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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED]
SRC 99 107 54962

Office: TEXAS SERVICE CENTER Date: **APR 06 2005**

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

S Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the petition for abandonment, reopened the matter on the petitioner's motion, and 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 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 an assistant pastor. The director determined that the petitioner had not established: (1) that the beneficiary had the requisite two years of continuous work experience in qualifying religious work; (2) that the petitioner had made a qualifying job offer to the beneficiary; or (3) the petitioner's ability to pay the beneficiary's proffered wage.

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 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. *Matter of Ho*. 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 582.

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 October 1, 2008, 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 October 1, 2008, 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 regulation at 8 C.F.R. § 204.5(m)(1) 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.” 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on February 22, 1999. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an assistant pastor throughout the two years immediately prior to that date.

Rev. Teofanes A. Viana, pastor of the petitioning church, states that the beneficiary “HAS BEEN A PASTOR IN [THE] PENTECOSTAL FAITH WITH NEW LIFE IN CHRIST MISSION SINCE 1990.” Because Rev. Viana’s letter is typed entirely in capital letters, it is not clear whether he means that the beneficiary has preached at a specific church called the “New Life in Christ Mission,” or simply that the beneficiary has found a “new life” through his faith, and now carries out “Christ’s mission.”

The beneficiary arrived in the United States with a B-2 nonimmigrant tourist visa on October 22, 1998, having spent the bulk of the two-year qualifying period in Brazil. Rev. Viana does not state how he has personal knowledge of the beneficiary’s work in Brazil, prior to the beneficiary’s arrival in the United States. Rev. Viana does not specifically state that the beneficiary has actively worked for the petitioner since his arrival. Following a request for additional information, the petitioner has submitted a series of untranslated Brazilian documents in the Portuguese language. 8 C.F.R. § 103.2(b)(3) requires the submission of certified translations of foreign-language documents.

In the notice of intent to revoke, the director observed that untranslated Portuguese-language documents are not sufficient evidence of qualifying past experience. The director also indicated that the petitioner had failed to provide an adequate description of the beneficiary’s past duties. In response, the petitioner submits an uncertified translation of a letter from Dr. Lenilson de Mello, president of Igreja Batista Getsêmani, Brazil, stating:

[The beneficiary] was a minister-president of this church . . . from March 29, 1994 through April 5, 1998. [The beneficiary] exercised all these functions as a minister and president, such as: Preaching the word of God, Bible Studies, ministration of the Holy Communion, Baptisms, matrimony ceremonies (civil and religious); familiar and spiritual counselor, Funeral services, presiding [over] meetings and other reunions.

We also declare the [the beneficiary] received from this church a monthly salary . . . housing, water, electric energy, automobile, gasoline for the automobile and medical insurance.

Regarding the beneficiary's work in the United States, Rev. Viana states that the beneficiary "worked in that church office from 8:00 a.m. to 5:00 p.m. Monday through Friday, plus the time in the regular services during the week." Rev. Viana states that the beneficiary "came to US in October 22, 1998 and joined our church," but this assertion does not indicate whether there was any gap between when the beneficiary entered the United States and when he began working for the petitioner.

Rev. Viana states: "The beneficiary is receiving a monthly salary from his home church. This monthly salary will stop whenever he becomes employed by our church. He also had another income from a job he had at Blockbuster." Elsewhere in the letter, Rev. Viana states: "I am sure that as soon as he becomes a legal resident of the United States and as soon as he starts receiving a salary from our church he will not have to work on supplemental employment in order to support himself and his family."

Pastor Ronald S. Carvalho, superintendent of Junta Administrativa de Missões (JAMI), states that the beneficiary "was sent as a JAMI Missionary Pastor to work in Dallas, United States of America, for an indefinite period of time." The letter is dated October 26, 1998. Pastor Carvalho does not indicate how much or how often JAMI has paid the beneficiary, or even whether JAMI has paid him at all.

Pastor Josafá Eugênio Barbalho of the Ordem do Ministros Batistas Nacionais (ORMIBAN), indicates that the beneficiary "and his family are missionaries associated with [Igreja Batista de Graça] and they have been receiving our financial and spiritual support since November, 1998," in the amount of \$300 per week. The record does not reveal what connection, if any, exists between JAMI and ORMIBAN.

Tax documents submitted in response to the notice of intent to revoke show that Blockbuster Distribution Corp. paid the beneficiary \$5,094.59 in 2002 and \$22,330.23 in 2003.

The director revoked the approval of the petition, stating that "administrative and secular tasks . . . characterized the work functions of the beneficiary during part [of] the two-year period prior to I-360 filing on February 22, 1999." The director does not explain how the available evidence points to the conclusion that the beneficiary performed "administrative and secular tasks" during the 1997-1999 qualifying period. The beneficiary's documented work at Blockbuster Distribution Corp. took place in 2002 and 2003, well after the qualifying period. While the beneficiary's work for Blockbuster Distribution raises important questions, this work does not concern the beneficiary's activities during the 1997-1999 qualifying period.

On appeal, Rev. Viana asserts that the beneficiary's work "in the church office" was not secular "because it is church related." Office work such as filing or preparing correspondence is administrative and secular, even if the business conducted relates to the operation of a church. That being said, there is no indication that the beneficiary's work for the petitioning church, or other churches in Brazil, has been administrative or secular in nature. The petitioner has indicated that the beneficiary's duties, past, present and future, are those of a minister. The reference to the beneficiary's work "in that church office" might, in isolation, be construed as a reference to administrative "office work," but in context it appears more likely that the beneficiary performed ministerial duties while based in the church's office. Whatever other problems exist with the record of proceeding, we do not conclude that the beneficiary's documented employment during the qualifying period was administrative or secular in nature.

The director also stated that the beneficiary's past work was unpaid, but this finding does not take into account the letter indicating that ORMIBAN paid the beneficiary a monthly salary. At the same time, it

remains that the record contains no financial documentation to substantiate the claims of the ORMIBAN official.

The evidence of record does not account for the beneficiary's activities during the six-and-a-half-month period April 6, 1998, when he stopped working for Igreja Batista Getsêmani, and October 22, 1998, when he most recently arrived in the United States. The letters from JAMI and ORMIBAN do not contain specific or verifiable details. The general assertion that the beneficiary traveled to the United States in order to work as a missionary does not readily conform to his most recent admission not as a B-1 business traveler, but as a B-2 visitor for pleasure. (The beneficiary did enter under a B-1 visa in August 1998, but he soon departed, as shown by his readmission only two months later.)

While we do not concur with all of the director's findings in this area, we agree that the petitioner has not established that the beneficiary continuously carried on the vocation of a minister throughout the two-year period from February 1997 to the filing date in February 1999.

Turning to the issue of the job offer, 8 C.F.R. § 204.5(m)(1) states that the alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of the intending employer's religious denomination. 8 C.F.R. § 204.5(m)(4) states that an authorized official of the religious organization in the United States must also state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration).

In the notice of intent to revoke, the director stated that the petitioner had not adequately described the beneficiary's intended future duties. In response, Rev. Viana offers the following description:

The position that our church has offered to [the beneficiary] is the Assistant pastor position.

He will be working in our church:

Monday, Tuesday and Wednesday from: 8:00 a.m. to 5:00 p.m.

Thursday, Friday and Saturday from: 7:00 p.m. to 10:00 p.m.

Sunday from: 9:00 a.m. to 12:00 p.m.

And from: 5:00 p.m. to 9:00 p.m.

His duties shall be: To hold Bible studies in our church members house, to preach in some regular services, to visit and pray for the sick people of our church, to exercise the same function as the pastor when the pastor is on leave, or upon the pastor's request. This position is a new position and it will be a salaried position. . . .

The Assistant Pastor position has the same functions as the Senior Pastor. . . . The only difference is that the Assistant Pastor always works under the supervision of the Senior Pastor.

The petitioner expresses confidence that the beneficiary will not require outside income once the petitioner begins paying him a salary. It remains, however, that ORMIBAN has supposedly been paying the beneficiary \$300 per week, while the beneficiary has worked at Blockbuster Distribution. The petitioner appears to have offered the beneficiary *less* than \$300 per week, and this reduction would, if anything, *increase* the beneficiary's need for additional outside income. This outside employment raises legitimate questions regarding whether the beneficiary truly seeks to work *solely* as a minister, as the statute and regulations require.

The director, in the revocation notice, found that the petitioner has not shown that the beneficiary will not rely on outside employment. The director also found the description of the terms of the job offer to be deficient, because the petitioner did not explain whether the beneficiary's \$250 salary will be paid weekly, monthly, or at some other regular interval.

On appeal, despite being notified on at least two occasions of deficiencies in the description of the terms of employment, the petitioner offers no clarification of the terms of employment. Regarding the beneficiary's work at Blockbuster Distribution, Rev. Viana asserts that the beneficiary "is not the only minister that hold[s] a secular job, several ministers do." He adds that the beneficiary was legally authorized to accept employment at Blockbuster Distribution. Work authorization, however, is not the issue here. The statute and regulations require that the alien must seek to enter *solely* to carry on the vocation of a minister. The employment policies of individual denominations or churches cannot, and do not, supersede the plain wording of the federal statute. In an instance such as this, where the beneficiary has pursued secular employment and appears likely to continue to do so, the regulations do not permit a finding of eligibility.

The next issue concerns the petitioner's ability to pay the beneficiary's salary. The regulation at 8 C.F.R. § 204.5(g)(2) states:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by the Service. In a case where the prospective employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by the Service.

Rev. Viana, in his initial letter on the beneficiary's behalf, stated that the beneficiary's "salary will be \$250.00." He did not specify whether this amount was to be paid weekly, monthly, or correlated to some other period of time. Subsequently, the petitioner has submitted copies of bank statements, showing that the petitioner carried a bank balance fluctuating between roughly \$14,000 and \$30,000 between November 1999 and January 2000.

The director, in the notice of intent to revoke, observed that bank statements do not meet the requirements of the regulation cited above. The director also stated that the assertion that the beneficiary's "salary will be \$250.00" is too vague to establish the terms of the beneficiary's proposed employment.

In response, the petitioner has submitted copies of additional, more recent bank statements, generally showing lower balances than the earlier statements submitted previously. The petitioner does not explain why the

submission of more bank statements overcomes the director's finding that bank statements cannot suffice to establish ability to pay.

The director revoked the approval of the petition, based in part on the petitioner's failure to submit evidence that meets the regulatory requirements regarding documentation of ability to pay. On appeal, Rev. Viana asserts "we are capable of fulfilling our promise . . . and the offered salary is still the same." Pursuant to 8 C.F.R. § 204.5(g)(2), the personal assurance of a company official is acceptable only when the prospective employer employs 100 or more workers. Here, according to Rev. Viana, "the only people that are receiving a salary in our church [are] myself . . . and my Secretary."

The above-cited regulation at 8 C.F.R. § 204.5(g)(2) states that evidence of ability to pay "shall be" in the form of tax returns, *audited* financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only *in addition to*, rather than *in place of*, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of evidence. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Beyond the decision of the director, examination of the record reveals additional information that prevents a finding of eligibility. One issue relates to the petitioner's tax status. 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

The petitioner's initial submission contained the pastor's claim that the petitioner is a qualifying tax-exempt entity, but no documentation to confirm this assertion. On October 5, 1999, the director instructed the petitioner to "submit a copy of the letter from the Internal Revenue Service which states that that your organization qualifies for exemption from taxation as described in Section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations." In response, the petitioner did not submit a copy of such a letter, nor did the petitioner submit documentation necessary to establish eligibility for such an exemption as required by 8 C.F.R. § 204.5(m)(3)(i)(B). The petitioner submitted a copy of its articles of incorporation, as executed in February 1992 and amended in August 1993, and a copy of a February 17, 1995 notice from the Texas Office of the Comptroller, indicating that the petitioner's "corporate privileges in Texas . . . were forfeited on 06-06-94 for failure to comply with Franchise Tax requirements." The notice provided instructions on how to reinstate corporate privileges, but there is no evidence in the record that the petitioner complied with these instructions.

In the notice of intent to revoke, the director reiterated that the record contained no evidence of the petitioner's qualifying tax-exempt status. In response to that notice, the petitioner has submitted a copy of its IRS recognition letter, dated August 27, 1993. This letter, by itself, would establish the required tax-exempt status, and the director was evidently satisfied with this evidence, as the final revocation notice contains no mention of the petitioner's tax status. It remains, however, that the petitioner lost its "corporate privileges" in

1995. If the petitioner lost its legal status as a corporation, then it is not clear that the exemption tied to that corporation would continue to exist. In short, the 1995 letter from the Texas Office of the Comptroller raises questions that the record does not resolve.

Finally, there is the issue of the beneficiary's denominational membership. 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that the beneficiary has the required two years of membership in the denomination immediately prior to the filing of the petition. This reflects the statutory requirement at section 101(a)(27)(C)(i) of the Act, quoted above. 8 C.F.R. § 204.5(m)(2) defines "religious denomination" as a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, religious congregations, or comparable indicia of a bona fide religious denomination. Because the beneficiary worked overseas for most of the two-year period immediately preceding the filing date, the petitioner must show that the foreign religious organizations belong to the same religious denomination as the petitioning church.

The churches and mission agencies for which the beneficiary has worked in Brazil all identify themselves as "Batista," translated as "Baptist." The petitioning church is affiliated with the Assemblies of God, a Pentecostal denomination. The available evidence indicates, on its face, that the beneficiary has moved from a Baptist denomination to a Pentecostal denomination (the terms "Baptist" and "Pentecostal" each refer to families of denominations rather than monolithic denominations in their own right). The burden is on the petitioner to establish that the beneficiary was a member of the petitioner's denomination (Assemblies of God) from February 1997 onward. Because the available evidence indicates that the beneficiary changed religious denominations less than two years prior to the petition's filing date, this appears to be an additional ground of ineligibility beyond those listed in the director's decision.

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 sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.