

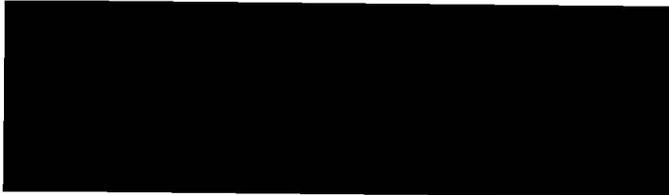
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
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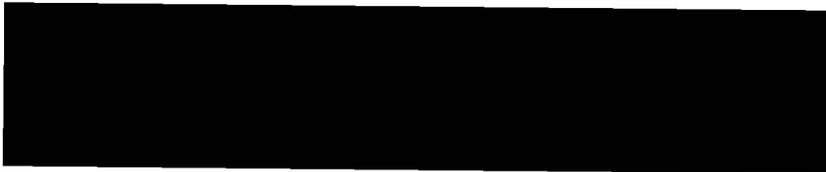
Petitioner:



Beneficiary:

PETITION: 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:



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.

A handwritten signature in black ink that reads "Mai Johnson".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, initially approved the employment-based immigrant visa petition. On further review, the director determined that the petitioner was not eligible for the visa preference classification. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke the approval of the preference visa petition and her reasons therefore, and subsequently exercised her discretion to revoke the approval of the petition on August 24, 2005. Counsel filed a Form EOIR-29, Notice of Appeal to the Board of Immigration Appeals from a Decision of an INS Officer. Pursuant to 8 C.F.R. § 204.5(n)(2), jurisdiction for an appeal of the denial of an employment based visa petition lies with the Associate Commissioner of Examinations (the Administrative Appeals Office (AAO)). The appeal will be dismissed.

The petitioner is a council of churches. 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 at Iglesia Nueva Jerusalem, a subordinate church. The director determined that the petitioner had not established that it qualifies as a bona fide nonprofit religious organization, that the position qualifies as that of a religious occupation, that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition, that the beneficiary is qualified for the position within the organization, that the petitioner has extended a qualifying job offer to the beneficiary or that it has the ability to pay the beneficiary the proffered wage.

On appeal, counsel submits a brief.

The petition was initially approved on September 9, 1997, and subsequently revoked on August 24, 2005. Counsel asserts on appeal that the eight-year delay “represents an inexcusable delay” and “causes . . . prejudice in that, due to the passage of time, [the petitioner is] unable to submit documents that will satisfy the Service [sic] untimely requests. For this reason, the Service has not demonstrated good cause to revoke the petition.”

Section 205 of the Act, 8 U.S.C. § 1155, states that the Secretary of the Department 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.” [Emphasis added.]

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.*

Additionally, the AAO is not required to approve applications or petitions where eligibility has not been demonstrated merely because of a prior approval that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or

any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

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 on appeal is whether the petitioner established that the beneficiary's prospective U.S. employer qualifies as a bona fide nonprofit religious organization.

The regulation at 8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

(3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with § 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 § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code (IRC) of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement, if applicable, and a copy of the organizing instrument of the organization, which contains a proper dissolution clause and which specifies the purposes of the organization.

With the petition, the petitioner submitted a copy of a September 11, 1987 letter from the IRS granting it tax-exempt status under section 501(c)(3) of the IRC as an organization described in sections 509(a)(1) and 170(b)(1)(A)(i) of the IRC. The petitioner submitted no evidence that it had been granted tax-exempt status for its subordinate units.

For the employing organization, the petitioner must either provide verification of individual exemption from the IRS, proof of coverage under a group exemption granted by the IRS to the denomination, or such documentation as is required by the IRS to establish eligibility as a tax-exempt nonprofit religious organization.

The organization can establish eligibility under 8 C.F.R. § 204.5(m)(3)(i)(B) by submitting documentation that establishes the religious nature and purpose of the organization, such as brochures or other literature describing the religious purpose and nature of the activities of the organization. The necessary documentation is described in a memorandum from William R. Yates, Associate Director of Operation for CIS, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003):

- (1) A properly completed IRS Form 1023,
- (2) A properly completed Schedule A supplement, if applicable,
- (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization, and
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

This list in the Yates Memorandum is consistent with the regulatory requirement at 8 C.F.R. § 204.5(m)(3)(i)(B). The memorandum specifically states that the above materials are, collectively, the “**minimum**” documentation that can establish “the religious nature and purpose of the organization.” Thus, for example, a petitioner cannot meet this burden by submitting only its articles of incorporation. Also, obviously, it is not enough merely for the petitioner to *submit* the documents listed above. The *content* of those documents must establish the religious purpose of the organization.

In response to the director’s Notice of Intent to Revoke (NOIR) approval of the visa petition, the petitioner submitted a copy of a March 9, 2001 letter from the IRS to the Nueva Jerusalem Church granting that organization tax-exempt status under section 501(c)(3) of the IRC as an organization described in sections 509(a)(1) and 170(b)(1)(A)(i). The record sufficiently establishes that the beneficiary’s prospective U.S. employer qualifies is a bona fide nonprofit religious organization.

The second issue is whether the petitioner established that the position qualifies as that of a religious worker.

Pursuant to the regulation at 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work as a religious worker. To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The proffered position is that of pastor. The regulation at 8 C.F.R. § 204.5(m)(2) defines minister as:

[A]n individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

In its undated letter accompanying the petition, the petitioner stated that the beneficiary “will solely carry on the vocation of a minister of our church. As a minister, he will be teaching the Word of god to our members and also overseeing teachers of disciples and missions.” The petitioner’s bylaws at Article 2, subsection D indicate that the duties of an ordained minister include solemnizing weddings, officiating the ordinances including Holy communion, baptism and “dedicating” children.

In response to the NOIR, the petitioner submitted a March 19, 2003 letter from Iglesia “Nueva Jerusalem” Inc., stating that, as pastor, the beneficiary “performs all duties performed by an ordained pastor.” The letter further indicates that the position carries a salary of \$3,000 per month and is a permanent, full-time position.

The record sufficiently establishes that the duties of the proffered position are consistent with those of a minister, and that the proffered position qualifies as that of a religious worker within the meaning of the statute and regulation.

The third issue is whether the petitioner established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file a Form 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 regulation 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.”

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on August 13, 1997. Therefore, the petitioner must establish that the beneficiary was continuously working as a pastor throughout the two-year period immediately preceding that date.

As noted above, the petitioner stated in its letter accompanying the petition that the beneficiary had served as a minister with the petitioning organization since December 1995. The petitioner, however, submitted no documentary evidence to corroborate the beneficiary's employment during the qualifying period. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In her NOIR, the director instructed the petitioner to:

Submit a detailed description of the beneficiary's prior work experience including duties, hours and compensations . . . accompanied by appropriate evidence (such as copy of pay stubs or checks, W-2's or other evidence as appropriate). Submit a copy of the income tax returns with all the pertaining W-2s for the two years preceding the filing of this petition. All this information requested must include the two years preceding the filing of this petition. All evidence should be submitted for the time frames of August 13, 1995 up to August 13, 1997.

* * *

Submit detailed time sheets, weekly time logs and schedules, work logs or reports, etc. clearly establishing that the beneficiary has performed the claimed religious services for the time period in question.

In response, the petitioner submitted partial copies of the beneficiary's 1995 and 1997 Forms 1040A, U.S. Individual Income Tax Returns, and a copy of a Form 1040X, Amended U.S. Individual Tax Return, for the year 1996. We note that the beneficiary's 1995 and 1997 Forms 1040A are both dated November 5, 1998, and both contain an annotation that a "church letter" is included instead of a Form W-2, Wage and Tax Statement. The letter from the church is not part of the documentation submitted by the petitioner. Although the beneficiary indicated on his returns that he served as a "full time pastor" or minister, the petitioner submitted no evidence to corroborate the beneficiary's employment or the duties that he performed. Further, as the tax returns were filed one to three years after the work by the beneficiary was allegedly performed, they do not provide contemporaneous evidence of work performed by the beneficiary during the qualifying period.

In the letter accompanying the petitioner's response to the NOIR, counsel stated that the director's request for "a detailed description of the beneficiary's work experience" and evidence establishing that the beneficiary performed the worked claimed for the qualifying period is "outside the scope" of 8 C.F.R. § 204.5(m)(3), and that "[t]he regulations do not require that upon the filing of the initial I-360, the beneficiary submit a detailed description as the Service is requesting." While counsel correctly quotes the requirements of the initial evidence required in filing this visa preference petition, she ignores the provisions of 8 C.F.R. §§ 103.2(b)(8), which states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Counsel also asserted that “all the required documentary evidence was submitted” at the time the petition was filed, and that “as evidence of this the Service approved this petition.” Nonetheless, as discussed above, the director may, at any time, revoke approval of a petition that he or she recognizes has been approved in error. *See* section 205 of the Act, 8 U.S.C. § 1155.

With the exception of the tax returns, the petitioner submitted no additional evidence of the beneficiary’s prior work experience in response to the NOIR, and submitted no additional evidence on appeal. The evidence submitted does not establish that the beneficiary worked continuously as a pastor for two full years preceding the filing of the visa petition.

The fourth issue on appeal is whether the petitioner established that the beneficiary is qualified for the position within the organization.

The petitioner submitted a copy of the beneficiary’s August 6, 1995 certificate of ordination, authorizing the beneficiary “to preach the Gospel, administer Christian ordinances and to solemnize Matrimony.” This authorization is consistent with the requirements for an ordained minister that appear in the petitioner’s bylaws. In its letter accompanying the petition, the petitioner stated that the requirements for becoming a licensed minister with the church are “[t]hrough living and setting forth good testimony and approximately four years of experience and preparation by teaching and serving in the different facets of the ministry.” According to the petitioner, the beneficiary has served as a minister since 1993.

We find that the evidence sufficiently establishes that the beneficiary is qualified for the position within the organization.

The fifth issue on appeal is whether the petitioner has established that it has extended a qualifying job offer to the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

The petitioner stated that the beneficiary will serve as a full-time minister with Iglesia Nueva Jerusalem and will receive a salary of \$3,000 per month. The director determined that, as the petitioner had not established that the position qualifies as that of a religious worker or that the beneficiary was qualified for the position, it failed to establish that it has extended a qualifying job offer to the beneficiary. As we find that the evidence sufficiently establishes that the position is a religious occupation and that the beneficiary is qualified for the position, we withdraw this determination by the director.

The sixth issue on appeal is whether the petitioner established that it has the ability to pay the beneficiary the proffered wage.

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.

In its letter accompanying the petition, the petitioner stated that the church's congregation would pay the beneficiary a yearly salary of \$19,200. As evidence of the church's ability to pay this salary, the petitioner submitted a copy of the December 1996 monthly bank statement for the Iglesia Nueva Jerusalem. In response to the NOIR, the petitioner submitted unaudited financial statements for the period January 1, 2003 through May 31, 2005. The petitioner submitted no similar evidence for the period of August 1997, the date the petition was filed, through 2002.

The above-cited regulation 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 primary evidence.

The petitioner submitted copies of the beneficiary's Forms 1040 for 1995, 1996 and 1997. Although the beneficiary claimed income from his work as a minister, the petitioner submitted no evidence of any compensation that it actually paid the beneficiary. Counsel asserts on appeal that the documentation "that would have established eligibility at the time of filing in this respect are not available now, as almost a decade has passed since the original filing." The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Accordingly, as the petitioner has not submitted any of the required types of primary evidence or evidence that the petitioner or the Iglesia Nueva Jerusalem has paid the beneficiary the proffered wage in the past, it has not established that the beneficiary's prospective U.S. employer has the continuing ability to pay the beneficiary the proffered wage as of the filing date of the petition.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.