

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

CA

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **MAY 25 2005**

WAC 01 222 30250

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.

Maia Johnson

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 Mennonite 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 entered the United States with the intent of performing qualifying religious work; (2) that the beneficiary had the requisite two years of continuous work experience as an assistant pastor immediately preceding the filing date of the petition; 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 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 originally entered the United States as a B-2 nonimmigrant visitor for pleasure. 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.

The next issue concerns the beneficiary's past employment. 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 July 6, 2001. 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.

[REDACTED] pastor of the petitioning church, states that the beneficiary "has been a minister with the Indonesian Pentecostal Revival Fellowship Vineyard, Inc. since 1998. . . . In January 1999, she visited our church and started doing volunteer work as a minister while performing her ministerial duties as the Indonesian Pentecostal Revival Fellowship Vineyard."

On April 12, 2002, the director instructed the petitioner to provide further information and evidence about the beneficiary's work history during the 1999-2001 qualifying period. In response, the petitioner submits copies of the beneficiary's income tax returns, and Jeanne Handojo states:

While [the beneficiary] was working at the Pentecostal organization, she was also volunteering her services to our organization by preaching in our church and in some of our home fellowships. She started volunteering in the beginning of 2001. At that time, she was having personal differences with the leader of the Pentecostal church. These differences were irreconcilable to a point where she had to leave the Pentecostal church. Gradually, she was more involved in our church. In April 2001, we offered her a full time ministerial position as the assistant pastor.

assertion that the beneficiary "started volunteering in the beginning of 2001" is not consistent with her earlier statement, in which she appeared to imply that the beneficiary began volunteering at the petitioning church in early 1999.

On her 1999 and 2000 tax returns, the beneficiary identified herself as a minister, and reported, respectively, \$24,000 and \$30,000 in earnings during those two years. A "W-2 Detail Report" indicates that the beneficiary's 1999 earnings came from Indonesia Pentecostal Revival Fellowship (IPRF). No similar document shows the source of the beneficiary's 2000 earnings. The record contains nothing from IPRF to show that the beneficiary's work for that church was consistently full-time. There is no evidence that IPRF cooperated in any way with the preparation of the petition (for example, by providing new employment verification documents).

The director approved the petition on July 29, 2002, but subsequently concluded that the approval had been in error. On February 24, 2004, the director issued the beneficiary a notice of intent to revoke, in part because the director determined that the petitioner had not sufficiently documented the beneficiary's employment for IPRF.

In response to the notice, the petitioner's former attorney, Bernard Lehrer, stated "since IPRF is not required to file any federal income tax return Form 990, no issuance of W-2 is required and none was issued." While it is true that churches generally are not required to file Form 990 returns, this has nothing to do with the entirely separate requirement that employers must furnish Form W-2 Wage and Tax Statements to every employee whose wages are subject to withholding of taxes.

The director revoked the approval of the petition on June 23, 2004. On appeal, counsel does not dispute the director's factual findings. Instead, counsel argues that the regulations do not require paid, full-time experience. Case law, however, sets forth such a requirement. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980), addresses the issue of what constitutes "continuous" qualifying religious work. In that decision, the Board of Immigration Appeals found that an alien "has not carried on the vocation of minister of the church . . . when only 9 hours per week are devoted to church activities, and he is not compensated." This case law being 25 years old, its application here does not, as counsel contends, constitute "a new rule." Counsel's arguments on appeal do not overcome the director's findings, which we hereby affirm.

The next issue concerns the petitioner's ability to pay the beneficiary's salary of \$1,250 per month. 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's initial submission includes "Income Statements," showing itemized monthly lists of the petitioner's income and expenses from January through June of 2000, and quarterly lists of income and expenses during 1999. Of the six months shown for 2000, the petitioner's expenses exceeded its income, and of the three remaining months, one month's income was barely half of the beneficiary's proffered monthly

salary. The petitioner's aggregate net income over the six months was \$7,836.34, which slightly exceeds the amount that the petitioner would have paid to the beneficiary over that period (\$7,500.00). In 1999, the petitioner's expenses exceeded its income during one quarter, and its income was never sufficient to pay the beneficiary's full salary during any quarter of 1999. The petitioner's net income for the entire year was \$2,424.98, less than two months' wages for the beneficiary. In all, during the 18 months covered by the petitioner's documents, the petitioner's net income would pay the beneficiary's salary for about nine months.

The director instructed the petitioner to submit bank documentation. The petitioner then submitted copies of bank statements, showing the following balances:

12/29/00	\$11,527.60	6/28/01	\$16,290.40	12/28/01	\$8,370.43
1/30/01	13,007.24	7/30/01	16,584.38	1/31/02	7,845.02
2/27/01	13,448.77	8/30/01	9,208.22	2/28/02	2,389.89
3/29/01	19,882.69	9/27/01	10,079.72	3/29/02	2,284.97
4/27/01	20,748.43	10/30/01	10,453.10	4/29/02	7,415.08
5/30/01	17,931.24	11/29/01	11,272.73	5/30/02	6,898.04

The above bank statements show a general downward trend from April 2001 onward. The petitioner also submits copies of its "Annual Income Statements" for 2000 and 2001, indicating that, in 2000, the petitioner's income exceeded its expenses by only \$708.71, and in 2001, the petitioner's expenses exceeded its income by \$3,067.51.

The director cited the petitioner's ability to pay as a factor in the notice of intent to revoke. In response, the petitioner has submitted a document headed "Grants and Compensation - Pastoral," indicating payments from the petitioner to the beneficiary as early as October 2000. This document indicates that the petitioner paid the beneficiary \$12,000 in 2001, \$22,400 in 2002 and \$20,400 in 2003. The only \$12,000 line item listed on the previously submitted "annual income statement" for 2001 is marked "Housing."

The petitioner submits copies of canceled checks from the petitioner, some paid to the beneficiary and some to her spouse. From 2002 onward, the petitioner has paid the beneficiary a "housing allowance" of \$1,700 per month.

The petitioner's earlier checks to the beneficiary, each in the amount of \$1,200 (slightly less than the actual proffered wage of \$1,250 per month), fall into the following sequence:

Check number	Date on check	Date presented for payment
2345	6/1/01	12/11/01
2346	7/1/01	12/11/01
2347	8/1/01	1/2/02
2348	9/1/01	1/22/02
2349	10/1/01	1/22/02
2350	11/1/01	1/28/02
2351	12/1/01	1/28/02

Although the above checks purport to represent payments spread over six months, the checks are consecutively numbered. The petitioner's bank statements confirm that all of the above checks were presented for payment over a span of seven weeks. The highest-numbered check cashed during July 2001 was check number 2207, presented on July 30. The petitioner's December 2001 bank statement shows checks

numbered between 2318 (cashed November 30) and 2364 (cashed December 27); checks [REDACTED] fall within this numerical sequence. From the above evidence, we conclude that the petitioner wrote all of the above checks in December 2001, and backdated them to create the superficial appearance of regular monthly payments extending back until just before the July 2001 filing date.

The petitioner's apparent attempt to retroactively create a payment history for the beneficiary raises very serious questions of credibility. 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*, 19 I&N Dec. 582, 586 (BIA 1988).

The director, in revoking the approval of the petition, determined that the above evidence was insufficient to establish that the petitioner has consistently been able to pay the beneficiary's proffered wage. On appeal, counsel asserts that the petitioner has, in fact, been paying the beneficiary. This assertion fails to take into account the extremely suspicious anomaly involving checks [REDACTED]. If the petitioner was able to pay the beneficiary in July 2001, then it is far from clear why the petitioner waited until December 2001 to actually pay her. The sequence of check numbers reflected on the bank statements all but destroys the possibility that the petitioner issued check [REDACTED] out of sequence in July 2001, and held checks [REDACTED] in reserve for subsequent payments. We simply cannot ignore the serious credibility issues that arise from the petitioner's attempt to retroactively create a payment history for the beneficiary in the second half of 2001.

Counsel states: "This ground for revocation is also inconsistent with the May 4, 2004 Memorandum issued by Associate Director [for Operations] [REDACTED] to all Service Center Directors directing a positive ability to pay determination where evidence has been presented of actual payment of the offered wage." In the memorandum, the associate director directs the Service Center adjudicators to accept evidence that "the petitioner . . . has paid or currently is paying the proffered wage," but only "[i]f the record is complete with respect to all of the required evidence." Elsewhere in the memorandum, the associate director enumerates this "required evidence": "Required initial evidence, as specified under 8 CFR 204.5(g)(2), includes copies of: (1) annual reports, (2) federal tax returns, or (3) audited financial statements. The petitioner must submit a copy of at least one of these required documents."

Thus, the associate director's memorandum (which counsel insists that we consider on appeal) reinforces 8 C.F.R. § 204.5(g)(2), which 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). Supporting that presumption in this instance is the evidence, already discussed above, that shows that the petitioner waited until December 2001 to pay the beneficiary six months' worth of supposedly monthly salary payments, issuing such payments not as a single lump sum, but in a series of deceptively misdated checks. We affirm the director's decision that the petitioner has not submitted the evidence required by the regulations to establish its ability to pay the beneficiary's proffered wage.

Beyond the decision of the director, we note that 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to establish that, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination. 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.

The petitioner indicates that it is a member church of the Pacific Southwest Mennonite Conference, which, in turn, is a member conference of the General Conference Mennonite Church (which merged with the Mennonite Church in 2002 to form the Mennonite Church USA). The petitioner has indicated that, when the qualifying period began, the beneficiary volunteered at the petitioning church, but was already a member of, and working for, IPRF. [REDACTED] asserts: "The Mennonite Church, in principle, share[s] a common statement of faith with the Indonesian Pentecostal Revival Fellowship." There is no evidence of any formal denominational affiliation between IPRF and the Mennonite Church. The General Conference Mennonite Church has a group tax exemption, extending to all subsidiary Mennonite churches and conferences in the United States (demonstrating the existence of a formal denominational hierarchy). Documentation in the record indicates that the petitioning church is covered by this group exemption, but there is no evidence that IPRF is also covered by this group exemption. Instead, IPRF has its own recognition letter from the Internal Revenue Service.

Professor [REDACTED] of Fuller Theological Seminary states: "The Mennonite Church has had working relationships with Pentecostal churches" around the world, but he makes no specific mention of IPRF, nor does he demonstrate that two churches belong to the same denomination simply by virtue of a "working relationship." The available evidence certainly does not support a blanket finding that every member of every Pentecostal church is, by default, a member of the Mennonite Church USA denomination, and the record contains no specific information to support the more limited finding that IPRF members are *de facto* Mennonites.

We find that the petitioner has not established that the beneficiary was a member of the petitioning church's denomination throughout the two-year qualifying period.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis).

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.