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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

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[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER Date:

JAN 07 2011

IN RE:

Petitioner:  
Beneficiary:

[Redacted]

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

*Naij Plenson*

2 Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa petition. The director reopened the proceeding on the petitioner's motion and approved the petition. Upon further review, the director determined that the beneficiary was not eligible for the benefit sought. 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 AAO will dismiss the appeal.

The petitioner is a member congregation of the [REDACTED]. 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 director of its music ministry. The director determined that the beneficiary's employment did not match the terms of the job offer, and that the beneficiary engaged in outside secular employment

On appeal, the petitioner submits a brief from counsel.

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 September 30, 2012, 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 September 30, 2012, 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 petitioner filed the Form I-360 petition on November 4, 2005. In an accompanying letter, [REDACTED] pastor of the petitioning church, stated that that the beneficiary "will receive a salary in the amount of \$24,000 per year" for "permanent, full-time employment at our Church." The director denied the petition on July 6, 2006, based on concerns about the nature of the beneficiary's intended position. The petitioner filed a motion to reopen and reconsider on August 7, 2006. The director granted the motion and approved the petition on September 26, 2006.

On December 6, 2007, a U.S. Citizenship and Immigration Services (USCIS) officer visited the address of the petitioning church and found that the site was primarily a Salvation Army church, which rents space to the petitioner. A church employee contacted a pastor of the petitioning church (the officer's transcribed notes variously identify the pastor as [REDACTED]). [REDACTED] stated that [REDACTED] was no longer at the petitioning church, and "that the beneficiary was currently working at a Korean grocery store" in addition to working at the petitioning church "as a pianist," according to the officer's notes.

On June 3, 2008, the director issued a notice of intent to revoke the approval of the petition. The director determined, based on the above information, that the petitioner employed the beneficiary only as a part-time pianist, while "[t]he beneficiary's primary employment is . . . at a Korean grocery store." The director therefore concluded that the petitioner had not accurately described its job offer to the beneficiary, exaggerating both her duties and her work hours so she could obtain immigration benefits.

The director instructed the petitioner to submit Internal Revenue Service (IRS) Form W-2 Wage and Tax Statements “and other evidence of the alien’s employment with the petitioning agent, such as, DE-6 forms filed with the State of California.” The director also requested “an itemized record issued by the Social Security Administration” which would “list the employers the beneficiary has worked for.”

In response to the notice, [REDACTED] successor as senior pastor of the petitioning church, stated that the use of the title “pianist” rather than “music director” “is an arbitrary distinction” that does not reduce the beneficiary’s responsibilities. [REDACTED] stated that the beneficiary “is referred to as ‘Music Director,’ ‘Pianist,’ and ‘Deacon’ because of the multiple roles she has taken.” [REDACTED] asserted: “full-time church workers often work more than 40 hours but follow irregular schedules compared to private jobs,” and added:

On the day of the USCIS officer’s visit, we did not have a regular schedule, and [the beneficiary] told me she was helping her husband to check the daily business/revenues of a Korean grocery store that her husband was negotiating to buy. [The beneficiary] and her husband were prospective buyers of the market and not their employees.

[REDACTED] stated that the beneficiary “did not work in other jobs beside this one” at the church.

[REDACTED]

I am the owner of [REDACTED] a Korean grocery store. . . .

In October 2007, I began negotiation of selling my store [to the beneficiary’s] husband. It is customary for the buyer to come to the store and check the daily business and revenues for several months before finalizing the contract. . . . Once in a while, [the beneficiary] would come instead of [her husband].

[REDACTED] stated “it is not true” that the beneficiary “worked at my store.”

The petitioner submitted a “Music Director’s Schedule” showing the following information:

Monday	Off
Tuesday	2:00 PM – 8:00 PM Review and prepare music files for various services and musical performances; attend cell-group meeting for Bible study and prayer
Wednesday	2:00 PM – 10:00 PM Prepare for Wednesday Music Service; lead the service; meet with the Senior Pastor to discuss musical themes and selections for the upcoming worship services
Thursday	2:00 PM – 8:00 PM Attend cell-group meeting for Bible study and prayer; offer counseling sessions; prepare for music sessions

Friday	6:00 PM – 10:00 PM	Lead Friday English Ministry Service music and provide music training
Saturday	12:00 PM – 8:00 PM	Lead Choir Practice with prayer, biblical lesson, and musical training and provide training to the Instrument Team and small singing groups
Sunday	10:00 AM – 6:00 PM	Lead Choir Practice before the Service, Sunday Service music, and provide post-service choir meeting and training.

The petitioner submitted copies of IRS Forms W-2, showing that the petitioner paid the beneficiary \$18,000 in 2007. This amount is only three-fourths of the \$24,000 annual salary that the petitioner initially claimed. The petitioner also submitted copies of the beneficiary's semimonthly paychecks from 2008, each in the amount of \$878.81. The copied checks show no sign of processing for payment.

The petitioner did not submit the state tax documents and Social Security information that the director had requested. The petitioner did not explain its failure to submit these documents, or even acknowledge that the director had asked for them.

Several church members jointly signed a statement (in both English and Korean) that described the beneficiary as the petitioner's "full time Music Director/Pianist" and condemned "the report saying that she is working full time at the Korean Market without further research." The statement repeated Rev. Shin's claim that the beneficiary happened to be at the grocery store on the day of the site inspection, but has never worked there. Each of the signers provided a telephone number.

In October 2008, the USCIS officer who had conducted the 2007 site inspection called all of the telephone numbers in the above statement. The officer reported the results of these telephone calls:

Only one member[,] [REDACTED], answered the telephone. [REDACTED] could not speak English and asked that I speak with her granddaughter. . . [REDACTED]. . .

[REDACTED] was asked if she knew [the beneficiary]. . . [REDACTED] stated that she has observed [the beneficiary] playing the Piano and it appears that her job at the church is playing the Piano. [REDACTED] was asked if she knew who [the beneficiary's spouse] was. [REDACTED] stated that [the beneficiary's spouse] helped put out . . . the music books and helped with music. KIM was asked if there was a Music Director at the church. [REDACTED] stated that she did not know the titles of the employees but it appeared that [the beneficiary's spouse] handled most of the assignments regarding music. [REDACTED] again reiterated that [the beneficiary] only played the piano.

On December 18, 2007, the [petitioner's] web site indicated that [the beneficiary's spouse] was the Music Conductor and his wife . . . was the Pianist. There was no mention of a Music Director. Since the [notice of] intent to revoke was issued, the

Church has since removed the pictures and the titles of their members and replaced [them] with new material.

The officer printed a copy of the web page [redacted] on December 18, 2007. The page identified the beneficiary as [redacted] and her spouse as a [redacted] (Conductor)." As of this writing in November 2010, the petitioner's web site no longer has a "workers" page.

The director revoked the approval of the petition on May 9, 2009. The director stated that attempts to verify the petitioner's claims had confirmed that the beneficiary's musical responsibilities were limited to playing the piano. The director noted that the petitioner changed its web site after USCIS confronted the petitioner with this information. The director also observed that the petitioner failed to submit specific documents that the director had requested. The director concluded that the petitioner had not adequately rebutted the earlier finding that the beneficiary worked at the grocery store.

On appeal, counsel argues that the petitioner need only document the beneficiary's continuous employment during the two years immediately preceding the filing of the petition. *See* 8 C.F.R. § 204.5(m)(4). Therefore, counsel asserts, the director had no basis to inquire into the beneficiary's employment after the filing date. Counsel also asserts that there is no basis to conclude "that the alien cannot engage in unrelated, nominal outside employment without affecting the I-360 approval."

The issue here is not the "unrelated, nominal outside employment" itself, but rather the accuracy of the stated job offer, and the petitioner's intention of honoring that offer. If the beneficiary is the petitioner's part-time pianist rather than its full-time musical director, and the beneficiary works at a grocery store even though she is authorized to work full-time for the petitioner, then questions necessarily arise as to whether a full-time job offer with the petitioner actually exists. The compliance review process, as outlined in the USCIS regulation at 8 C.F.R. § 204.5(m)(12), exists to combat fraud and to ensure that religious organizations do not extend nominal or exaggerated job offers simply as a pretext for obtaining immigration benefits for unqualified aliens. Under that regulation, USCIS cannot properly approve any petition that has failed compliance review.

Counsel acknowledges that the petitioner paid the beneficiary only \$18,000 in 2007, a drop from the \$24,000 or more she earned in earlier years, but states that the petitioner disputes the conclusion that this drop in pay corresponds to a reduction in the beneficiary's work hours. Counsel offers no alternative explanation for this 25% decrease in salary for 2007. Counsel observes that the beneficiary received a higher salary in 2008, but the evidence from that year is fragmentary and fails to account for the low 2007 compensation.

Counsel states that the beneficiary's "alleged employment with a Korean grocery . . . is factually incorrect," but submits no evidence to support this assertion. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel admits that “if the beneficiary were to entirely switch careers during an application for adjustment, this might support a denial of an application for adjustment of status because of the inference that the beneficiary no longer intended to accept the proffered job offer.” The same conclusion would arise, however, if the beneficiary’s continued employment with the petitioner did not match the terms of the previously claimed job offer.

Counsel asserts that the director has relied on unfounded claims. The director based the findings on evidence provided by the petitioner (such as the 2007 Form W-2) and on contact with church members and employees. In contrast, the petitioner has provided no new evidence on appeal.

When presented with information indicating that the beneficiary had reduced her hours with the petitioner in order to work at a grocery store, the petitioner responded with tax documentation seeming to confirm that reduction in hours at the church, because the documentation showed a 25% reduction in her salary. The petitioner has not explained this drop in the beneficiary’s compensation.

Counsel asserts that the question of the beneficiary’s exact job title is irrelevant. Counsel does not address or explain other factors, such as witness statements that the beneficiary’s sole function at the church is to play the piano and the description, on the petitioner’s own web site, of the beneficiary as a “pianist” and her spouse as the “conductor” – descriptions that disappeared after the director issued the notice of intent to revoke the approval of the petition. Thus, the petitioner did not merely fail to give the beneficiary a job title reflecting authority over the church’s musical program. The petitioner did give such a title to someone else at the church.

The director instructed the petitioner to submit Social Security Administration documents, which would identify every employer that reported paying wages or salaries to the beneficiary. The petitioner has not submitted this evidence, or explained its failure to do so. On appeal, counsel does not even mention the request for this documentation, much less account for its absence. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. 8 C.F.R. § 103.2(b)(14). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The petitioner’s evasive, unresponsive and self-serving claims cannot take the place of specific documents which, if submitted, might have supported the petitioner’s claims.

For the reasons discussed above, we agree with the director’s decision to revoke the approval of the petition. Beyond the above discussion, the record raises additional grounds for concern. The AAO may deny an application or petition that fails to comply with the technical requirements of the law even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

As counsel has acknowledged, the petitioner must demonstrate the beneficiary's continuous, qualifying employment for at least two years immediately preceding the filing of the petition. At the time of filing, the regulations contained this requirement at 8 C.F.R. §§ 204.5(m)(1) and (3)(ii)(A). Following revisions to the regulations, similar provisions now exist at 8 C.F.R. §§ 204.5(m)(4) and (11).

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. There are discrepancies and gaps in the evidence of the beneficiary's compensation, both during and after the two-year period immediately preceding the filing of the petition.

As we have already noted, the petitioner has submitted photocopied paychecks and IRS Forms W-2 to establish the beneficiary's claimed employment history with the petitioner. IRS Forms W-2 indicate that the petitioner paid the beneficiary \$10,000 in 2003, \$24,000 in 2004, \$25,000 in 2005, and \$18,000 in 2007. The record contains no Form W-2 for 2006.

An uncertified copy of the beneficiary's IRS Form 1040A income tax return indicates that the beneficiary earned \$24,000 as a "Pianist" in 2004. An uncertified copy of an IRS Form 941 quarterly return indicates that the petitioner paid the beneficiary \$8,000 in the first quarter of 2005. This amount extrapolates to \$32,000 per year. According to IRS Form W-2, however, the petitioner paid the beneficiary only \$25,000 in 2005. The petitioner did not acknowledge or explain these figures, which seem to indicate that the petitioner either lowered the beneficiary's salary in 2005, or overpaid her in the early months of that year.

The petitioner has submitted photocopies of paychecks, some with receipts attached. None of the copied checks show evidence of processing for payment. The checks and receipts indicate that One Stop Payroll, Inc. (OSPAY) issued the checks from a bank account with a number ending in 4535.

Monthly checks dated between January 1 and August 1, 2005, each show purported payments of \$1,784.29. The check dated September 1, 2005 is for \$874.11, and signals a change from monthly to semimonthly salary payments. The checks are numbered between 20046 and 20070, with each check number being either three or six numbers higher than that of the previous check.

The petitioner submitted partial copies of bank statements dated between April and August 2005. These partial statements do not show every check processed during the statement periods. They do, however, show the numbers of some of those checks. The check numbers shown on the bank statements range from 5670 to 5746, a completely different range than the numbers 20046-20070 shown on paychecks dated during the same period. Also, the statements pertain to an account with a number ending in 3227, not the 4535 shown on the claimed salary checks. The partial bank statements do not reflect transfer of funds to OSPAY.

Photocopied checks dated between July 31 and October 16, 2006, purport to show semimonthly salary payments of \$877.37 each (after withholding of taxes). Attached receipts indicate that the beneficiary's gross salary was \$1,000 per check, equivalent to \$24,000 per year. Copies of semimonthly paychecks dated between February 14 and June 30, 2008 each purport to show \$878.81 paid to the beneficiary. The 2008 paychecks are sequentially numbered 20207 to 20216, indicating that the beneficiary was the petitioner's only salaried employee during much of early 2008.

By submitting incomplete bank statements from one account, and copies of unprocessed checks from a different account, the petitioner has failed to establish continuity between its own finances and the beneficiary's claimed compensation. Even if the payroll documents are entirely authentic, fluctuations in the beneficiary's compensation (usually downward) raise unanswered questions. These issues undermine the overall credibility of the petitioner's claims and evidence.

The AAO will dismiss the appeal for the above stated reasons, with each considered as an independent and alternative basis for dismissal. 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, the petitioner has not met that burden.

**ORDER:** The appeal is dismissed.