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



U.S. Citizenship
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Services

PHOTOCOPY

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[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 04 2004
WAC 01 219 51177

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:

[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, 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 "communion of churches within ministries in Asia and the United States." It seeks classification of 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 be employed as its director of activities.

Section 205 of the Act, 8 U.S.C. § 1155, states: "The [Secretary of Homeland Security] may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N 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.* at 582. 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.

The record reflects that the director issued the notice of intent to revoke the approval of the petition on August 18, 2003. In the notice the director indicated that the record did not establish that the beneficiary had been continuously employed during the two-year period immediately preceding the filing of the petition and that the beneficiary's position was not a qualifying occupation. The petitioner failed to respond to the director's notice of intent to revoke; therefore, the director revoked the petition on May 3, 2004. The petitioner, through counsel, files a timely appeal.

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 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) echoes the above statutory language, and states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file an 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 issue to be examined is whether the petitioner has demonstrated that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for at least the two years preceding the filing of the petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that “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 petition was filed on April 30, 2001. Therefore, the petitioner must establish that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation from at least April 30, 1999.

The Form I-94, Arrival and Departure Record, indicates that the beneficiary initially entered the United States on December 29, 1999 as a B-2 nonimmigrant with authorization to remain in the United States until June 28, 2000. The beneficiary subsequently received approval to change his nonimmigrant status to that of an R-1 nonimmigrant with authorization to remain in the United States from December 21, 2000 to October 15, 2003. Thus, the beneficiary’s experience in the United States, by itself, is not sufficient to meet the requirements of the regulation.

In a letter dated April 18, 2001, [REDACTED] secretary of the petitioner’s board, submits a letter describing the beneficiary’s offered position and his qualifying experience. [REDACTED] states:

We have had the pleasure of employing [the beneficiary] as a religious worker since December 2000, when our R-1 petition on his behalf was approved.

* * *

[The beneficiary] served in our ministries in the Philippines since 1997 before joining us in the United States. He is responsible for various religious services, including visiting members in their homes with prayer and home Bible studies; organizing religious activities; meeting and conferring with church elders regarding each ministry's activities and outreach programs; coordinating the church's overall program and participating in evangelistic outreach programs in the community. We hope that [the beneficiary] can continue providing these services on a full-time permanent basis.

[The beneficiary] currently spends an average of 40 hours per week performing the above listed religious duties. We anticipate that he will continue to do so. The church will continue to pay [the beneficiary] a monthly salary of \$2000 for his services.

Although the petitioner submitted copies of its bank statements, the statements do not contain sufficient information to establish that the beneficiary has worked for the petitioner since December 2000. Further, the record did not provide any evidence regarding the beneficiary's full-time, continuous employment prior to coming to the United States.

In response to the director's request for evidence, the petitioner submits a letter dated October 1, 2000, from Reverend [redacted] senior pastor of the petitioning church, who states that the beneficiary "has been working for our ministry on a full-time basis in Los Banos, Laguna, Philippines from 1997 to 1999." The petitioner also submitted copies of the beneficiary's 2001 W-2 Wage and Tax statement and checks covering the period January 2001 through December 2001. Again, however, the petitioner failed to provide documentary evidence to establish that the beneficiary's work in the United States was full-time or any evidence to establish the beneficiary's employment in the Philippines.

The director approved the petition on February 3, 2002, and the beneficiary filed a Form I-485 application to adjust status on July 14, 2003. As part of that application, the petitioner submitted evidence that the beneficiary's position was that of a "director of activities." The beneficiary's Form G-325A also indicates that he worked for the petitioner as a director of activities from December 2000 to July 3, 2003, the date the beneficiary signed the form.

On August 18, 2003, the director issued a notice of intent to revoke, stating that the available evidence indicates that there was a one-year break in the beneficiary's employment and that the duties of the beneficiary's position appear to be administrative rather than religious. The petitioner failed to respond to the director's notice of intent to revoke and the director revoked the petition on May 3, 2004, on the grounds that the beneficiary was not continuously employed in a qualifying occupation during the two years immediately preceding the filing of the petition.

On appeal, as it relates to the director's finding regarding the gap in the beneficiary's employment, counsel refers to a Citizenship and Immigration Services letter¹ and states:

¹ Letter by Lawrence L. Weinig, Acting Assistant Commissioner, May 8, 1992 (CO 204.26-C).

In December 1999, beneficiary and his spouse came to the U.S. for a brief visit. Beneficiary's employment with the church in the Philippines was not affected during this visit, and he was due to return to his position upon returning to the Philippines. In fact, anticipating a brief visit, Beneficiary and his spouse left their children in the Philippines when they came to the United States in December 1999. While in California, Beneficiary was offered a position with Bread of Life Ministries in the U.S. Through mutual agreement between the church in the U.S., and the church in the Philippines – where – Beneficiary was employed – Beneficiary was transferred to the U.S. in 2000, and steps were taken to secure the Beneficiary's R-1 status. While the Beneficiary was unable to lawfully work for the church in the U.S., he was financially supported while he awaited approval of the R-1 petition on his behalf. Accordingly, any lapse in the beneficiary's paid "employment" with the church was beyond his personal control.

Counsel's argument regarding the beneficiary's break in employment being beyond the beneficiary's control and counsel's reliance on [REDACTED]'s memo is without merit. Although the letter cited by counsel does indicate that "case law has made allowances for breaks where such breaks were beyond the alien's control," the letter also states that any determination made regarding breaks in religious employment must be made on a case-by-case basis. In reviewing the facts of the instant case, we do not find the facts support counsel's assertion that the beneficiary's lack of employment was caused by "circumstances beyond his control" as it was the beneficiary's choice to remain in the United States to await approval of his R-1 nonimmigrant visa rather than to return home. In this case, there were no circumstances that prevented the beneficiary from returning to his country to continue his work while awaiting approval of his nonimmigrant visa.²

Moreover, even if we were persuaded by counsel's argument, the record continues to lack sufficient evidence regarding the beneficiary's employment in the Philippines from April 30, 1999 up to the time he entered the United States in December 1999. The sole piece of evidence to document the beneficiary's claimed work experience is the unsubstantiated letter from Rev. Conde. On appeal, the petitioner resubmits copies of the beneficiary's 2001 W-2 Wage and Tax Statement and checks issued to the beneficiary in 2001. Additionally, the

² We note that counsel fails to distinguish the instant case from the precedent decisions cited in the letter. The interruption in *Matter of B-*, 3 I&N Dec. 162 (BIA 1948), was not caused by self-imposed factors such as voluntary relocation to a country where the alien had no work authorization. Rather, the alien in *Matter of B-* was unable to carry on the vocation of a rabbi because he was imprisoned in a Nazi concentration camp. Another case cited by counsel, *Matter of M-*, 1 I&N Dec. 147 (BIA 1941), regards another rabbi, who fled Nazi persecution after his native Poland fell while the alien was on vacation abroad. Such circumstances are wholly inapplicable to the facts of the instant case where the beneficiary voluntarily left his home for a vacation in the United States and chose to remain under his own volition.

Further, while *Matter of B-* and *Matter of M-* predate the current special immigrant religious worker statute, Congress, when it revised the law in 1990, approvingly acknowledged the body of "[s]ubstantial case law" already in existence. See H.R. Rpt. 101-723, at 75 (Sept. 19, 1990). This case law, as noted above, establishes an operational definition of "continuous" work, and there is nothing in the statute or regulations to indicate that the word "continuous" means one thing for a minister, and something else for a worker in a religious occupation. Indeed, the structure of section 101(a)(27)(C) of the Act strongly implies a single, universal sense of the word "continuous" for the different classifications of special immigrant religious workers.

petitioner submits copies of pay statements covering the years 2002 and 2003. However, the petitioner fails to submit any evidence that relates to the beneficiary's work prior to coming to the United States, such as tax records, checks, or pay statements.

The remaining determination is whether the beneficiary is employed in a qualifying occupation. On appeal, counsel argues that the beneficiary occupies a "crucial position" within the church and that his position involves traditional religious functions. Counsel states:

The origins of the Beneficiary's functions are firmly rooted in Christian evangelical traditions, the gospel of Paul, and may be credited with spreading Christian principles and values across the globe. The Service has twice considered this issue, and correctly found that the position qualifies as a traditional religious function.

Counsel's argument related to the prior approval of the beneficiary's R-1 nonimmigrant visa and the initial approval of the Form I-360 is not persuasive. There is a significant difference between a nonimmigrant R-1 visa classification, which allows an alien to enter the United States temporarily, and an immigrant I-360 visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. *Cf.* §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; see also § 316 of the Act, 8 U.S.C. § 1427. Because the eligibility requirements for each petition are different, the fact that the beneficiary may have had a prior nonimmigrant visa petition approved on his behalf, does not relieve the petitioner from establishing that the beneficiary meets the evidentiary and eligibility requirements of the instant immigrant visa petition. Moreover, as noted previously, approval of a petition may be revoked at any time for "good and sufficient cause." See Section 205 of the Act, 8 U.S.C. § 1155.

As it relates to counsel's contention that the beneficiary's position is "crucial" and related to a traditional religious function, counsel submits no documentation from the petitioning church to substantiate his statement. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Counsel also refers to section 129.107-018 of the U.S. Department of Labor's (DOL) Dictionary of Occupational Titles and states that DOL's "findings" are "consistent" on the point that that the beneficiary's position "qualifies as a traditional religious function." We do not agree. The section referred to by counsel, which is defined as a "Director of Religious Activities," describes the duties of the position as:

Directs and coordinates activities of various denominational groups to meet religious needs of students; Meets with religious advisers and councils to coordinate overall religious program. Assists and advises groups in promoting interfaith understanding. Interprets policies of university to community religious workers and confers with administrative officials concerning suggestions and requests for religious activities. Provides counseling and guidance relative to marital, health, financial, and religious problems. Plans and conducts conferences and courses to assist in interpretation of religion to various academic groups and to promote understanding of individual faiths and convictions of other groups.

The section indicates that alternate titles for the listed occupation include “dean of chapel” and “director of religious life.”

Not only does the definition’s reference to “students,” “education,” “university,” and “academic groups,” indicate that the position cited by counsel relates to a position at a scholastic institution and not a church, the described duties are not similar to those of the beneficiary’s position.

Even if the above-defined position were found to be the same position as that of the beneficiary, it appears that counsel is confusing what is required to be classified as an occupation in DOL’s Dictionary of Occupational Titles and what is required by CIS to establish a qualifying *religious occupation*. DOL’s Dictionary of Occupational Titles was implemented as a way to standardize occupational information to support job placement activities³; it provides no guidance on whether a defined occupation is considered to be a religious occupation. Rather, the determination as to whether a position can be considered a qualifying religious occupation is based upon statute, regulation, and established case law.

The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

With regard to religious occupations, the lists in the above regulation reflect that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Citizenship and Immigration Services therefore interprets 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.

According to Mr. Cruz’s January 18, 2002 letter, the beneficiary:

[S]pends “an average of 2 hours per week visiting members in their homes with prayer and small group Bible studies. He spends about 30 hrs. per week organizing religious activities, and coordinating the church’s overall program. These activities include Sunday Seeker Service, Midweek Community Gatherings, Morning Watch and Night Watches (Prayer Meetings), Prayer and Fasting, Conventions/Summit and other Outreach

³ See <http://www.oalj.dol.gov/public/dot/refrnc/dotintro.htm> [July 20, 2005].

Activities like Sports Fest. Concert and Men's Basketball . . . The meeting [with the church pastors, elders, and workers] take approximately 2.5 to 3 hrs. per week.

A review of the beneficiary's duties as director of activities reveals duties of uncertain religious significance, such as "organizing" religious activities, "meeting and conferring" with church elders, and "coordinating" the church's overall program." Further, the duties also include the beneficiary's "participation in evangelistic outreach programs in the community," but do not distinguish how the beneficiary's "participation" during these programs is any different that any other member of the congregation. Upon consideration, while some elements of the beneficiary's work may involve religious purposes, the majority of his duties appear to involve administrative and secular duties. Accordingly, the evidence does not persuasively demonstrate that the beneficiary's duties are preponderantly related to traditional religious functions.

In sum, the evidence does not support the argument that the beneficiary continuously worked in a qualifying religious occupation during the two-year period immediately preceding the filing of the instant petition. While the determination of an individual's status or duties within a religious organization is not under the purview of CIS, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

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.

ORDER: The appeal is dismissed.