

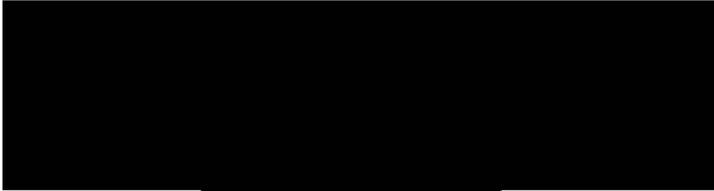


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Office: VERMONT SERVICE CENTER

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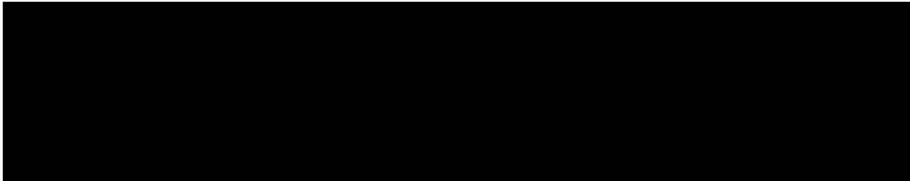
Petitioner:

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:



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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont 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 Pentecostal Christian 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 missionary. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a missionary immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary or that the beneficiary's position qualifies as a religious occupation.

On appeal, the petitioner submits a brief from counsel.

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 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 Dec. 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.* 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 589.

8 C.F.R. § 205.2(b) requires that the petitioner be given the opportunity to offer evidence in support of the petition and in opposition to the grounds alleged for revocation of the approval. The director issued a notice of intent to revoke which addressed one issue, specifically the requirement that the petitioner establish that the beneficiary worked continuously in a qualifying capacity during the two years immediately prior to the filing of the petition. The revocation notice, however, included two unrelated grounds in addition to the experience issue. A decision to revoke approval of a visa petition can only be grounded upon, and the petitioner is only obliged to respond to, the factual allegations specified in the notice of intention to revoke. *Matter of Arias*, 19 I&N Dec. 568, 570 (BIA 1988).

In the interest of thoroughness, the AAO will briefly consider the additional grounds first raised in the revocation notice. The regulation at 8 C.F.R. § 204.5(m)(2) defines “religious occupation” as:

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.

The petitioner indicated that the beneficiary is a “missionary,” “lead choir member,” “Sunday school program director” and “seamstress.” Her duties include “teach[ing] witnessing techniques,” “[v]isiting/counseling members in their homes,” “lay preaching,” and “[t]each[ing] Sunday School.” Other duties are, in isolation, secular in nature, such as designing and sewing choir robes, but these secular duties do not make up a majority of the beneficiary’s described job duties. The director found: “[t]he record fails to show that the beneficiary’s

primary duties in the proposed job require specific religious training beyond that of a dedicated and caring member of the religious organization to establish that they are traditional religious functions above those performed routinely by members.”

After careful and prolonged consideration of this issue, the AAO finds that the “training” issue has received a disproportionate amount of weight in adjudications of special immigrant religious worker petitions. Obviously, when a given position clearly requires specific training, 8 C.F.R. § 204.5(m)(3)(ii)(D) requires the petitioner to show that the alien possesses that training; but the issue of training should not be a primary factor when considering the question of whether that position relates to a traditional religious function. Of greater importance is evidence showing that churches or other entities within a given denomination routinely employ paid, full-time workers in comparable positions, and that those positions do not embody fundamentally secular tasks, indistinguishable from positions with secular employers.

Here, the director’s finding stemmed in part from the aforementioned discussion of training, and in part from a misreading of case law. The director stated: “Simply producing documents purported to be certificates of training. Which are not based on theological training or education, is not proof that an alien is entitled to perform the duties of a foreign religious worker [*sic*]. Matter of Rhee, 16 I&N Dec. 607 (BIA 1978).” The director, here, appears to have relied on an overextension of *Rhee*, a decision that applied only to ministers because it dates from a time when only ministers were eligible for classification as special immigrant religious workers. *Rhee* continues to be applicable in instances where a given position requires specific credentials, but here the director appears to have misapplied the decision. The AAO withdraws the director’s finding that the beneficiary’s position, as described, does not qualify as a religious occupation.

The other issue raised for the first time in the revocation notice concerns the job offer. 8 C.F.R. § 204.5(m)(4) requires the petitioner to set forth the terms of compensation and establish that the beneficiary will not be solely dependent on supplemental employment or solicitation of funds for support. The director stated: “The record does not satisfactorily establish that the beneficiary has been given a valid job offer,” but offered no clear reasoning in support of this finding. The director observed that “the beneficiary has been volunteering her services . . . while receiving honorariums, food and clothing,” but the director failed to explain why this means the petitioner has not extended a valid job offer. Payment in kind, in lieu of a cash wage or salary, does not invalidate the job offer. The AAO withdraws the director’s finding relating to the job offer, the director having offered no argument to support that finding.

Turning to the basis for revocation raised in the notice of intent to revoke, 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 December 7, 1995. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a missionary throughout the two years immediately prior to that date.

In a September 8, 1995 letter accompanying the initial filing of the petition, [REDACTED], Pastor of the petitioning church, stated that the beneficiary had worked for the church "since February 12, 1991" but had not yet been "employed" *per se*. In a separate letter bearing the same date, [REDACTED] stated:

As a bona-fide member of [the petitioning church, the beneficiary] has been spending a great deal of her time (usually in excess of 35-40 hours weekly) as the Seam[s]tress, Missionary, Lead Choir Member, and Sunday School Program Coordinator. Her energy and time has been on a voluntary basis except for the honorariums, food, and clothing she receives from time to time. . . .

She will be paid one hundred and fifty (\$150.00) dollars weekly and will be required to work at least thirty-five (35) hours each week. She will also be given food, clothing, shelter, and any other basic necessity that will help alleviate the economic hardship that she may encounter. . . . She will not become a liability to the United States Government in the foreseeable future.

In a subsequent letter dated January 10, 1996, [REDACTED] stated that the beneficiary "at present does not receive a salary from this church, though she is often the recipient of honorariums and food baskets from my Outreach Ministry. She also receives other help from relatives." He also claimed that the beneficiary "will not become a public charge or liability to the United States government in the near future."

The director approved the petition on January 29, 1996, and the beneficiary subsequently filed a Form I-485 adjustment application on April 12, 1996. By signing the Form I-485, the beneficiary certified under penalty of perjury that the information in her application was true and correct. The beneficiary answered "No" when asked if she had ever "received public assistance in the U.S. from any source, including the U.S. government or any state, county, city or municipality." The application included Form G-325A, Biographical Information, dated April 2, 1996. On that form, instructed to list her employment over the previous five years, the beneficiary indicated "none."

A handwritten annotation on the 1996 Form I-485 reads: "food stamps + welfare for baby admitted at interview." This contradicts the beneficiary's false claim that she had not received public assistance, as well as [REDACTED]'s assertion that the beneficiary would not "become a public charge . . . in the near future." The District Director, New York, denied the adjustment application on February 14, 1997, having found that the beneficiary was "likely to continue to be a public charge."

A March 17, 1997 document from the City of New York, Human Resources Administration, Income Support Programs indicated that, as of April 1, 1997, the city would discontinue the beneficiary's "public assistance grant," "food stamp benefit" and "Medical Assistance" because the beneficiary was "going back to work."

Subsequently, the beneficiary filed another Form I-485 adjustment application on July 2, 2001. The beneficiary submitted an updated Form G-325A, dated May 18, 2001, indicating that she had worked for the petitioner since April 1996. The beneficiary again falsely answered "No" when asked if she had received public assistance.

On August 29, 2002, [REDACTED] of the petitioner's Payroll Department stated that the beneficiary "became a staff member of [the petitioning] Church in September 2001," adding that in "February 2002, she became a permanent employee in her present position with a base salary of \$250.00 per week."

On April 9, 2007, the director issued a notice of intent to revoke, stating that the materials described above indicate that the petitioner did not employ the beneficiary during the two-year qualifying period. On June 25, 2007, the director issued a notice of revocation, stating that the petitioner had not responded to the notice of intent to revoke. When the petitioner's response surfaced and was incorporated into the record, the director withdrew the June 25, 2007 notice.

In response to the notice of intent to revoke, the petitioner submitted an affidavit from the beneficiary. The beneficiary stated that she had worked for the petitioner "since 1991." The beneficiary stated that, after the birth of her daughter in July 1996, she suffered from post-partum depression and therefore "was unable to work [for the petitioner] for several months," during which she relied on government benefits until the child's father began contributing child support. The beneficiary stated that she did not remember what she said during her 1996 interview, but that, due to her depression, she "was not able to express [her]self well."

The Form G-325A, on which the beneficiary stated that she had not been employed for the past five years, is dated April 2, 1996, three months before the birth of the beneficiary's daughter. The beneficiary asserted that a [REDACTED] prepared the beneficiary's paperwork, and that she "did not review the materials thoroughly." The beneficiary signed the Form G-325A approximately three inches from the word "NONE" in capital letters, in the "employment" section of the form. [REDACTED]'s name does not appear on the 1996 Form G-325A. On the 1996 Form I-485, the section marked "Signature of person preparing form" has been left blank. There is, therefore, no evidence that [REDACTED] or any third party prepared the materials submitted with the beneficiary's adjustment application.

[REDACTED], in a letter dated May 31, 2007, stated:

[The beneficiary] has worked with our organization since 1991. . . .

While I was not at the December, 1996 interview, I have read the Notice's assertion that [the beneficiary] apparently said that she had not worked for us since April of that year. Though this is technically correct, I can verify that she was on a leave of absence from her work as a result of her pregnancy and complications. . . .

[The beneficiary] resumed her position with our organization shortly after the interview. . . .

As the record explains, our organization was admittedly providing [the beneficiary] with unlawful employment for a period. While we did not feel comfortable breaking the law, [the beneficiary] was very important to our church, and we also took every step possible to assist her in obtaining legal immigration status.

As a result, for a number of years we paid [the beneficiary] cash, and did not place her on our official payroll. In 2001, we put her on the payroll, designating her as a “staff member” and subsequently made her a “permanent” employee in anticipation of her second residency application being granted.

Again, however, neither her duties nor hours substantially changed with these designations. Since 1991, she had been working with us, as she continues to do.

The director revoked the approval of the petition on July 2, 2007, stating that the petitioner had not established that the petitioner employed the beneficiary continuously throughout the 1993-1995 qualifying period. On appeal, counsel argues:

[T]he Service Center is reversing a decision which is now more than eleven years old, and based upon the review of a period which commenced over thirteen years ago.

Concededly, . . . revocation is statutorily permitted “at any time” after approval. INA § 205. Nevertheless, the Service Center’s revocation power is not unfettered, but rather subject to the requirements and limitations set forth at 8 C.F.R. § 205.

Subject to certain procedural safeguards, regulations permit revocation “when the necessity for the revocation comes to the attention of the Service.” 8 C.F.R. § 205.2(a). The Service Center violated this regulation, because the information prompting the revocation[] was presented to the Service, including the Service Center itself, several years ago.

Counsel observes that the information cited in the 2007 notice of intent to revoke came to the Service Center’s attention at the beneficiary’s adjustment interview in 1996. Counsel contends that the director did not initiate the revocation “when the necessity for the revocation [came] to the attention of the Service,” and therefore the director somehow forfeited the chance to revoke the approval of the petition.

The AAO rejects counsel’s implicit claim that, once an adjudicator encounters derogatory or disqualifying information, the Service Center must initiate revocation within a limited period of time, after which it is too late to revoke the approval. Counsel extrapolates some sort of time limit from the regulatory phrase “when the necessity for the revocation comes to the attention of the Service,” although counsel fails to explain the length of the permitted period or the statutory or regulatory basis for this contention. Counsel’s argument rests on overly simplistic assumptions regarding Service Center operations and procedures, and also appears to operate from the false premise that the Service Center took no adverse action of any kind between 1996 and 2007.

More fundamentally, counsel’s interpretation of the regulations contradicts the underlying statute at section 205 of the Act, which, as counsel concedes, permits revocation “at any time.” Because counsel’s interpretation flies in the face of the plain wording of the statute, that interpretation cannot be correct. *See INS v. Phinpathya*, 464 U.S. 183 (1984); *Shaar v. INS*, 141 F3d 953, 956 (9th Cir. 1998); *Matter of Lemhammad*, 20 I&N Dec. 316 (BIA 1991).

Counsel states that the delay in commencing revocation was prejudicial because the director “was faulting Petitioner for the adequacy of materials from a period which commenced nearly fourteen years ago, and which until very recently there had been no reason to maintain.” Counsel fails to identify the “materials” or to indicate when those materials were destroyed or otherwise became unavailable. If specific, persuasive evidence used to exist, then there was some point in time when it ceased to exist. If, on the other hand, it never existed, then complaints about the passage of time are irrelevant.

We will give due consideration to counsel’s assertion that “the additional evidence cannot be reasonably expected to be of the same caliber as materials which would be provided with a more recent petition,” but at the same time we must consider the credibility and reliability of the petitioner’s existing sources. Counsel states: “As will be discussed below, the Petitioner actually submitted substantial independent evidence regarding the nature of Beneficiary’s position.” Counsel, however, does not go on to discuss or even identify the “substantial independent evidence” that the petitioner is said to have “actually submitted.”

Counsel does not contest the beneficiary’s assertion, in her 1996 adjustment interview, that she had not worked for the petitioner since April 1996. Counsel correctly observes that the beneficiary’s statement is not disqualifying, because April 1996 fell after the petition’s filing date. Counsel also asserts that the beneficiary’s Form G-325A from 1996 should be ignored, because a third party prepared the document and the beneficiary simply signed it without reading it carefully.

We note that, in her second Form G-325A, in 2001, the beneficiary stated that she *began* working for the petitioner in April 1996, which contradicts her own prior oral assertion that she *stopped* working that month and did not work for the remainder of 1996. This 2001 Form G-325A accompanied the Form I-485 on which the beneficiary falsely denied having received public assistance. Regardless of who prepared these forms, or how closely the beneficiary reviewed them before signing them, it is clear that we can place little stock in the beneficiary’s unsubstantiated assertions. The beneficiary has repeatedly contradicted herself, and the excuse that she signed forms without reading them first does not inspire confidence in any document signed by the beneficiary, up to and including her Form I-485 adjustment applications.

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. *Matter of Ho* at 591. 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. *Id.* at 582, 591-92.

Much of the previously-submitted information about the beneficiary’s work history comes from Bishop [REDACTED], whose credibility and reliability have not been firmly established in this proceeding. It was Bishop [REDACTED] who pledged that the beneficiary “will not become a public charge” on January 10, 1996, a matter of months before the beneficiary began receiving food stamps and other public benefits.

Also reflecting on [REDACTED] credibility is his September 8, 1995 assertion that the beneficiary “has been performing [certain specified] duties since February 12, 1991.” In January 10, 1996 correspondence, Bishop

██████████ stated that the beneficiary began working in “November of 1992.” In a May 31, 2007 letter, Bishop ██████████ returned to his initial assertion that the beneficiary “has worked with our organization since 1991,” and again that the beneficiary “has been working with us since 1991,” stating a third time: “[s]ince 1991, she had been working with us.” The beneficiary herself repeated the “since 1991” claim in a sworn statement “under penalty of perjury” dated June 1, 2007.

A document submitted prior to the approval of the petition is a Certificate of Membership, signed by Bishop ██████████ and purportedly dated “this 5th day of December, 1991,” identifying the beneficiary as a member of the petitioning church. The photocopied certificate includes a foil seal with the embossed inscription “CORPORATE SEAL 1993.” Given the 1993 date on the seal, the certificate cannot have existed on December 5, 1991.

Also submitted prior to the approval of the petition is an unsigned document entitled “Where and How We Began!!!” According to this document, “[i]t was Friday, November 27, 1992, the ██████████ family opened the doors of their home . . . for the first prayer meeting of the Tabernacle of Praise church.” This document indicates that the petitioning church did not come into existence until almost two years after February 12, 1991. The record contains no credible documentary evidence that the petitioning church existed in any form in 1991; a certificate dated 1991 is clearly inaccurate because it is stamped with the year “1993.”

A determination letter from the Internal Revenue Service, dated October 18, 1994, stated: “the effective date of this determination letter is March 8, 1993,” According to Internal Revenue Service Publication 557, “Tax-Exempt Status for Your Organization,” “[a] ruling or determination letter recognizing exemption is usually *effective as of the date of formation of an organization*” (italics in original).” This information indicates that the petitioner’s “date of formation” was March 8, 1993; this is entirely consistent with the petitioner’s “1993” seal and with the assertion that the church began with an informal meeting in late 1992.

Because there is no credible evidence that the petitioning church existed in any form in 1991, and because other evidence affirmatively indicates a 1993 formation date for the church, we can give no credence to ██████████’ repeated claims (in letters and on a certificate) that the beneficiary became involved with the petitioning church in 1991. Pursuant to *Matter of Ho* at 591, these contradictions necessarily undermine the credibility of ██████████ other unsupported claims.

On more than one occasion (in letters dated September 8, 1995 and January 6, 1996), ██████████ cited a letter from the Most Rev. ██████████ “under whose spiritual guidance [the beneficiary] spent most of her time as a student.” ██████████ referred to ██████████ as “Senior Assistant Bishop in Panama.” A document identified as the beneficiary’s “autobiography” indicates that the beneficiary earned a bachelor’s degree at Liceo De Senioritas College in Panama. She claimed no subsequent formal studies. This suggests that the beneficiary was under ██████████’s guidance during her time at the college. An undated letter from ██████████ discussed the beneficiary’s activities in Panama and made no mention of her later activities in the United States. ██████████ stated “we lost [the beneficiary] from the Panama District” when she relocated. ██████████ identified himself as “Senior Assistant to the Bishop,” rather than “Senior Assistant Bishop.”

On September 10, 2002, in the presence of a district adjudications officer in New York, the beneficiary signed a sworn statement indicating that she met “Elder [REDACTED] [for] the first time at [the petitioning] church in Brooklyn, NY.” This contradicts [REDACTED] repeated prior assertions that the beneficiary “spent most of her time as a student” under [REDACTED] “spiritual guidance.”

Because the record contains no verifiable documentary evidence that the beneficiary performed qualifying religious work for the petitioner during the two-year qualifying period, in this regard the petition relies entirely on the petitioner’s and the beneficiary’s assertions. We can give little credence to those unsupported assertions, because there are numerous credibility issues, with the beneficiary and principal witnesses contradicting one another and making claims inconsistent with the sparse documentation in the record. The beneficiary has repeatedly made false statements to immigration authorities, from her June 26, 1987 assertion to an immigration inspector in Buffalo, New York that she would depart the United States within a week to the assertion on her 2001 Form I-485 adjustment application that she has never relied on public assistance. We cannot ignore this pattern when weighing the credibility of her statements in this proceeding.

The petitioner has submitted no verifiable evidence of employment during the two-year qualifying period, and the record compromises the credibility of the witnesses attesting to the petitioner’s work during that period. Section 204(b) of the Act, 8 U.S.C. § 1154(b), provides for the approval of immigrant petitions only upon a determination that “the facts stated in the petition are true.” False, contradictory, or unverifiable claims inherently prevent a finding that the petitioner’s claims are true. *See Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Systronics Corp. v. I.N.S.*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988). We therefore affirm the director’s core finding that the petitioner has not credibly, reliably established that the beneficiary earned the required experience during the two-year qualifying period.

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.