

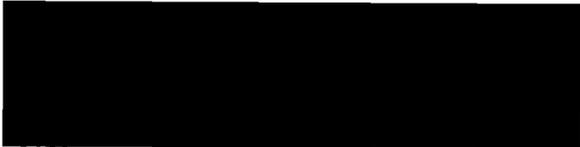
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



C1

DATE: **JUN 03 2011** Office: CALIFORNIA SERVICE CENTER

FILE:

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:



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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based immigrant visa petition. On further review, the director determined that the petitioner was not eligible for the visa preference classification. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke (NOIR) approval of the petition and her reasons for doing so, and subsequently exercised her discretion to revoke approval of the petition on January 18, 2008. On December 16, 2008, the Administrative Appeals Office (AAO) remanded the matter for consideration under new regulations. The director again denied the petition and, following the AAO's instructions, certified the decision to the AAO for review. The AAO will affirm the director's January 18, 2008 decision.

On November 26, 2008, the U.S. Citizenship and Immigration Services (USCIS) issued new regulations for special immigrant religious worker petitions. Supplementary information published with the new rule specified:

All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule. If documentation is required under this rule that was not required before, the petition will not be denied. Instead the petitioner will be allowed a reasonable period of time to provide the required evidence or information. 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008).

However, as the instant petition was not pending on November 26, 2008, it is not subject to the evidentiary requirements of the new regulation. Accordingly, the petition must be adjudicated based on the regulations in effect at the time the petition was filed. Therefore, the AAO's remand for application of the new regulation was in error. As such, for purposes of this certification, the AAO will focus its review on the original decision of the director which was correctly based upon the regulations in effect at the time the petition was originally approved. Nonetheless, as the AAO conducts appellate review on a *de novo* basis, all of the evidence of record will be considered.

The petitioner is 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 religious instructor and pastoral assistant. The director determined that the petitioner had not established that the duties of the proffered position relate to a traditional religious function and that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the petition.

Counsel argues on appeal that the petitioner "the outline of the beneficiary's daily and weekly schedule clearly demonstrates the beneficiary engages in activities that embody the tenets of Christian doctrine have religious significance."¹ Counsel further argues that the beneficiary has worked continuously in the same type of work as the proffered position and that inconsistent

¹ New counsel began representing the petitioner following the AAO's remand and will be referred to as new counsel in this decision. Previous counsel will be referred to as counsel.

information in the record “is due to human error.” Counsel submits a brief and additional documentation in support of the appeal.

Section 205 of the Act, 8 U.S.C. § 1155, states that the Secretary of the Department of Homeland Security “may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204.”

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for “good and sufficient cause” where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Id.*

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 first issue presented is whether the petitioner has established that the proffered position qualifies as that of a religious occupation.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation. The regulation in effect at the time the petition was filed at 8 C.F.R. § 204.5(m)(2) provided:

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.

USCIS therefore interpreted the term “traditional religious function” to require a demonstration that the duties of the position were directly related to the religious creed of the denomination, that the position was defined and recognized by the governing body of the denomination, and that the position was traditionally a permanent, full-time, salaried occupation within the denomination.

In its February 6, 2006 “letter of intention,” the petitioner stated that the main duty of the religious instructor was to “educate church members to deal with their personal, social and spiritual life based on the Word of God.” The petitioner further stated:

He will be required to lead bible studies and other activities that will nurture the believer so that she comes to understand God’s will in their lives. He will confer with parents and adolescent children to work out family problems. He does plan religious mission studies and activities. He is responsible to communicate with the Youth groups and to make educational program for them He does create religious study courses and programs, provide spiritual counseling and guidance and assistance to church members. Also, he manages making Bible study book on text, and other material for Sunday Bible School and Youth group.

As a Pastor Assistant, he does assist senior pastor for all church activities. This includes assists for various religious ceremonies, worship services and religious holidays. Further he does coordinate church administration matters.

The director approved the petition on May 17, 2006. On August 30, 2007, an immigration officer (IO) visited the petitioner's premises for the purpose of verifying the petitioner's claims in the petition. The IO reported that the beneficiary was reportedly replacing a pastoral assistant that had left three years earlier but that on August 20, 2007, the petitioner had "submitted documents listing the beneficiary as a 'janitor.'" The IO referred to an unsigned and undated "employees list," submitted on the petitioner's letterhead, that identifies the beneficiary as a "janitor" whose duties were to "Maintain[] our church building. Repair as necessary." The IO also reported that the petitioner had filed 11 previous religious worker petitions for pastoral assistants, including two beneficiaries, [REDACTED] and [REDACTED], who were still working at the church at the time.

On November 6, 2007, the director notified the petitioner of the findings of the IO and her intent to revoke the petition based on the IO's findings. In response, the petitioner's pastor stated that the positions of religious instructor and pastoral assistant are defined as traditional religious functions and that the beneficiary performs activities that constitutes the practice of religion. The petitioner provided a daily and weekly work schedule for the beneficiary, stating:

[The beneficiary's] work duties consist of four main parts:

1. Supporting and assisting the Senior Pastor including preparation of various worship services and Sermon outline. (60% about 24 hours per week)
2. Developing and organizing religious and educational programs. Also, leading religious study courses. (10% 4 hours per week)
3. Conducting Biblical sessions, discussion groups, and retreats. (10% 4 hours per week)
4. Counsel members of the church on strengthening and maintaining their faith and beliefs. (20% 8 hours per week)

The petitioner stated that the duties of the position include preparing the proper sermon or speech and reporting to the senior pastor for reference, broadcasting the sermon schedule, preparing and researching data, preparing and arranging lectures for guest speakers, meeting with department managers, phoning absent members, visiting homes and workplaces on the weekend, evangelizing, being in charge of communion and liturgical services every other month, being in charge of janitorial expenses, and worship and education duties.

The petitioner further stated that it had submitted another religious worker petition using a different attorney. According to the petitioner, the attorney instructed it to submit a list of all its employees, position titles, and a detailed description of their duties. However, the attorney "mistakenly" identified the beneficiary of the current petition as a janitor. The petitioner asserts that the attorney "did not confirm the positions with the Senior Pastor or the other religious worker before submitting the document. Also, the other religious worker provided information

based on their opinion and not the facts.” The petitioner alleges that the beneficiary “is in charge of the janitorial department and takes care of all the janitorial expenses.” The petitioner provided a copy of the employee list “constructed” by the attorney’s office and a copy of a list that it stated it provided to the attorney. Neither list is dated; however, the list that the petitioner stated that it provided to the attorney is signed and on the petitioner’s letterhead. That list does not include any position of janitor or any details of the job duties. There is no explanation as to why the attorney would have redrafted the list of employees to include a janitor, added specific details of the positions, and added the position of pianist to the employee list. Further, the list of employees provided to USCIS was also on the petitioner’s letterhead. The petitioner does not submit any explanation or documentation from counsel confirming the petitioner’s claimed version of events. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Doubt cast on any aspect of the petitioner’s proof may, of course, 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). If USCIS fails to believe that a fact stated in the petition is true, USCIS 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. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The AAO also notes that neither list includes the name of [REDACTED], identified by the IO as the beneficiary of a then pending petition (USCIS receipt number [REDACTED] approved for H-1B status in computer science). Additionally, the IO stated that a petition was filed on behalf of [REDACTED] as a pastoral assistant; however, he is identified on the employee lists as an associate pastor.

The petitioner also submitted copies of receipts that it stated were payments authorized by the beneficiary for janitorial expenses. The documents include three receipts signed by [REDACTED] in July and August of 2005 and January of 2007 for \$500, \$600 and \$625. The July 2005 receipt for \$500 is documented on a receipt written in Korean. The petitioner, however, failed to provide a translation of the document. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner’s claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. The other two documents do not indicate the purpose of the receipts. Additionally, a September 29, 2006 invoice from an unidentified company for gardening, with a fee of \$250, reveals an obvious alteration in the name and address of the customer. Other documents, which include a proposal for connecting a fire pipe to a hose valve, an invoice for connecting a fire hose line, a proposal for painting, an invoice for air conditioner maintenance and an invoice for an air conditioner repair, are all for major repairs and maintenance and do not rebut the statement that the beneficiary serves as a janitor with the petitioning organization. The petitioner submitted no documentation of any individual or company that was responsible for the day-to-day maintenance and care of the church.

The director rejected the petitioner's argument that the error in reporting the beneficiary as a janitor was that of the attorney, stating, "The petitioner is responsible for the content of all information submitted to the service" and that the petitioner had not established that the duties of the prospective occupation relate to a traditional religious function. On appeal, counsel states that the petitioner provided a list of 25 specific duties for which the beneficiary would be responsible and that:

Preparation of worship, development of religious programs, leadership of religious studies, and religious counseling are all activities proscribed by Christian doctrine. The very performance of these activities constitutes practice of the Christian religion. The beneficiary's main duties involve skill, training, and experience related to the Christian objectives of encouraging believers and witnessing to nonbelievers. The inclusion of minor administrative tasks such as handling janitorial expenses in the list of all of the beneficiary's duties does not diminish that the beneficiary's main duties are related to traditional religious functions nor implies that all of the beneficiary's duties are administrative in nature.

The petitioner also submits statements from three of the petitioner's pastors, a member of the elder board, the director of its mission department, members who stated they attended the beneficiary's bible study groups, and [REDACTED] who identified himself as a member of the [REDACTED] [REDACTED] who had attended the petitioner's "midweek early morning prayer/study service" since 2004. All attest to the beneficiary's work as a pastoral assistant. According to [REDACTED]

[The beneficiary] arranged for a translator, specially for me because, as far as I know usually I am the only non-Korean attendant to these services, called me whenever I did not show up for several days, has visited me . . . when recently I was hospitalized, he has helped develop our friendship by having lunch together more than once, also has provided valuable spiritual guidance from the Word of God.

The AAO notes that none of those attesting to the beneficiary's services provides independent or objective testimony. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. The individuals writing letters in support of the petition are either directly associated with the petitioner or, in the case of [REDACTED], a friend of the beneficiary.

In response to a November 24, 2009 Notice of Intent to Deny (NOID), issued following the AAO's remand, the petitioner submitted the employer attestation, Part 8 of the August 19, 2009 version of the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, stating that the proffered position was that of pastoral assistant and identifying the duties as assisting with worship services, teaching Bible study groups, organizing and coordinating mission activities,

and assisting with pastoral care and congregational visitations. In item 3, the petitioner listed pastoral assistant as one of the positions at the location where the beneficiary will work; however, it is unclear whether this is the position allegedly occupied by the beneficiary. The petitioner listed the duties of that position as assisting the assistant pastors. The petitioner also provided a weekly schedule for the beneficiary that includes supervising the gardening crew for two hours and monitoring the janitorial crew for three hours on Saturday.

The issue regarding the proffered position and the director's determination that the petitioner had not established that the duties of the prospective occupation relate to a traditional religious function may be a matter of semantics. The director's decision clearly refers to the evidence that suggests the job that the beneficiary will work in is a janitorial position, which is clearly not a religious occupation, rather than to the proffered position of pastoral assistant and religious instructor.

The duties of pastoral assistant (and religious instructor) relate to the religious creed of the denomination. However, the petitioner submitted no documentation to establish that the position or pastoral assistant or religious instructor is defined and recognized by the governing body of the denomination, and that the position was traditionally a permanent, full-time, salaried occupation within the denomination. Although the petitioner has filed petitions for several individuals for positions as pastoral assistant, the record contains no documentation from its denomination establishing that the position is recognized as a religious occupation within the denomination. With the petition, the petitioner submitted a certificate of employment and a certificate of salary from the [REDACTED] verifying that the beneficiary worked as a religious instructor and pastor assistant with that organization from August 1998 to August 2003 with a monthly salary of approximately \$300 (USD). However, this relatively low salary appears inconsistent with full time employment.

Accordingly, the AAO finds that the petitioner has submitted insufficient documentation to establish that the proffered position of pastoral assistant and religious instructor is a religious occupation within the meaning of the regulation.

The second issue is whether the petitioner has established that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m) provides that to be eligible for classification as a special immigrant religious worker, the alien must:

- (4) Have been working in one of the positions described in paragraph (m)(2) of this section, either abroad or in lawful immigration status in the United States, and after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition. The prior religious work need not correspond precisely to the type of work to be performed. A break in the continuity of the work during the preceding two years will not affect eligibility so long as:

- (i) The alien was still employed as a religious worker;
- (ii) The break did not exceed two years; and
- (iii) The nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States. However, the alien must have been a member of the petitioner's denomination throughout the two years of qualifying employment.

Therefore, the petitioner must show that the beneficiary worked in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States, continuously for at least the two-year period immediately preceding the filing of the petition. The petition was filed on March 2, 2006. Accordingly, the petitioner must establish that the beneficiary was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

As discussed at length above, the petitioner has submitted insufficient documentation to establish that the beneficiary has worked in qualifying religious work. First, the petitioner has not sufficiently rebutted the IO's findings that the beneficiary worked as a janitor. Second, even assuming that the beneficiary worked in the positions as claimed by the petitioner, the petitioner has not established that the position qualifies as that of a religious occupation.

Accordingly, the petitioner has failed to establish that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa petition.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO 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 (9th 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).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The director's decision of January 18, 2008 is affirmed. The petition remains unapprovable.