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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

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAR 09 2011

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.

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) the approval of the petition and her reasons therefore, and subsequently exercised her discretion to revoke approval of the petition on August 17, 2009. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 youth pastor/assistant pastor. The director determined that the petitioner had not established that it operates as claimed in its petition and therefore has not established its need for the beneficiary's services.

On appeal, counsel asserts that, in revoking the petition, the director abused her discretion and erred as a matter of law. Counsel submits a brief in support of the petition.[1]

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.*

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[1] Different counsel represents the petitioner on appeal. Previous counsel will be referred to as "prior counsel" in this decision.

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).

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 that "[a]ll cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008). The petition was filed on June 24, 2005 and approved on November 9, 2005. The director revoked approval of the petition on August 17, 2009. We note that the director applied the new rule to the instant case. However, as the petition was not pending on the effective date of the new rule, the new rule is not applicable. We will therefore adjudicate the petition under the regulations in effect at the time of the initial filing of the petition.

On August 30, 2007, an immigration officer (IO) visited the petitioner's premises for the purpose of verifying the petitioner's claims in its petition. The IO found the gate locked and no cars in the parking lot. On September 14, 2007, in the presence of prior counsel, an IO interviewed the beneficiary and [redacted] the petitioner's president and the individual who signed the petition on its behalf. The IO reported that the beneficiary stated that the church "operated on a daily, regular basis" and that he physically worked at the church. The IO reported that when he revealed the August 30 visit, the beneficiary and [redacted] stated that they were at a summer camp during that week. However, the evidence they produced indicated that the camp was held

in July rather than in August. The IO reported that the beneficiary then stated that he worked at his residence.

On July 6, 2009, the director notified the petitioner of the results of the onsite investigation and interview and instructed the petitioner to submit verifiable evidence "of the beneficiary's work duties, specific time tables[,] as well as photographs of the beneficiary carrying on his ministerial work." In response, the beneficiary provided a "Detail Description of the Alien's Proposed daily Duties," which reflects that most of his work time is spent at his house in "personal devotion," reading the bible, studying and preparing for church and bible study. The beneficiary indicated that he visited church members at home or in the hospital for two hours on Saturday and for three hours on Wednesday. He indicated that Monday was his day of rest but that in the afternoon he was "open for possible counseling," and made visits to homes or hospitals on Wednesday and Friday for three or four hours and for two hours on Saturday. The document indicates that the beneficiary's Sunday work schedule involves four hours of praise and worship service, teaching Sunday school, and teen and youth bible study. The beneficiary states that he has two hours for bible study and prayer meeting on Wednesday night. He stated that his hours vary for special events such as Christmas and Easter cantatas, church anniversaries, funerals, house blessing "and other events."

The petitioner submitted a letter dated July 22, 2007 from the [redacted] confirming that the petitioner participated in the organization's "2007 family camp on July 27-29." We note that the letter, signed by the [redacted] is dated prior to the actual date of the event. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. 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. 582, 591-92 (BIA 1988). The petitioner also provided copies of its church flyers dated in April and May 2007 that identify the beneficiary as "youth/choir director" and indicated that choir practice was held on Sundays at 1:30 pm. The church's 2009 programs indicate that another individual is in charge of the music ministry and that teen's bible study is held at 1:30 pm on Sunday. We note that the beneficiary's schedule indicates that from 1:30 to 3:00 pm on Sunday, he holds teens and youth bible study, which includes singing, games and interaction with youth.

In denying the petition, the director stated:

> During [an] interview [on September 14, 2007], [redacted] was unable to recollect much less account for another beneficiary . . .This was unusual considering [his] claims that every employee of the church reports to the President. The failure of the petitioner to account for the whereabouts of its religious worker employees is indicative of an organization that does not exercise effective administrative management over its affairs.
>
> Another claim made by both [redacted] and Beneficiary was that Beneficiary worked at the church full time, which claim was subsequently retracted and

> replaced with "at the house[.]" When asked about the absence of any activity or people during the site inspection, both and Beneficiary attributed the unusual incident to having a church activity conducted off-site at a Summer Camp. In fact, the petitioner submitted a "confirmation" from the stating the petitioning church participated in the 2007 family camp on July 27 – 29, 2007 at the The date of the summer camp activity failed to coincide with the date when the site inspection was conducted by USCIS where the absence of any activity and presence was observed by USCIS. Hence, the absence of the beneficiary on the premises remains unaccounted for.

The director further stated that the "detailed description" of the beneficiary's duties did not sufficiently establish how the beneficiary occupied his work day.

> The amount of time spent with each activity is unclear and the USCIS is unable to make a determination as to whether the beneficiary engaged in full time work merely from the general chart provided by the petitioner. Among the duties listed, house by house preaching was listed for each and every work day. It is unclear as to the amount of time the beneficiary's devotes to his regular house by house preaching duties, but the petitioner and beneficiary can reasonable be expected to draw from their two year work experience, especially those that are as redundant as above, to provide the USCIS with enough evidence to make a determination as to whether, in this case, the beneficiary worked a commensurate number of hours that reflect a full time occupation, profession, or vocation. The USCIS can only conclude from the record, that the hours spent are not set, and therefore, the petitioner has not satisfactorily established that the beneficiary has worked continuously as a full time youth pastor for the preceding two years.

On appeal, counsel, who did not accompany the petitioner for the interview, asserts that the petitioner "has never claimed that its 'premises' are open every day of the week, nor does any such legal requirement exist. Further, the Petitioner has never claimed that the Beneficiary's full-time work always transpires on its 'premises.'" Counsel also asserts that the beneficiary did not "retract" his statement about working at the petitioner's premises and attributes it to a misunderstanding. Counsel asserts that the beneficiary merely "clarified in response to a question which was not clearly presented to an individual (the Beneficiary) whose native language is not English."

Nonetheless, the petitioner has not presented sufficient documentation to establish that the beneficiary works full time as a religious worker with the petitioning organization. While the petitioner submitted documentation to establish that the beneficiary was paid for his work, the beneficiary's schedule indicates that he spends most of his time at his home. The petitioner submitted no documentation to verify that the beneficiary actually performed religious work during those times. The beneficiary has no office hours at the church and apparently has limited

interaction with his congregation. The petitioner submitted no documentation to establish that the beneficiary performed the visits or counseling that he identifies on his daily schedule.

The director, based on the interview with and the beneficiary, noted that could not recall another beneficiary for whom the church had petitioned for immigrant religious worker status. The director thought this lack of memory was indicative of the petitioner's management of its affairs. Counsel alleges that did not sign the petition on behalf of the individual, who no longer works for the organization; however, the issue is whether the petitioner operates as claimed in its petition. is president and head of the board of deacons for the petitioning organization. Therefore, he would or should have knowledge of the petitioner's operations. Whether or not he signed the petition is irrelevant.

The record does not sufficiently establish that the petitioner operates as claimed in its petition and that the beneficiary works in the capacity claimed in the petition.

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 appeal is dismissed.