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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

C1

[redacted]

FILE: [redacted] Office: [redacted] Date: AUG 12 2010

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

[redacted]

Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, the AAO will remand the petition for further action and consideration.

The petitioner is a Methodist 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 its senior pastor. The director determined that a compliance review had failed to verify the petitioner's claims.

On appeal, the petitioner submits witness letters and other documents.

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 . . . ; 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 petitioner filed the Form I-360 petition on March 18, 2004, stating that the beneficiary had arrived in the United States on May 15, 2003 as an R-1 nonimmigrant religious worker.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(12) states:

> *Inspections, evaluations, verifications, and compliance reviews.* The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, satellite locations, or the work locations planned for the

applicable employee. decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

The USCIS regulation at 8 C.F.R. § 204.5(m)(2) requires that the beneficiary must be coming to the United States to work in a full time (average of at least 35 hours per week) compensated position.

On Friday, March 18, 2005, two USCIS officers visited the petitioning church and found "there was no one at the church." The officers conducted a second visit on Tuesday, March 29, 2005, and found the beneficiary and another individual "playing table tennis in the building." The officers reported that the beneficiary "cannot speak or understand English," and the other individual acted as a translator. The officers also reported: "According to a neighbor who lives near the church building, there are no weekday activities at the church and she has not seen anyone working there during the week." The officers' report does not identify the neighbor.

On March 8, 2006, the director instructed the petitioner to submit detailed evidence to show that the beneficiary has been working full-time. In response, church elder provided the beneficiary's claimed weekly schedule of activities:

Sunday	9:00 to 10:00	Lead Worship I
	11:00 to 12:30	Lead Worship II
	14:00 to 15:30	Lead Worship III
	15:00 to 16:00	Lead Counseling
Monday	4:30 to 6:30	Lead Prayer and Worship
Tuesday	4:30 to 6:30	Lead Prayer and Worship
	9:00 to 10:00	Lead Staff Meeting
	10:00 to 17:00	Pastoral Visitations
	19:00 to 21:30	Lead Bible Study
Wednesday	4:30 to 6:30	Lead Prayer and Worship
	9:00 to 10:00	Lead Staff Meeting
	10:00 to 12:30	Administration, Lead Counseling, and Research
	14:00 to 20:00	Preparations for Worship
	20:00 to 21:30	Lead Worship
Thursday	4:30 to 6:30	Lead Prayer and Worship
	9:00 to 10:00	Lead Staff Meeting
	10:00 to 12:30	Administration, Lead Counseling, and Research
	14:00 to 17:00	Pastoral Visitations and Evangelism
Friday	4:30 to 6:30	Lead Prayer and Worship
	9:00 to 10:00	Lead Staff Meeting
	10:00 to 12:30	Administration, Lead Counseling, and Research
	14:00 to 20:00	Preparations for Worship
	20:00 to 21:30	Lead Worship
Saturday	4:30 to 6:30	Lead Prayer and Worship

9:00 to 10:00	Lead Staff Meeting
10:00 to 17:00	Preparations for Worship

We note that the schedule does not place the beneficiary at the church during normal business hours on Mondays.

On November 20, 2008, the director advised the petitioner of the following information:

> On or about January 9, 2006, the Service contacted the Texas Workforce Commission requesting verification of all employees the petitioner [claimed to employ] in the site visit. . . . The Texas Workforce Commission . . . indicates the church has not submitted any information indicating it has paid any employees with respect to [its] Tax identification number.

The director instructed the petitioner to submit certified documentation from the Internal Revenue Service (IRS), the Texas Workforce Commission (TWC) and the Social Security Administration (SSA) showing that the petitioner had employed the beneficiary and reported his income.

In response, the petitioner submitted IRS and SSA transcripts showing that the petitioner has paid the beneficiary from $24,000 to $30,000 per year. The petitioner also submitted materials from the TWC indicating that "Services of an Ordained Minister" and "Services in the employ of a Church" are exempt from TWC reporting requirements. The evidence submitted is consistent and credible with respect to the beneficiary's past employment and compensation at the petitioning church, and goes beyond what the regulations require.

The director denied the petition on May 1, 2009, stating: "the results of the site investigation [call] into question the proffered position as being full-time employment." On appeal, the petitioner submits a statement signed by the beneficiary. The statement is in English, with no indication that it has been translated from Korean, although the compliance review report indicated that the beneficiary "cannot speak or understand English." The director may wish to verify the circumstances under which the beneficiary wrote and signed this letter.

In terms of the content of the letter, it correctly indicates that the beneficiary's schedule did not place him at the church at the time of the first site visit. The letter acknowledges that some R-1 nonimmigrant religious workers had exaggerated their work hours, which has fed the director's concerns about the overall credibility of the petitioner's claims and evidence.

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). Nevertheless, we observe that *Ho* does not state that any given discrepancy necessarily and permanently poisons the petitioner's credibility throughout the proceeding. Rather, *Ho* plainly leaves the door open for the petitioner to resolve credibility issues, stating that the petitioner can resolve any inconsistencies in the record by independent objective

evidence. 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 petitioner submits letters from two individuals who assert that they live next to the petitioning church, and that they have seen the beneficiary's car "in the parking lot of the church on a regular basis since 2003." The individuals provide their names, addresses and telephone numbers. The compliance review report, in contrast, refers only to "a neighbor who lives near the church building."

Observations contained in an investigative report that are conclusory, speculative, equivocal, or irrelevant do not provide good and sufficient cause for the issuance of a notice of intent to revoke the approval of a visa petition and cannot serve as the basis for revocation. *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988). Similarly, such observations cannot form the basis for denial of a petition. The USCIS officers' conclusory statement regarding an unidentified neighbor, therefore, would not be sufficient grounds for denial of the present petition, even if the petitioner had not subsequently contradicted that finding by submitting statements from two identified witnesses.

If the director continues to be concerned about the activities at the church, it would be proper to seek to verify the claims of the witnesses on appeal. Furthermore, it is worth noting that, while the second site visit raised questions regarding other aliens, the beneficiary was indeed present at the church when the officers arrived for that site visit.

The petitioner has submitted strong evidence that it has paid the beneficiary [redacted] or more per year. This salary, while austere, is consistent with full-time work in an occupation that is not generally viewed as lucrative.

[redacted] of the Special Immigrant Nonminister Religious Worker Program Act, Pub. L. No. 110-391, 122 Stat. 4193 (2008), USCIS published a rule setting forth new regulations for special immigrant religious worker petitions. The rule applied to all such petitions pending on that date. 73 Fed. Reg. 72276 (Nov. 26, 2008).

Despite the issuance of new regulations (which superseded and replaced the old regulations), the director denied the present petition on May 1, 2009, citing only the old regulations. Therefore, the director erroneously based the decision on obsolete regulations that were no longer in effect at the time of the decision.

The director must issue a new decision based on the new regulations published on November 26, 2008. Because the new regulations include substantial new evidentiary requirements, the director must also afford the petitioner an opportunity to submit all such evidence that the petitioner did not initially submit, or that the director has not previously requested. 8 C.F.R. § 103.2(b)(8).

Certain new regulations are of particular interest in this proceeding. The new regulation at 8 C.F.R. § 204.5(m)(7) states: "An authorized official of the prospective employer of an alien seeking

religious worker status must complete, sign and date an attestation prescribed by USCIS and submit it along with the petition." The record contains no such attestation.

In instances (such as this proceeding) in which the petitioner claims that the beneficiary will work as a minister, the new regulation at 8 C.F.R. § 204.5(m)(9) requires the petitioner to submit evidence that the beneficiary qualifies as a minister, including documentation (if available) of the beneficiary's training and ordination. The petitioner has submitted certificates prepared several years after the fact, attesting to the beneficiary's training and ordination. Some documents are from a church official in California, purporting to attest to the beneficiary's activities in Korea more than a decade earlier. If the director determines that the petitioner must submit copies of first-hand documents, rather than certificates describing events that occurred years earlier, the director must allow the petitioner an opportunity to submit such materials.

Similarly, it is not sufficient for the petitioner simply to assert that the beneficiary worked continuously throughout the two-year period immediately preceding the filing of the petition. The new regulation at 8 C.F.R. § 204.5(m)(11) requires the petitioner to submit Internal Revenue Service (IRS) documentation of salaries earned in the United States (which the petitioner has already submitted), as well as "comparable evidence" of work performed outside the United States during that period. The beneficiary was in Korea for most of the relevant two-year period, and therefore the petitioner must submit evidence that is comparable to IRS documentation to establish his employment in Korea. Once again, the petitioner has submitted letters from various officials, prepared years after the fact, but such letters are not comparable to IRS documentation.

As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The matter is remanded to the director, California Service Center, for the issuance of a request for evidence (if necessary) and a new decision in accordance with the requirements of the new regulation published at 73 Fed. Reg. 72276 (Nov. 26, 2008). If the new decision is adverse to the petitioner, it shall be certified to the Administrative Appeals Office for review.