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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: MAY 26 2011 Office: CALIFORNIA SERVICE CENTER FILE: [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, California Service Center, initially approved the employment-based immigrant visa petition. On further review, the director 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 her reasons for doing so and subsequently exercised her discretion to revoke approval of the petition on December 16, 2008. On July 2, 2009, 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 December 16, 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, CSC, which was correctly based upon the regulations in effect at the time the petition was originally approved. Nonetheless, 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.[1] 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 evangelist. The director determined that the petitioner 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 and that the beneficiary had continued to work for the petitioner subsequent to the filing of the petition.

On appeal, counsel asserts that the director unfairly "penalize[d] the church for the claimed failure to receive the copies" of the beneficiary's tax returns directly from the Internal Revenue Service (IRS) and that the beneficiary continued to work for the petitioning organization as shown by the petitioner's quarterly payroll report to the State of California. The petitioner submits additional documentation in support of the appeal.

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[1] The petitioner's name is alternately spelled as "Immanual" and "Immanuel" throughout the record. However, the certificate of amendment to the petitioner's articles of incorporation indicates that the corporation is "Immanual Church of America."

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 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 at 8 C.F.R. § 204.5(m)(1) provided, in pertinent part, 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 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 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 August 1, 2005. Therefore, the petitioner must establish that the beneficiary was continuously working as an evangelist throughout the two-year period immediately preceding that date.

In its July 12, 2005 letter submitted in support of the petition, the petitioner stated that, pursuant to an R-1 nonimmigrant religious worker visa, the beneficiary had been in its employ as an evangelist since April 2003 and that:

> Her duties will continue to include assisting with worship services, teaching women's Bible study classes, leading women's prayer groups, coordinating evangelism programs and projects, assisting the pastor with congregational visits to the elderly and the shut-ins, and assist in leading daily sunrise morning services. She will receive a monthly salary of $1,800.00.

The petitioner submitted copies of IRS Form W-2, Wage and Tax Statement, that it issued to the beneficiary in 2003 and 2004 on which it reported wages of $10,500 and $18,000, respectively. The petitioner also submitted uncertified copies of California EDD Form DE6 (Quarterly Wage & Withholding Report), for the quarters ending March 31, 2005 and June 30, 2005 on which it reported it paid the beneficiary $4,500 in each of the two quarters. The petitioner submitted no other documentation regarding the beneficiary's work during the two years immediately preceding the filing of the petition. The petition was approved on January 31, 2006.

In her NOIR of July 7, 2008, however, the director found that the petitioner had submitted insufficient documentation to establish that the beneficiary had worked in qualifying religious work throughout the qualifying period. The director stated that the petitioner had provided a "general and unsupported" description of the beneficiary's duties and had not provided the number of hours that she would work or a schedule of her duties. The director also stated that the petitioner had not provided copies of the beneficiary's federal tax returns and stated that the returns must be sent to USCIS directly from the IRS.

In response, the petitioner reiterated the beneficiary's duties, stated that she worked 40 hours per week, and provided a weekly work schedule that included items such as worship service, preparation for worship service, Sunday school, bible study, visitation and women's ministry meeting. The petitioner also provided a copy of IRS Form 4506, Request for Copy of Tax Return, dated July 14, 2008 with a request to submit the returns to the California Service Center.

The director revoked approval of the petition, in part, because the service center had not received the copies of the beneficiary's federal tax returns from the IRS. On appeal, counsel states that the petitioner cannot be "blamed" for the non-receipt of the tax forms from the IRS. The petitioner submitted copies of IRS Form W-2 that it issued to the beneficiary in 2005, 2006 and 2007 and a copy of California EDD Form DE 6, reflecting that it paid the beneficiary $5,400 for the quarter ended March 31, 2008. The petitioner also provided copies of the beneficiary's tax transcripts from the IRS for the years 2004 through 2007.

While the AAO finds that the petitioner has submitted sufficient documentation to establish that the beneficiary was compensated by the petitioner during the two years prior to the filing of the petition, for the reasons discussed below, the petitioner has not established that the beneficiary worked in a qualifying religious occupation or vocation.

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." The effective regulation at the time the petition was filed stated only that a religious occupation 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 positions of cantor, missionary, or religious instructor were provided as 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 are those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

Accordingly, USCIS interpreted the term "traditional religious function" to require a demonstration that the duties of the position are 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 record does not establish that the petitioner provided any evidence that the position of evangelist is a religious occupation as outlined above. The petitioner submitted no documentation to establish that the proffered position is defined and recognized by the governing body of the petitioner's denomination and that the position is a permanent, full-time, salaried occupation within the petitioner's denomination.
Accordingly, the petitioner failed to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the visa petition.

The director also determined that the petitioner failed to establish that the beneficiary continued to work for the petitioner subsequent to the filing of the petition.

In adjudicating a petition filed on behalf of another beneficiary under USCIS receipt number [redacted], adjudicators noted that the petitioner alleged that the beneficiary of that petition was a replacement for the beneficiary of the current petition. Accordingly, the director notified the petitioner of her intent to revoke approval of the instant petition because the beneficiary no longer worked for the petitioning organization.

In a July 31, 2008 statement, the petitioner stated:

> [The beneficiary] was assigned in July 2005 to assist in planting a church in [redacted]. That church was formally incorporated in January 2007 as the [redacted] located at [redacted]. She remained on our payroll throughout the time she spent in [redacted] and has rejoined our church as of July 2007.

As discussed previously, the petitioner submitted IRS documentation reflecting that it paid the beneficiary from 2003 through 2007. In denying the petition, the director stated:

> [N]o documentary evidence was submitted to support the [petitioner's] statement [] regarding the beneficiary's transfer to San Diego. In addition, no documentary evidence was provided to show that the beneficiary has worked at the [redacted] church during the period from July 2005 to July 2007. More importantly, the Senior Pastor's claim that the beneficiary "was assigned in July 2005 is contradictory with his own statement provided in the job offer letter dated July 12, 2005. In that letter, Senior Pastor stated "[The beneficiary's] duties will continue to include assisting with worship services, teaching women's Bible study classes, leading women's prayer groups, coordinating evangelism programs and projects, assisting the pastor congregational visits to he elderly and the shut-ins . . ." The fact of beneficiary being assigned to a new church in July 2005 was not mentioned in the Senior Pastor's letter written in the same month on July 12, 2005. Evidence that is created by the petitioner after USCIS points out the deficiencies and inconsistencies in the petition will not be considered independent and objective evidence. Necessarily, independent and objective evidence would be evidence that is contemporaneous with the event that is to be proven and existent at the time of USCIS' notice.

On appeal, counsel asserts:

> The revocation decision incorrectly finds the church's letters of July 12, 2005 and July 31, 2008 to be contradictory. The earlier letter was submitted in support of Form I-360 and set forth the job duties without identifying where the duties would be performed. As evangelism and church planting are well-known church activities it is in the nature of a religious worker's call that he or she may be asked to perform duties in various locations. To impose on a church the duty of ascertaining and setting forth all possible locations for future job performance would be an impossible task and even if it could be done it [sic] would not be relevant to the determination of whether it is qualifying religious worker activity.
>
> The church was asked to explain in 2008 the circumstances of [the beneficiary's] working in another location and the church answered the questions. The church was not asked to provide any other specific corroboratory evidence of this out-of-town assignment and therefore did not do so. . . .
>
> Had a Request for Evidence been issued, the church would have supplied the . . . evidence supplied herewith fully documenting [the beneficiary's] work with the church as stated by the church.

The petitioner submitted a copy of "session minutes" that are dated June 26, 2005, indicating that the beneficiary was appointed "temporarily to begin planting in San Diego area to expand evangelism in the area," that the period of assignment was for two years beginning on July 1, 2005, that she would "continue to receive the salary from the main church," and that she would "work together and support [redacted] to focus on Christian education, visitations, and evangelism in the area." The petitioner also submitted a "summary translation" of two "weekly Sunday worship bulletin[s] of the [redacted]" that allegedly identifies the beneficiary "as a church worker, [who] participates in worship liturgy and weekly activities, and [who] is available for church members and visitors to contact." The bulletins are dated in September 18, 2005 and April 15, 2007.

We note first that the regulation at 8 C.F.R. § 103.2(b)(3), provides:

> *Translations.* Any document containing foreign language submitted to [USCIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. [Emphasis added.]

The petitioner provided only a summary of the documents and not a full translation as required by the above-cited regulation. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. Even assuming, however that the documentation met the requirements of the regulation, two church bulletins that identify the beneficiary is not evidence that she worked full time as a religious worker or that she performed the duties specified by the petitioner.

Additionally, there is nothing in the record to establish that the petitioner is engaged in church planting or that the beneficiary's duties as an evangelist, as described by the petitioner, qualifies her to engage

in church planting. Counsel's assertion that to "[i]mpose on a church the duty of ascertaining and setting forth all possible locations for future job performance would be an impossible task" is specious. According to documentation submitted by the petitioner, the decision to assign the beneficiary to another church had already been made prior to the date the petition was filed. However, the petitioner did not allege that it was engaged in church planting until subsequent to the AAO's remand of June 2009 and provided no evidence that it was actually engaged in church planting activities. Additionally, it did not allege that the beneficiary would be assigned to a location different from that in which she was currently working. Further, as the director indicated, there is nothing in the record to establish that the [redacted] is affiliated with the petitioning organization and therefore no evidence that it is a church plant for the petitioning organization.

Additionally, the petitioner stated in its August 6, 2007 letter that the beneficiary of petition [redacted] had replaced the beneficiary of the instant petition in February 2005 as she had moved to another church. The August 2007 letter thus indicates that the beneficiary had left the petitioning church prior to the June 26, 2005 church session that allegedly assigned her to the new church with an effective date of July 1, 2005. Further the letter written in support of petition [redacted] is dated after the beneficiary's alleged return to the petitioning organization in July 2007. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may, of course, 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). If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The petitioner submitted no documentation to establish that the beneficiary worked in a religious occupation subsequent to the filing of the visa petition. The evidence indicates that the proffered job did not exist within the petitioning organization at the time the petition was filed and that the petitioner intentionally misled USCIS as to the nature and duties of the job.

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 director's decision of December 16, 2008 is affirmed. The petition remains unapprovable.