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U.S. Citizenship
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Services

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APR 15 2005

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date:

WAC 97 037 52685

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:

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.

Robert P. Wiemann

Robert P. Wiemann, Director
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 appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a minister. The director determined that the petitioner had not established that: (1) the beneficiary entered the United States with the sole intention of working as a minister; (2) the beneficiary had the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition; (3) the petitioner had made a qualifying job offer to the beneficiary; or (4) the petitioner is, and has been, able 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 first issue raised in the director's decision concerns the beneficiary's entry into the United States. Section 101(a)(27)(C)(ii)(I) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(I), requires that the alien seeking classification "seeks to enter the United States . . . solely for the purpose of carrying on the vocation of a minister." In this instance, the beneficiary entered the United States as a B-2 tourist. Thus, the director concluded, the beneficiary did not enter the United States solely for the purpose of working as a minister.

This finding is not defensible. The AAO interprets the language of the statute, when it refers to "entry" into the United States, to refer to the alien's intended *future* entry *as an immigrant*, either by crossing the border with an immigrant visa, or by adjusting status within the United States. This is consistent with the phrase "*seeks to enter*," which describes the entry as a future act. We therefore withdraw this particular finding by the director, while of course reserving the prerogative of making other relevant findings regarding the beneficiary's apparent intentions.

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 November 22, 1996. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a minister throughout the two years immediately prior to that date.

In a letter submitted with the initial filing, [REDACTED] president of the petitioning church (and the beneficiary's stepfather), states: "For the past 10 years [the beneficiary] has been a member of our denomination . . . and has been carrying on his vocation as a Minister for the past 6 years in Finland and Luxemb[o]urg. . . . He seeks to work in the United States solely as a Minister for [the petitioning church]."

Mr. [REDACTED] states that the beneficiary was ordained as a minister on December 15, 1990, and that the beneficiary's duties "are traditional scripture, sermon, weddings, baptisms and other traditional church functions [and] also lectures and performances as a Youth Minister." The petitioner submits a copy of a certificate, dated December 15, 1990 and signed by [REDACTED]. The certificate reads in part:

CERTIFICATE
YOUTH MINISTER

We hereby certify that,
[the beneficiary]
has been participating and finished needed exam
for youth minister duties.

*

- The basic religious philosophy
 - Healthy lifestyle
 - Guided relationship
 - Youth work

The document does not refer to ordination, nor to weddings or baptisms. The certificate states only that the beneficiary is a qualified "Youth Minister." In a later letter, [REDACTED] states that the petitioner's "ministry began in Finland in 1984" and that "[f]or over 14 years [i.e., since 1985] [the beneficiary] has been a member of our denomination." The petitioner submits no documentary evidence to establish the extent, or even the exact location, of the beneficiary's employment as a minister from 1994 to 1996.

The beneficiary entered the United States as a tourist on June 6, 1996. [REDACTED] treasurer of the petitioning church, states that the beneficiary "is my adult son. Since his arrival in the United States he has lived with me and my family and we have provided for all of his financial needs and daily necessities. Our providing for him in this way has made it possible for him to help out as a volunteer at the church." Ms. [REDACTED] does not specify the extent of the beneficiary's church work from June to November of 1996.

The director issued a notice of intent to revoke, stating that there is no evidence that the beneficiary has accumulated qualifying employment experience subsequent to his entry as a tourist. The beneficiary, rather than the petitioner, responded to this notice, although it is not clear that the beneficiary had the authority to do so. The beneficiary is not an affected party in the proceeding, pursuant to 8 C.F.R. § 103.3(a)(1)(iii). Having said that, we note that the notice was mailed to the beneficiary rather than to the attention of the petitioner.

In response, the beneficiary maintains that his "work for [the petitioner] has been continuous. I **did** work for the denomination throughout the two year period immediately preceding the filing of the visa petition" (emphasis in original). The beneficiary provided no evidence of past employment with this response, and once again, some of his claims are extremely vague. Regarding his work prior to his arrival in the United States, the beneficiary states that he worked in "Europe" but provides no specific information that could be verified by local church authorities (nor any means of even identifying, let alone contacting, such authorities).

The director revoked the petition, stating that the record does not establish the beneficiary's continuous involvement in qualifying religious work throughout the qualifying period. On appeal, counsel asserts that the beneficiary's experience qualifies him for immigration benefits, even if he received room and board in lieu of paid wages. This assertion fails to overcome the director's finding, because counsel's arguments beg the question of whether the claimed employment took place as claimed. The general assertion that the beneficiary worked as a minister somewhere in Europe is not a satisfactory claim of prior employment. The beneficiary's own statements regarding his past work are devoid of verifiable detail. The only documents that begin to approach corroboration are equally vague statements from the beneficiary's mother and stepfather, neither of whom claim to have actually been in Europe in 1994-1996 to witness the beneficiary's work. Despite being put on notice that the evidence is insufficient to establish that the beneficiary worked as claimed, the petitioner has offered no further documentation to corroborate even skeletal details of its claim.

8 C.F.R. § 204.5(m)(1), mirroring the wording of section 101(a)(27)(C)(ii)(I) of the Act, indicates that an alien who seeks to enter the United States for the purpose of carrying on the vocation of a minister must intend to work *solely* as a minister. By definition, the alien cannot fulfill this intent until after he or she "enters" the United States as an immigrant, either by crossing the border with an immigrant visa or by

adjusting status. Nevertheless, the alien's actions prior to entry or adjustment can provide some indication of the alien's intentions.

On January 31, 2000, as part of the beneficiary's adjustment process, an official of the Los Angeles District Office instructed the beneficiary to submit various documents, including tax documents from previous years. The beneficiary's 1998 federal tax return shows \$1,329 in wages/salaries/tips from an unidentified source, and \$4,915 in business income. The beneficiary identified his occupation as "self-employed" and his "principal business or profession" as "computer services."

The director, in the notice of intent to revoke, cited the above information, stating that it proves that the beneficiary has not worked solely as a minister following the petition's filing date. In response, the beneficiary states "I have no need of additional funds," and that the church's support "is all I needed." He does not address his own income tax return, in which he personally referred to himself as a self-employed provider of computer services.

The director based the subsequent revocation, in part, on the evidence showing that the beneficiary has not solely pursued the vocation of a minister, instead deriving the bulk (perhaps all) of his reported income from secular employment. On appeal, counsel states that the beneficiary has not yet become a permanent resident, and therefore he is not yet obligated to earn his living solely as a minister:

We would note that the beneficiary was an applicant for adjustment of status during 1998 and had authorization to work issued by the Service. Such authorization did not specify the work had to be for the church. As he was not yet granted lawful permanent residence, which would restrict his employment solely for the Petitioner, there does not appear to be any restriction to his taking employment outside the church in that period.

Counsel fails to explain how this secular employment is consistent with the beneficiary's *bona fide* intent to work solely as a minister. It certainly does not correspond well with the beneficiary's claim that the church takes care of all his needs and that he requires no other income. It is also worth noting that, on the tax return provided, the beneficiary identified himself not as a minister, but rather as a self-employed provider of "computer services." There is no Form W-2 or other documentation to show that any of the beneficiary's reported income came from the petitioning church. As a result, the record is devoid of contemporaneous documentary evidence to show that the beneficiary has ever earned his living as a minister, and nothing other than the unsupported testimony of the beneficiary and his family to suggest that he ever will earn his living in that manner.

Counsel adds "the beneficiary has not taken any outside employment other than that one period." This claim is unproven. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Because the beneficiary has submitted only one tax return, and he has never provided the comprehensive Social Security printout that the Los Angeles District Office requested several years ago, there is no support for any definitive conclusion that the beneficiary's secular work was limited to "that one period."

We concur with the director that the available evidence does not support the conclusion that the beneficiary has a *bona fide* intention to work solely as a minister. At his first opportunity to work legally in the United States, the beneficiary pursued secular employment.

The above finding leads to an overall discussion of the validity of the petitioner's job offer, including the petitioner's ability to pay the beneficiary's proffered wage. 8 C.F.R. § 204.5(m)(4) requires the petitioner to

set forth the terms of employment. The petitioner must state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration). 8 C.F.R. § 204.5(g)(2) states, in pertinent part:

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.

states that the beneficiary will receive a "monthly payment [of] \$900.00," "room and board included." In a subsequent letter, he states that the beneficiary's "position is permanent and full-time with a salary of \$900 per month in addition to room and board." A bank statement in the record indicates that the petitioner's bank account held \$185.73 as of December 18, 1996. The account was apparently established on November 29, 1996, a week after the petition was filed. Another statement from January 19, 2000, shows a balance of \$364.82. Neither statement shows any checks or other payments except for bank fees.

In the notice of intent to revoke, the director noted the absence of any evidence that the petitioner has ever paid the beneficiary. In response to that notice, the beneficiary asserts "The Petitioner **did** engage me in accordance with the job offer. I have been given room and board, and payment. . . . They also paid various expenses for me, which were deducted from my salary." Elsewhere in the same paragraph, however, the beneficiary states "I did not request my salary." As noted above, the two bank statements in the record do not show any payments of any kind to anyone except for bank fees; there is no evidence that the beneficiary received even partial payments from the petitioner.

Regarding the inadequate evidence of ability to pay, the beneficiary asserts: "The church is solvent, and financial records are attached to show that they can pay me additional funds now." A "Profit & Loss" statement for the fiscal year ending September 2003 shows the following figures:

Ordinary Income	\$70,166.39	Other Expenses	\$4,725.75
Total Expenses	63,341.68	Net Other Income	33,569.26
Net Ordinary Income	6,824.71	Net Income	40,393.97
Other Income	38,295.01		

The statement does not identify the source of the "Other Income." Furthermore, there is no itemized listing to show the beneficiary's salary or the cost of his room and board. The petitioner's major expense was \$36,887.65 for "Miscellaneous." The profit and loss statement, apart from failing to conform to the evidentiary requirements of 8 C.F.R. § 204.5(g)(2), does not establish the petitioner's ability to pay from the 1996 filing date onward.

The director, in revoking the petition, concluded that the petitioner "failed to establish that it has extended a valid job offer" or that it has consistently been able to pay the beneficiary's proffered salary. On appeal, counsel asserts that the petitioner has consistently provided room and board to the beneficiary: "His share of the housing costs alone for one month equate to \$995.00. This is more than the proffered wage." We note that Seppo Plaami has stated that the beneficiary receives "\$900 per month *in addition to* room and board" (emphasis added). The petitioner offers no documentary evidence to show that the petitioner has supported

the beneficiary since 1991 as claimed. Even if the petitioner had proven that the beneficiary has resided with [redacted] and [redacted] since his 1996 arrival, we cannot ignore that Ms [redacted] the beneficiary's mother, a fact which, alone, is sufficient to explain why she would feed and house him.

The petitioner submits copies of additional bank statements on appeal. Some of the later statements show large monthly balances, but the earlier statements do not demonstrate that the petitioner had \$900 per month available to pay the beneficiary's salary. The beneficiary's claim that he did not choose to ask for this salary, does not remove the petitioner's regulatory obligation to prove its ability to pay that salary.

Regarding the low balances in the petitioner's account, counsel states: "The Petitioner has not kept large amounts in its checking accounts, but instead has paid for expenses such as salaries and rents prior to depositing funds in a bank account." Seppo Plaami offers a similar assertion, stating "Ministers' Salaries and rent are taken out from the income of [the petitioner] prior to depositing funds in the bank."

The above assertions illustrate the intent behind 8 C.F.R. § 204.5(g)(2), which indicates 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. The regulations require reliable documents that provide a *complete* financial picture of the petitioning entity, rather than simply a snapshot of how much cash was in one bank account at one particular moment in time. Even on its face, the petitioner's claim is an admission that its bank statements provide an incomplete and, thus, unacceptable picture of the petitioner's finances.

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). The claim that the petitioner's bank balance represents only the remainder of a larger cash supply is, like many of the petitioner's claims, utterly without support in the record. The claim that the petitioner paid salaries and expenses with undeposited funds does not, in any way or by any reasonable standard, absolve the petitioner of its obligation to prove that it had those funds in the first place, or that they were disbursed in the manner claimed. There is no evidence to show that the petitioner has ever paid the beneficiary for his work, and, as noted above, the fact that he lives with relatives does not compel any presumption that this living arrangement is contingent on employment.

We conclude that the director was correct in concluding that the petitioner has not presented a valid offer of employment,¹ or shown its ability to pay the beneficiary's proffered wage. In sum, the record is devoid of evidence that would be crucial in establishing fundamental claims by the petitioner and the beneficiary, and the little contemporaneous evidence that exists in the record is inconsistent with, or at the very least fails to support, the petitioner's claims. We find that the petition was approved in error and that the director acted correctly 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 sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ We note that, according to an official web site run by the State of California, the petitioner's corporate status in that state has been suspended. <http://kepler.ss.ca.gov/corpdata/ShowAllList?QueryCorpNumber=C1992270>, accessed March 25, 2005. For this reason, we have addressed our notice of decision to the petitioner's Honolulu address.