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FILE: [Redacted]
WAC 98 070 50114

Office: CALIFORNIA SERVICE CENTER Date:

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.

Mari Johnson

R 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 an evangelist. The director determined that the petitioner had not established: (1) that the beneficiary had entered the United States for the purpose of performing qualifying religious work; (2) that the beneficiary had the requisite two years of continuous work experience as an evangelist immediately preceding the filing date of the petition; or (3) that the petitioner is able to pay the proffered wage so that the beneficiary is not dependent on outside employment.

On appeal, counsel contends that the director failed to consider the petitioner's response to the notice of intent to revoke, because the notice of revocation is purportedly identical to the notice of intent to revoke.

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).

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Attorney General 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.

The first issue raised in the director's decision concerns the beneficiary's entry into the United States. Section 101(a)(27)(C)(ii) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii), requires that the alien seeking classification "seeks to enter the United States" for the purpose of carrying on qualifying religious work. In this instance, the beneficiary entered the United States as a B-2 nonimmigrant visitor for pleasure. Thus, the director concluded, the beneficiary did not enter the United States for the purpose of working as a religious worker.

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.

The next issue concerns the beneficiary's prior experience. 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 January 9, 1998. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an evangelist throughout the two years immediately prior to that date.

Prior to the filing of the I-360 Petition for Special Immigrant, the petitioner had been the beneficiary of a Form I-130 Petition for Alien Relative as the spouse of a United States citizen. (The petition was never approved, as the marriage ended in divorce on December 4, 1998.) As part of that petition, the beneficiary executed Form G-325A, Biographic Information, which requires information about the alien's employment during the previous five years (in this instance, from September 1991 to September 1996). On this form, the beneficiary indicated that she had been an evangelist at Hyogwang Presbyterian Church in Korea from August 1989 to December 1994, but she claimed no more recent employment; instead, she wrote "None" on the line marked "Present Time." Thus, on September 20, 1996, under penalty of perjury, the beneficiary indicated that she was not employed.

In a letter dated January 6, 1998, [REDACTED] pastor of Sun Rising Presbyterian Church, indicates that the beneficiary "has served our church as Director of Religious Education from March 1995 to the present [REDACTED] does not specify whether or not the beneficiary was paid, nor does [REDACTED] whether the beneficiary worked full-time or part-time.

On the same date as the above letter, [REDACTED] senior pastor of the petitioning church, indicated that the beneficiary "is currently enrolled in [the] Masters in Theology program at the World Mission University. . . . She will receive a monthly salary of \$900.00."

The petition was approved on April 3, 1998, and the beneficiary applied for adjustment of status. On July 30, 1998, the beneficiary completed a second Form G-325A. On this form, the beneficiary indicated that she had been the religious education director at Sun Rising Presbyterian Church since March 1995.

In a subsequent letter dated September 6, 1998, [REDACTED] states the beneficiary "is paid a monthly salary of \$1,000.00 and her employment started as of August 1, 1998." The petitioner provided a copy of the beneficiary's first paycheck, dated August 23, 1998, in the amount of \$1,000.00, reflecting no withholding of taxes. On January 20, 2001, [REDACTED] stated that the beneficiary "serves as our Director of Religious Education," and he repeats the assertions regarding the beneficiary's salary and starting date.

Copies of canceled checks show that Sun Rising Presbyterian Church paid the beneficiary \$200 per month in 1995, \$275 per month in 1996, and \$300 per month in 1997 and the first seven months of 1998. A statement from the Social Security Administration indicated that it had received no report of the beneficiary's earnings during 1996 or 1997.

On August 4, 2003, the director issued a notice of intent to revoke, stating that, on September 20, 1996, the beneficiary had claimed that she had not worked since December 1994. The director added "[t]here is no supporting evidence to demonstrate that the petitioner [has paid] the beneficiary for his/her service. Therefore, the evidence is insufficient to establish that the beneficiary has been performing full-time work in this occupation continuously, for the two-year period immediately preceding the filing of the petition" (director's emphasis).

In response to this notice, counsel argued that the regulations do not require that the two years of qualifying experience must have been paid, full-time employment. While such a requirement is not in the regulations, we are also bound by published precedent decisions. Relevant case law here includes *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980), in which the Board of Immigration Appeals ruled that a student was not working continuously as a minister because "only 9 hours per week are devoted to church activities, and he is not compensated."

Counsel also asserted that the director's assertions regarding the beneficiary's Form G-325A are mistaken, because "[t]he beneficiary's G-325A signed on July 30, 1998 clearly states employment with Sun Rising Presbyterian Church." The director, however, had clearly indicated that the form in question was the one executed on September 20, 1996, not July 30, 1998. The earlier Form G-325A amounts to the beneficiary's contemporaneous statement during the two-year qualifying period, that she was not employed at the time. If the beneficiary *was*, in fact, a paid church employee during 1996, then the beneficiary concealed a material fact on a form executed under penalty of perjury. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 582, 586. Whether or not the beneficiary actually received payment in 1995 and 1996, the claims on the two Forms G-325A cannot both be true.

In the September 18, 2003 notice of revocation, the director again noted the discrepancies between the beneficiary's two Forms G-325A, and cited *Matter of Ho* to illustrate the serious credibility issues that these discrepancies raise. On appeal, counsel protests that the revocation notice was "carelessly prepared" and "clearly cut and pasted" from the notice of intent to revoke. Counsel resubmits a copy of the response to the notice of intent to revoke, arguing that the director failed to consider that response when rendering the decision.

While there are certainly similarities between the notice of intent to revoke and the subsequent notice of revocation, there are also differences that show that the first document was not simply "cut and pasted" in its entirety into the second one. For instance, the director clarified the discussion of the beneficiary's Forms G-325A, clearly stating that the beneficiary had executed *two* such forms, containing contradictory claims. Counsel has never addressed, let alone resolved, this contradiction or the credibility issues that inevitably arise as a result.

Assuming that the 1995-1998 checks from Sun Rising Presbyterian Church are authentic (in which case the beneficiary concealed a material fact on her 1996 Form G-325A), the relatively low amounts on those checks do not appear to be consistent with full-time employment, and the petitioner has neither demonstrated nor claimed that the beneficiary worked full-time at that church. *Matter of Varughese* indicates that part-time work by a student is not qualifying experience, a fact pattern that appears to be highly relevant to the present proceeding. We find, therefore, that the petitioner has not established that the beneficiary possesses the required two years of *continuous* experience immediately preceding the petition's filing date.

The remaining cited ground for revocation relates to the beneficiary's compensation, already discussed above to some degree. The regulation at 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.

The petitioner initially indicated that the beneficiary would receive \$900 per month for her church work (a figure later increased to \$1,000 per month). Asked for financial documentation, the petitioner provided bank statements from late 2002 and 2003. These statements show ending balances that rarely exceed \$100, and numerous instances where the account was overdrawn. In early December 2002, following several deposits, the petitioner's balance briefly exceeded \$4,000, but by the end of the month the account was overdrawn by nearly \$1,000. An unaudited financial report indicates that the petitioner's 2002 income exceeded its expenses by \$219.55. The report lists an aggregate total of \$34,253.75 in "ministry staff" salaries, but no itemized breakdown to indicate how many salaries that amount covers.

The beneficiary's tax documents show the following income:

1998	Work as a "Preacher"	\$5,400
1999	Work as a "Preacher"	12,000

2000	The petitioning church	9,000 /12,000 ¹
	Miscellaneous	15,000
2001	The petitioning church	9,000
	Day care	7,200
2002	Self-Employed, tutoring	12,000

Bank statements from 2000 show monthly checks in the amount of \$1,000. The petitioner claims that these checks represent payments to the beneficiary. The petitioner has submitted copies of checks issued to the beneficiary from March 1999, from September 1999 to January 2001 (missing September 2000), and in January and February of 2003. The copies do not show that the checks have been presented for payment. The record does not contain any financial documentation relating to 1998 or 1998, and only one bank statement from 2000. None of this documentation meets the evidentiary requirements set forth at 8 C.F.R. § 204.5(g)(2). A 1996 financial report, showing net income of \$7,711.37, predates the petition's filing date by over a year.

In a letter dated March 2, 2003 [REDACTED] states:

In 2001, we have [sic] been planning to locate to a permanent facility which caused us to locate at several places before settling [at] our current location. Therefore we have been unable [to] offer some of our services in 2001 and 2002 due to unavailability of adequate space. Fortunately, since January 2003, we are grateful that the Korean mission outreach has began [sic] resuming its work and [the beneficiary] has been working steadily.

In the notice of intent to revoke, the director cited the beneficiary's numerous sources of income since 1998, and concluded that the petitioner had failed to establish that it has consistently been able to pay the beneficiary's proffered wage. In response, counsel has stated "[t]he record is clear that the beneficiary was paid \$1,000.00 per month by the church [in] 1998, 1999 and most of 2000. After a gap in employment with the church, the beneficiary again began receiving \$1,000.00 per month in 2001." Counsel asserted that the petitioner has explained that "the gap in employment was due to the church's move" rather than to any financial distress [REDACTED] however, had indicated that the "gap" took place "in 2001 and 2002," and the "Korean mission outreach," for which the beneficiary works, resumed its work in "January 2003." Judging from the evidence of record, the "gap" was roughly 15 months long, from October 2001 (the petitioner's 2001 Form W-2 shows nine months of wages) to January 2003 (the beneficiary's first paycheck after the gap). Furthermore, the petitioner's explanation amounts to an unsubstantiated claim, and it in no way proves that the petitioner would have been able to pay the beneficiary's salary during late 2001 and 2002. Indeed, the record does not rule out the possibility that financial distress is what forced the petitioner to relocate in the first place.

The director, in revoking the approval of the petition, concluded that the petitioner had not submitted the evidence required to establish that it has consistently been able to pay the beneficiary's salary from January 1998 onward. On appeal, counsel states "[w]e will rest our appeal on our August 21, 2003 Response which has received no discussion in the Notice of Revocation and has therefore not been considered." The petitioner thus offers no new argument or evidence in this regard.

¹ The beneficiary claimed only \$9,000 in wages on her 2000 tax return, but a 2000 Form W-2 Wage and Tax Statement from the petitioner shows \$12,000 in wages paid to the beneficiary.

Regarding the admitted gap in the beneficiary's employment, we note that the petitioner has essentially conceded that it did not pay the beneficiary in 2002. Therefore, there is no reason to believe that the salaries reflected on the petitioner's 2002 financial statement include the beneficiary's salary. As noted previously, that statement showed only \$219.55 in income after expenses, a sum that is not adequate to pay even a week of the beneficiary's wages, let alone a year. The documentation submitted by the petitioner is *prima facie* evidence that the petitioner was unable to pay, and in fact did not pay, the beneficiary's proffered salary in 2002. Since that time, the petitioner has repeatedly overdrawn its checking account, which does not lead us to conclude that the petitioner's financial picture has improved significantly since 2002.

Furthermore, as the director noted in the revocation notice, the beneficiary has relied on secular income from 1998 to 2002 (the latter year being, at the time of the decision, the most recent year for which tax information was available). The director concluded that "the beneficiary will be dependent on supplemental employment or solicitation of funds for support," and that such dependence is not permitted by 8 C.F.R. § 204.5(m)(4). In essentially the only substantive new argument on appeal, counsel argues that the regulations require only that the beneficiary is not *solely* dependent on supplemental employment, and therefore some degree of supplemental employment is permitted. The record, however, indicates that the beneficiary was, in fact, *solely* dependent on supplemental income during the 15-month gap in her church employment in late 2001 and all of 2002.

We conclude, from the available evidence, that the petitioner has not consistently been able to pay the beneficiary's proffered salary from the filing date onward, and that, for a significant period of time, the beneficiary was solely dependent on supplemental employment. We also conclude that the evidence of record is not consistent with continuous (i.e., full-time) work throughout the 1996-1998 qualifying period, even without taking into consideration the beneficiary's contradictory claims in that regard. We find, therefore, that the director acted correctly in revoking the approval of the petition.

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.