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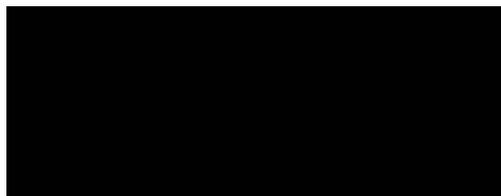
U.S. Department of Homeland Security
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Washington, DC 20529



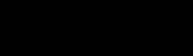
U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: OCT 01 2008

WAC 06 143 52672

IN RE:

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:

SELF-REPRESENTED

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, appearing to read "Maurice" or similar.

Robert P. Wiemann, Chief
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 AAO will also enter a finding of fraud and willful misrepresentation of a material fact.

The petitioner purports to be 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 a youth minister and music minister. The director determined that the petitioner had not established that: (1) the petitioner qualifies as a *bona fide* tax-exempt nonprofit religious organization; (2) the proffered position qualifies as a religious occupation; (3) the petitioner is able to pay the beneficiary's salary; (4) the beneficiary had the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition; or (5) a valid job offer exists.

On appeal, the petitioner submits additional statements and documents.

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.

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).

RELIGIOUS OCCUPATION

The first issue we shall discuss concerns the proffered position's status as a religious occupation. Citizenship and Immigration Services (CIS) regulations at 8 C.F.R. § 204.5(m)(2) contain the following pertinent definitions:

Minister means an 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.

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

The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Citizenship and Immigration Services therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of

the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

The petitioner filed the petition on April 6, 2006. In an undated letter accompanying the initial filing, [REDACTED] identified elsewhere in the record as Pastor of the petitioning entity, stated:

[The beneficiary] is our Youth Ministry and Music Ministry. . . . He is the Music Director . . . he directs the music all days of worship. . . . Also, as Youth Ministry; he preaches the Gospel of God to the Youth Society and provides counseling to its members. On Thursdays is his musical practice day from 7:00 to 9:00. On Fridays and all days of worship he has to attend to the church at 6:30 to prepare the instruments. . . . Saturdays and Sundays he has to meet with the youth society as a way of mak[ing] them interested in the Holy Ghost through the music. . . . In the worships he is the one in charge of the adoration and the songs for prais[ing] the lord.

A photocopied "Certificate of Theology" from Union Amistosa Ministries, Inc., dated June 15, 2003, indicates that the beneficiary "satisfactorily completed the Studies Course of the Theology" (*sic*). The record does not contain any other information about Union Amistosa Ministries. Although the beneficiary's claimed theological training is said to be in the Christian faith, the borders of the certificate show dreidels and Stars of David, which are Jewish religious symbols. A "Certificate of Ordination" from the petitioner, dated September 18, 2003, indicates that the beneficiary is a "MINISTER ORDAINED according with the scriptures" (*sic*).

The director approved the petition on May 30, 2006 without further inquiry. Subsequently, on July 21, 2006, the director issued a notice of intent to revoke pursuant to 8 C.F.R. § 205.2(b). In that notice, the director stated that the petitioner had not shown that the beneficiary's musical duties were inherently religious. The director continued:

Although the petitioner submitted a Certificate of Theology that certifies the beneficiary has completed the course studies of the theology issued by Union Amistosa Ministries, Inc. dated 6/15/03. For immigration purposes, the issuance of a piece of paper "Certificate of Theology" is not conclusive as to whether the beneficiary has any theological training or education. The petitioner has not established that Union Amistosa Ministries, Inc. is a religious school. However, the Service's record show Union Amistosa Ministries, Inc. has less than 200 memberships and filed more than seventy I-360 (pastor/minister) petitions. Therefore, the certificate of theology provided by Union Amistosa Ministries, Inc. on behalf of the beneficiary is questionable for the validity. In addition, the petitioner submitted a Certificate of Ordination, which was issued on September 18, 2003 reflecting that the beneficiary is a Minister Ordained signed by [REDACTED] In Matter of Rhee, 16 I&N Dec. 607 (BIA 1978), the Board of Immigration Appeals (BIA) held that simply producing documents purported to be "certificate of ordination," which are not based on theological training or education, does not constitute proof that an alien is entitled to performs duties as a Music Director.

(Sic.) In response, [REDACTED] stated: "I consider a Youth Minister like [the beneficiary] is completely in the category of '*religious instructors and/or religious counselors.*'" Regarding the beneficiary's claimed theological education, [REDACTED] stated:

The certificate of theology submitted issued by Union Amistosa Ministries Inc. is proof of completed studies of Theology at Union Amistosa Ministries Inc. As far as I know Union Amistosa Ministries Inc is a biblical institute, and I have not knowledge of its membership or I-360 applications filed by them. Because Union Amistosa Ministries Inc. is known for us as a Biblical Institute, I'm not aware of their business other than biblical school. Also, a certificate of theology is only the proof a institute gives to their students in order to prove those students have studied at a certain place.

(Sic.) [REDACTED] also asserted that the beneficiary is willing "to be tested on biblical subjects." It is reasonable for [REDACTED] to assert that he is not aware of petitions filed by Union Amistosa Ministries, but his claimed ignorance of "their business" cannot serve in place of documentary evidence about that institution's purported theological training program.

Having asserted that the beneficiary's position is a religious occupation, [REDACTED] then appeared to reassert the claim that the beneficiary is an ordained minister. He stated:

There are some requirements to be Ordained. . . .

- 1 The candidate shall be baptized before the assembled church.
- 2 The candidate shall be ordained.
- 3 The candidate has to be a member of the church for at least two years.

The above list presents a logical problem, as it seems to indicate that one must be ordained in order to qualify for ordination.

The director revoked the approval of the petition on September 5, 2006, stating that the petitioner had failed to overcome the concerns raised in the notice of intent to revoke. On appeal, [REDACTED] identified elsewhere as Secretary of the petitioning entity, states that Union Amistosa Ministries is not the petitioner, and therefore its history and practices are "irrelevant regarding . . . the eligibility of the beneficiary."

The director, in revoking the petition, relied on a somewhat garbled reading of *Matter of Rhee* as well as evidence not in the record (concerning petitions filed by Union Amistosa Ministries). Also, the petitioner is correct insofar as the petitioner is not responsible for the activities of Union Amistosa Ministries. Nevertheless, the petitioner has relied on a document supplied by Union Amistosa Ministries as evidence of the beneficiary's qualifications. It is entirely proper to inquire into the origin of that document and the validity of those qualifications. The petitioner has been either unable or unwilling to provide any supporting evidence to establish that Union Amistosa Ministries does, in fact, operate an organized and systematic theological training program. The petitioner's claimed ignorance of the history of Union Amistosa Ministries

would not prevent the petitioner from contacting that entity and obtaining documentary evidence about its claimed educational activities. The petitioner has also made inconsistent claims as to whether the beneficiary works in the religious occupation of an instructor/counselor or in the vocation of a minister. As a result, the petitioner's claims are incoherent and, therefore, lacking in credibility. The AAO affirms the director's finding that the petitioner has not established that it seeks to employ the beneficiary in a qualifying capacity.

PAST EXPERIENCE

The second issue concerns the beneficiary's claimed work 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 April 6, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a minister throughout the two years immediately prior to that date.

The Board of Immigration Appeals has held that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399, 402 (BIA 1980). In line with case law and the intent of Congress, it is clear, therefore that to be continuously carrying on the religious work means to do so on a full-time basis. We note that the Ninth Circuit Court of Appeals, within whose jurisdiction this proceeding arose, has upheld the AAO's interpretation of the two-year experience requirement. See *Hawaii Saeronam Presbyterian Church v. Ziglar*, 2007 WL 1747133 (9th Cir., June 14, 2007).

On the Form I-360 petition, asked whether the beneficiary had "ever worked in the U.S. without permission," the petitioner answered "no." The petitioner also indicated that the beneficiary was in the United States throughout the entire two-year qualifying period. Asked to specify the beneficiary's current nonimmigrant status, the petitioner wrote "No Status." Thus, the petitioner has made contradictory claims. **If the beneficiary lacks legal status, but worked in the United States, then such work was unauthorized.**

█ in his brief introductory letter, did not outline the specific purported terms of employment. He stated that the petitioner paid the beneficiary "in cash without deductions. . . . In addition we provide board and room."

The petitioner submitted copies of Internal Revenue Service (IRS) Form 1099-MISC Miscellaneous Income statements, purporting to indicate that the petitioner paid the beneficiary \$4,311 in 2003, \$4,544 in 2004 and \$4,311 in 2005. An accompanying "Record de Compensaciones" purports to indicate that the petitioner paid the beneficiary once a week (Sundays in 2003 and 2004 and Saturdays in 2005), with most payments between \$70 and \$150 each, throughout 2003-2005. Each page of the "Record" lists the days of a given month, with a column for the amount (if any) paid each day, and a space for the beneficiary's signature corresponding to each day. A portion of one page is reproduced below:

FEBRUARY 2005				
Friday	25 th	\$	-	x _____
Saturday	26 th	\$	85.00	x <u>[signature]</u> _____
Sunday	27 th	\$	-	x _____
Monday	28 th	\$	-	x _____
Tuesday	29 th	\$	-	x _____

The record contains no contemporaneous financial documents (such as copies of processed checks) showing the actual transfer of funds from the petitioner to the beneficiary. Also, the annual totals quoted above are too low to be consistent with full-time employment, even at the legal minimum wage.

In the notice of intent to revoke, the director cited the low amounts claimed in the petitioner's alleged pay records and concluded "the evidence is insufficient to establish that the beneficiary has been performing full-time work" for the petitioner. In response, [REDACTED] stated: "[In] the first letter I sent, I [stated that] we pay economic compensations to [the beneficiary] and we also provide to him board and room." The petitioner submitted no documentary evidence to corroborate the claim that the petitioner provided the beneficiary's basic material support.

The director revoked the petition, reiterating the finding that the petitioner's evidence is not consistent with full-time employment. On appeal, the petitioner did not address this finding except to state that the petitioner had previously submitted "the summary of compensations for the previous years of 2004 and 2005." Those claimed pay records, however, are inconsistent and unreliable.

The format of the "Record de Compensaciones" leads to inconsistent conclusions about the timing of their preparation. The beneficiary signed each page several times, once for each day he purportedly received payment, which implies that the beneficiary signed the document at the time of each payment. But because the amounts paid (which vary unpredictably from day to day) were printed as part of the document, rather than added later, each page could not have been printed until after the end of the month in question.

Furthermore, 2005 was not a leap year, and thus there was no February 29, 2005. As a result, the dates for the last ten months of 2005 correspond to the wrong days of the week (December 31, 2005 was a Saturday, not a Sunday as the "Record" shows). Also, for two of the three covered years, the amounts shown on the alleged pay records do not agree with the IRS Forms 1099-MISC for the corresponding years. The alleged records for 2003 show \$4,046 paid to the beneficiary, versus \$4,311 on the Form 1099-MISC. The claimed records for 2005 show \$5,378 paid during the year, which differs by more than a thousand dollars from the \$4,311 total claimed on the IRS Form 1099-MISC for that same year. Because these materials contradict one another, we cannot conclude that the materials amount to strong primary evidence of payment or employment.

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*, 19 I&N Dec. 582, 591 (BIA 1988). 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. The AAO affirms the director's finding that the petitioner has not established that the beneficiary possesses the required two years of continuous experience.

The third and fourth issues the AAO will address both concern the terms of employment.

JOB OFFER

The third issue concerns the adequacy and validity of the petitioner's job offer to the beneficiary. 8 C.F.R. § 204.5(m)(4) requires the prospective employer to state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration) or how the alien will be paid or remunerated if the alien will work in a professional religious capacity or in other religious work. The petitioner's initial submission included only the vague assertion that the petitioner pays the beneficiary "in cash without deductions" plus room and board. The payments claimed for December 2005 (the most recent month for which the petitioner provided data) averaged \$137 per week.

In a passage quoted earlier in this decision, [REDACTED] specified that the beneficiary had duties on Thursday evenings from 7:00 to 9:00, Friday evenings beginning at 6:30, and at unspecified times on Saturdays and Sundays. An accompanying list of "Service Days" lists four days per week:

WEDNESDAY	8:00 PM	"VISITATION DAY"
FRIDAY	7:00 PM	"PRAYING"
SATURDAY	7:00 PM	"YOUTH SERVICE"
SUNDAY	6:00 PM	"EVANGELISTIC"

In the notice of intent to revoke, the director observed that the information provided by the petitioner did not suggest a full-time work schedule. The petitioner's response to the notice did not address this issue. The director reaffirmed this finding in the notice of revocation.

On appeal, [REDACTED] states: "About the part of the letter where it is indicated that a pastor works approximately 28 to 40 ho[ur]s [per week], there were being described the characteristics of a pastor, but there was also added that much of the job was done out of the church." This passage is not clear because the record contains no prior letter describing a 28 to 40 hour work week, and the petitioner had not previously described the beneficiary as its pastor.

Regarding the director's assertion that the beneficiary's compensation was too low to support him, [REDACTED] states that one must take into consideration "the evidence of the family's income, including the beneficiary's spouse. . . . [P]lease see the 1099 forms attached for 2003 and 2004 . . . for the beneficiary's spouse." The record does not contain IRS Forms 1099 issued to the beneficiary's (unnamed) spouse. On Form I-360, the petitioner had indicated that the beneficiary was unmarried, and the record contains no evidence that the beneficiary had subsequently married.

As we have shown, [REDACTED] letter on appeal contains several assertions that have no apparent relation to the evidence of record. It is as though the letter was written with respect to a different individual than the beneficiary.

The petitioner failed to set forth specific job offer terms showing full-time employment. The petitioner's assertions on appeal confuse rather than clarify the matter. The AAO affirms the director's finding that the petitioner has not credibly set forth a specific offer of full-time employment.

ABILITY TO PAY

The fourth issue is the petitioner's ability to compensate the beneficiary. 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.

We note that the petitioner cannot establish its ability to pay the proffered wage (or salary) without first specifying the amount of the beneficiary's proffered compensation. At the time the director revoked the approval of the petition, the petitioner had not specified the proffered level of compensation.

The petitioner's initial submission did not address the petitioner's ability to compensate the beneficiary, except for the alleged monthly pay records and IRS Forms 1099-MISC already described above. The director, in the notice of intent to revoke, noted the petitioner's failure to establish its ability to pay the beneficiary a living wage. In response, the petitioner submitted a one-page "Profit and Loss Statement" for the first seven months of 2006, containing the following information:

Gross Income		\$37,195.48
Deductions:		
Compensation of officers; directors	5,859.18	
Other Salaries and wages	5,034.75	
Professional fundraising fees	1,995.33	
Accounting fees	933.33	
Legal fees	700.00	
Supplies	290.00	
Occupancy	4,809.22	
TOTAL DEDUCTIONS		<u>19,622.00</u>
NET PROFIT		17,573.48

The document lacks many of the details typically found in an audited financial statement, and contains a minor arithmetical error; the deductions add up to \$19,622.01, not an even \$19,622.00. The beneficiary signed the statement, identifying himself as the petitioner's "Accountant." The record contains no evidence of the beneficiary's credentials as an accountant, and no primary documentation to show that any of the cited figures are reliable or based in fact. Significantly, although the petitioner claims to provide the beneficiary with room and board, the above statement does not appear to reflect related expenses, such as the cost of food.

The outstanding credibility issues in this proceeding prevent the AAO from giving full credence to a minimally-detailed statement supposedly audited by the beneficiary himself. 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).

In revoking the approval of the petition, the director reiterated: "the evidence is insufficient to establish that the prospective employer can pay the beneficiary sufficient[ly]." On appeal, the petitioner submits another "Profit and Loss Statement" for the first seven months of 2006, containing identical information to the statement submitted previously (including the one-cent arithmetical error in the "Total Deductions"). This version is said to have been audited by [REDACTED] on September 19, 2006, some six weeks after the beneficiary supposedly conducted his audit. The petitioner's submission of this document does little to bolster the petitioner's credibility.

The petitioner also submits a copy of an IRS Form 990 return, analogous to an income tax return, for 2005. According to this return, the petitioner paid \$4,311 in 2005. As we have already noted, the petitioner's purported pay records list weekly payments to the beneficiary totaling \$5,378 for 2005. The Form 990 also indicates that the beneficiary works, on average, 384 hours per week. (A week consists of 168 hours.) Also, nothing among the expenses itemized on Form 990 appears to account for the non-cash benefits supposedly provided to the beneficiary in addition to his claimed cash payments.

[REDACTED] signed the Form 990 return, and dated it April 10, 2006. The paid preparer's signature is dated June 29, 2006, which indicates that [REDACTED] signed the return more than two months before it was prepared. Thus, yet another inconsistency further undermines the credibility of the petitioner's documentation. We note that Union Amistosa Ministries, Inc., is identified as having prepared the Form 990.

The AAO, seeing no basis to conclude that the Form 990 is any more reliable than the petitioner's previous flawed submissions, affirms the director's finding that the petitioner has failed to establish, credibly, that it has the ability to compensate the beneficiary.

NON-PROFIT STATUS

The fifth issue raised by the director concerns the petitioner's tax status.

8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization seeking to employ the beneficiary qualifies as a non-profit organization in the form of either:

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

The documentation described at 8 C.F.R. § 204.5(m)(3)(i)(B) is described in a memorandum from William R. Yates, Associate Director of Operations, *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;
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The petitioner's initial submission did not address the issue of the petitioner's tax status. The director noted this omission in the notice of intent to revoke, and added that an inquiry had revealed the existence of a different church, New Congregational Baptist Church, at the claimed site of the petitioning church.

In response, the petitioner submitted a letter purportedly from [REDACTED] of New Congregational Baptist Church. The letter reads, in part:

This letter is to verify that [the petitioner] is using our premise for their religious services for its congregation. The current schedule of services on which [the petitioner] is performing religious services are as next:

Thursday	8:00 PM
Friday	7:00 PM
Saturday	7:00 PM
Sunday	6:00 PM

[The petitioner] is a different congregation and denomination than New Congregational Baptist Church, but we share facilities with religious worships at different days and schedules.

(*Sic.*) We note that the letter indicates that the petitioner uses the site only four evenings a week, consistent with the director's finding that the beneficiary's work schedule is not full-time. Furthermore, the schedule conflicts with the petitioner's claim to hold services on Wednesday evenings rather than Thursday evenings.

The letterhead of the letter quoted above shows the name of the church and a telephone number. According to a business card attached to the letter, however, the number shown is [REDACTED] home number, not the church's number. It is not clear why a church's printed letterhead would show the minister's home number instead of the number for the church itself.

Even if the letter attributed to [REDACTED] were free of inconsistencies, such a letter would not establish the petitioner's tax-exempt status. Regarding that status, [REDACTED] stated: "Please find copies of 1023 form and schedule A attached." The record does not contain an IRS Form 1023 exemption application or the Schedule A attachment to that application.

The director, in revoking the approval of the petition, observed that the petitioner had not submitted evidence to show that it is recognized as tax-exempt, or that it qualifies for such recognition. The petitioner's submissions on appeal do not address this finding. While only a tax-exempt non-profit organization may legitimately file an IRS Form 990 return, the petitioner's submission of a Form 990 return on appeal does not establish that the petitioner is, in fact, a tax-exempt non-profit organization that is qualified to file such a return.

The credibility issues which have surfaced throughout this proceeding lead the AAO to affirm the director's finding that the petitioner has failed to establish that it qualifies as a *bona fide* tax-exempt, non-profit religious organization. It appears, instead, that the petitioner has sought to cultivate the appearance of such an organization in order to secure immigration benefits for aliens including the beneficiary. The AAO is not persuaded that the petitioner exists as a functioning church, or that the beneficiary holds legitimate credentials as a minister or other religious worker.

Attempts to verify the petitioner's claims, and review of other petitions, have raised additional issues of concern. The petitioner claims to have operated and employed the beneficiary since 2003. According to records maintained by the California Secretary of State,¹ the petitioner did not file its articles of incorporation until June 5, 2006, two months after the petition's April 6, 2006 filing date.

Furthermore, the Form 1099-MISC dated 2005 appears to have been altered. The dates on the 2003 and 2004 Forms 1099-MISC are in a sans-serif font, with the first two digits in white, resembling the following:

2003 **2004**

On the 2005 document, however, the date is in a serif font, all in black, resembling the following:

2005

¹ Available at <http://kepler.ss.ca.gov/corpdata/ShowAllList?QueryCorpNumber=C2836539>, visited July 9, 2008.

Also, a thin black line, visible above the date “2005,” resembles an artifact that sometimes results from photocopying the edge of a piece of paper. The evidence therefore suggests that the date “2005” was copied onto a Form 1099-MISC from a different year.

On August 4, 2008, the AAO issued a notice of intent to dismiss the appeal with a finding of willful misrepresentation of a material fact. The record contains no response to the AAO’s notice, and therefore the AAO renders its decision based on the record as it now stands. The petitioner’s claims throughout this proceeding are inconsistent, lack credibility, and do not conform to reality.

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Under Board of Immigration Appeals (BIA) precedent, a material misrepresentation is one which “tends to shut off a line of inquiry which is relevant to the alien’s eligibility and which might well have resulted in a proper determination that he be excluded.” *Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1961).

For the reasons discussed above, the AAO finds that the petitioner has sought to procure on behalf of the beneficiary a benefit provided under the Act through fraud and willful misrepresentation of a material fact in an effort to mislead CIS and the AAO on an element material to the beneficiary’s eligibility for a benefit sought under the immigration laws of the United States. *See* 18 U.S.C. §§ 1001, 1546. By signing the alleged pay receipts and other documents in furtherance of the instant petition and submitting the evidence described above, the beneficiary has actively participated in this fraud and willful misrepresentation of a material fact. This finding of fraud shall be considered in any future proceeding where admissibility is an issue.

If CIS is not persuaded that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. I.N.S.*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). Moreover, the petitioner’s submission of a fraudulent document brings into question the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *See Matter of Ho* at 591.

The appeal will be dismissed 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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.

FURTHER ORDER: The AAO finds that the petitioner and the beneficiary knowingly submitted documents containing false statements in an effort to mislead CIS and the AAO on an element material to the beneficiary's eligibility for a benefit sought under the immigration laws of the United States.