observed at the church service:

When the officers arrived at the Church, we were holding the Main Sunday Worship Service. The officers . . . only saw the Main Sunday Service on that day. They did not inspect other Sunday Services such as Sunday School, Youth Service, or College Service, which were held on the same day, nor did they see college student members, youth members or Sunday school students.

The petitioner also argued that its member list included teenagers and children, rather than adults alone. The inspecting officers indicated that they saw "[s]ix . . . teenagers/young adults," "[t]here toddlers and one infant" among the 33 members counted at the service (a number consistent with the estimate from [REDACTED] pastor). [REDACTED] daughter stated "there are about 8-10 students" in the Junior High School/College group, and another witness "said there were 4 students in attendance that morning." There is no evidence that the youth group members would bring the total membership close to the over 100 members originally claimed in 2003, or the 93 members claimed on the newly submitted 2007 member list.

The petitioner also argued: "The USCIS Officers visited the Church on November 17, 2007, just a few days before Thanksgiving holiday. The number of attendees on November 17, 2007 was smaller than usual." The petitioner submits no evidence to support the claim that its usual Sunday attendance is closer to "around fifty (50) members." We note that the only reason the officers visited the church in November was because they found no church personnel on site at all during repeated visits in October 2007.

It remains that [REDACTED] pastor's estimate of the petitioner's membership matched the USCIS officers' personal observations. That pastor also indicated that the petitioner's personnel are only present at the church during services on Sundays and Wednesdays, whereas the petitioner had claimed that the beneficiary presides over morning services throughout most of the week as well as

handling various administrative functions. Church bulletins refer to weekday morning services, but do not appear to identify alternative sites for those services.

In the March 2009 letter, the petitioner claimed to have referred to English-language services and classes “because we have planned and been prepared to provide English services for the convenience of English speaking congregation.” The petitioner did not explain why the beneficiary, who supposedly studied English language for at least two years and whom the petitioner specifically identified as being responsible for English-language activities, spoke no English during his interview and required the services of a translator.

The record shows numerous consistency and credibility problems in this proceeding, dating back well before the 2007 compliance review inspections and interviews. For instance, the petitioner has never satisfactorily explained why it paid the beneficiary about a year’s wages in 2001, even though the beneficiary supposedly worked at a different church (which apparently did not pay him at all) for the first half of that year. The petitioner has been on notice of this discrepancy since 2004; we are not introducing new allegations here. The petitioner’s attempt to explain this issue was not an explanation at all; the petitioner simply repeated the claim that the beneficiary changed employers in 2001.

With regard to the beneficiary’s change of employers in 2001, we note an additional credibility issue. The AAO may identify additional grounds for denial beyond what the Service Center identified 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 (9<sup>th</sup> 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 record shows that Southern California Grace Mount Church filed a Form I-129 nonimmigrant petition on the beneficiary’s behalf in November 1998, which, upon its approval, classified the beneficiary as an R-1 nonimmigrant religious worker from March 29, 2000 to March 28, 2003. The petitioner then filed its own nonimmigrant petition on the beneficiary’s behalf on April 9, 2001, subsequently approved with a validity date from July 23, 2001 to July 23, 2003 and then extended through March 28, 2005.

Section 101(a)(15)(R)(i) of the Act and the USCIS regulations at 8 C.F.R. §§ 214.2(r)(1) and (3)(ii)(B) (as in effect prior to November 29, 2008) require that the beneficiary must have belonged to the petitioner’s religious denomination for at least two years immediately preceding the filing of the petition. The record shows that Southern California Grace Mount Church belongs to the United Methodist Church, whereas the petitioner belongs to the Korean-American Presbyterian Church. Because these churches belong to two distinct religious denominations, the beneficiary should not have been able to move directly from one church to the other while maintaining R-1 nonimmigrant status. The question of how, exactly, these petitions came to be approved lies outside the scope of this proceeding, but it serves to illustrate that the issues with this petition did not begin with the 2007 compliance review and site inspections.

The petitioner has produced a number of *ad hoc* explanations for the numerous discrepancies that the inspecting USCIS officers observed, but a series of unsigned letters cannot resolve the issue. Doubt cast on any aspect of the petitioner's proof may 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). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92. The petitioner has not submitted competent objective evidence to resolve the many credibility questions in this proceeding. We find, therefore, that the director approved the petition in error, and that the director acted properly in revoking that approval.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the AAO will dismiss the appeal.

**ORDER:** The appeal is dismissed.