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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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DATE: **MAY 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:

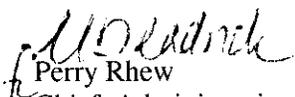
SELF-REPRESENTED

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, Vermont Service Center, initially approved the employment-based immigrant visa petition. On further review, the Director, California Service Center, 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 therefore, and subsequently exercised her discretion to revoke approval of the petition on October 13, 2009. The matter 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 an associate pastor. The director determined that the petitioner had not established that it has the ability to pay the beneficiary and that the beneficiary has worked for the petitioner since 2007.

On appeal, the petitioner states that the beneficiary has worked for [REDACTED] for approximately 12 years and that he has been compensated by donors. The petitioner 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 un rebutted, 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).

We note that approval of the instant petition was rendered prior to the implementation of new regulations for special immigrant religious worker petitions on November 26, 2008. Supplementary information published with the new rule specified that cases pending on the rule's effective date would be adjudicated under the standards of new rule. However, as the instant petition was not pending on the date of the new rule, it must be reviewed under the regulations in effect at the time it was initially adjudicated.

The first issue presented is whether the petitioner has established that it had the continuing ability to pay the proffered wage.

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.

The petition was filed on August 18, 2004. Therefore, the petitioner must establish that it had the continuing ability to pay the beneficiary the proffered wage as of that date.

In an August 13, 2005 letter, the petitioner, through its pastor, [REDACTED], stated that the petitioner would pay the beneficiary a base salary of \$30,533 and other benefits to "include housing allowance, utilities, furnishing, continuing education, automobile and professional expenses." The petitioner submitted a copy of the combined financial statements of [REDACTED] of the [REDACTED]. However, it did not allege and submitted no documentation to establish that either of these organizations would be responsible for the beneficiary's compensation. Further, it submitted no financial documentation relating to the petitioning organization to establish its ability to pay the beneficiary. Nonetheless, the Director, Vermont Service Center approved the petition on March 23, 2006.

On August 23, 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 [REDACTED] who signed the petition on behalf of the petitioner, informed him that the beneficiary no longer worked for the organization and had not received a salary when he had. The director advised the petitioner of the IO's report in her June 2, 2009 NOIR.

In response, [REDACTED] stated that in August 2007, the beneficiary "relocated" to a [REDACTED] "while working as the head chaplain in a medical institution." The petitioner asserts that it was under the "humble impression that under the Portability Act, [the beneficiary] is allowed to move to another work location doing the same line of service." The petitioner is apparently referring to the American Competitiveness in the Twenty-First Century Act (AC21), Public Law 106-313. The petitioner cited to no provision of AC21 to support its contention, and the AAO notes that AC21 does not apply to petitions filed under section 203(b)(4) of the Act, 8 U.S.C. § 1153(b)(4). *See* section 106 of AC21 referring to subsection (a)(1)(D) of the Act (since re-designated section 204(a)(1)(F) of the Act).

The petitioner submitted no documentation to establish that the unnamed church in Maryland or the medical institution for which the beneficiary allegedly works is a subordinate unit for the petitioning organization or that either organization is a bona fide nonprofit religious organization as required by the regulation.

The petitioner further stated:

From 1998-2002, [the beneficiary] worked as a Religious worker/Bible teacher in the [REDACTED]. [He] received [a] salary as a Bible teacher from the New Jersey Conference. From 2003-2007, he worked as an associate pastor in the [petitioning organization]. As an associate pastor, he was receiving [a] stipend from the [petitioner]. The stipend and allowances are directly given to [the beneficiary] by members in support to [sic] his education, travel and housing expenses.

The petitioner submitted an undated letter from [REDACTED] who attested that she assisted in supporting the beneficiary through her "gifts and offerings to help out in his housing and travel allowances." The petitioner submitted no documentation of any support provided by [REDACTED] to the beneficiary. The petitioner also provided a copy of a "summarized student statement" and indicates that a \$500 payment for the beneficiary was provided by a "member." The statement does not identify the institution and there is no evidence that the individual indicated is a member of the petitioning organization. Regardless, the financial support provided by individual members of the petitioning organization is not evidence of the petitioner's ability to pay the beneficiary.

The petitioner submitted a copy of a November 6, 2006 check stub indicating that the [REDACTED] contributed \$1,250 to the beneficiary's continuing education. The petitioner also submitted a April 12, 2005 "Notification of Actions" from [REDACTED], which states that the beneficiary was "serving in his local church as [REDACTED] and is receiving a stipend from the [petitioner] through the courtesy payroll of the [REDACTED]." However, the petitioner submitted no documentation of a stipend paid by the Conference on its behalf. A copy of a June 30, 2009 letter from [REDACTED], signed by its executive director, verified that

[The beneficiary] served the [REDACTED] as a full-time employed Teacher at our [REDACTED] from July 1, 1998 to June 30, 2002. The [REDACTED] is a part of the school system of the [REDACTED]

After leaving our employment as a teacher [at the school, the beneficiary] served as an Assistant Pastor of the [petitioning organization] here in New Jersey. He was compensated directly by certain members of the [petitioning organization] while serving in this capacity until 2007.

There is nothing in the record to establish that the beneficiary received any payments from the petitioner. The only evidence of payment from [REDACTED] was in 1999 and 2000, prior to the qualifying period.

On appeal, the petitioner provided a copy of another letter from the [REDACTED] dated the same date and with much of the same language as its previous letter. However, in this letter the executive secretary certified that the beneficiary "volunteered as an Assistant Pastor" of the petitioning organization and that he "moved from New Jersey in 2007."

The petitioner provides a partial copy of the beneficiary's May 23, 2006 bank statement that reflects a \$5,000 deposit. The petitioner suggests, without providing evidence, that the deposit was from [REDACTED]. As discussed earlier, support provided by individual members of the petitioning organization does not establish the petitioner's ability to pay the beneficiary.

The petitioner has submitted no documentation of its ability to pay the beneficiary as of the date the petition was filed or at any time subsequent to that date. Accordingly, the petitioner has failed to establish its continuing ability to pay the beneficiary the proffered wage.

The director also determined that the petitioner had failed to establish that the beneficiary continued to work for the petitioner subsequent to 2007.

The IO reported that the New Jersey Department of Labor records did not indicate that the beneficiary had ever worked as an employee for the petitioning organization but did reflect "other New Jersey employment as of 2003."

As discussed previously, the petitioner provided documentation in which it indicated that the beneficiary volunteered his services for the petitioner and received compensation for his services from individual member congregants. In response to the NOIR, the petitioner submitted statements signed by members of the church attesting to the beneficiary's service as associate pastor from 2004 to 2007. However, the unsupported statements of these individuals are not sufficient to meet the petitioner's burden of proof.

The petitioner also provided what it stated was an "elder of the month schedule" for the period from 2004 to 2005. The beneficiary appears on the schedule; however, there is nothing in the record to indicate that the beneficiary actually served in that capacity during the periods indicated. Photographs submitted by the petitioner indicate that they are from a church retreat in 2006 and a "church camping" in 2008 and highlight an individual who is presumably the beneficiary. However, none of the photographs establish that the beneficiary worked for the petitioning organization. Furthermore, the petitioner admits that the beneficiary did not work for the petitioning organization subsequent to 2007.

Regarding other income received by the beneficiary, the petitioner stated that the beneficiary "pursued advance studies in clinical pastoral care while serving as an associate pastor." The petitioner submitted the following documentation:

1. A copy of an August 16, 2002 letter from The [REDACTED] at [REDACTED] welcoming the beneficiary into its "pastoral care and education as a Chaplain Resident" for the period August 26, 2002 through August 31, 2003, which included a yearly stipend of \$23,275.
2. A December 2002 letter from the [REDACTED], addressed to [REDACTED]
3. A pastoral care staff directory identifying the beneficiary as the "supervisory education student." The document does not indicate for which organization the directory applies.
4. A copy of a February 9, 2005 "final evaluation" for the beneficiary as supervisory group trainee for the spring, summer and fall of 2004 from [REDACTED]

5. A "Schedule & Presenters" for the 2005 "Summer CPE" from the [REDACTED], identifying the beneficiary as one of the CPE supervisory faculty.
6. A copy of a March 2005 certificate from [REDACTED] certifying the beneficiary as a "diplomate."
7. A copy of a May 19, 2007 certificate from [REDACTED] conferring a "doctor of ministry" on the beneficiary.

[REDACTED] further stated:

Clinical Pastoral Education (CPE) is a residency program for clergy pursuing certification in chaplaincy and pastoral care and counseling. This CPE residency program is similar to medical residency where students receive stipend and benefits while being trained. Due to the nature of the residency program, [the beneficiary] received stipends and benefits through their payroll.

While the petitioner submitted documentation of the beneficiary's participation in education and training programs, it submitted no verifiable documentation that the beneficiary worked as its associate pastor either prior to, during or subsequent to approval of the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant.

On appeal, the petitioner states that the director erred in stating that the beneficiary transferred to another Seventh-day Adventist church in Plainfield, New Jersey, and that, in fact, the Plainfield address was the physical address of the church. However, the petitioner does not contest the director's findings that the beneficiary subsequently transferred to a church in Maryland. The petitioner also acknowledges that the record lacks evidence of the beneficiary's "ongoing employment since 2007," stating, "This is only true in the sense that he does not receive recorded remuneration from the petitioner since 2007." The petitioner blames this on the "delayed immigration processing."

Petitioner's reasoning is faulty. In its petition for immigrant benefits on behalf of the beneficiary, the petitioner alleged that it would provide the beneficiary with permanent full-time employment for which it would pay him an annual salary of \$30,533 and provide him with other allowances, including housing and utilities. When a job offer is the basis for immigration, there must be a high degree of certainty that the employment will not end or be modified because the employer is no longer able to meet the terms agreed upon in the job offer. It must be established, with some degree of certainty that the petitioner is viable to the point where the beneficiary's employment will not end or change because the petitioner is unable to meet the terms. In the instant case, the petitioner has not satisfactorily demonstrated that it extended an offer and employed the beneficiary in a full-time, permanent position.

Furthermore, the petitioner 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 regulation in effect at the time the petition was filed provided, at 8 C.F.R. § 204.5(m)(1) that a Form I-360 petition “may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has . . . been performing the [religious] vocation, professional work, or other work continuously . . . for at least the two-year period immediately preceding the filing of the petition.”

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

As previously stated, the petition was filed on August 18, 2004. Therefore, the petitioner must establish that the beneficiary worked continuously as an associate pastor throughout the two-year period immediately preceding that date.

As discussed above, the petitioner submitted no verifiable documentation of the beneficiary’s employment in the period immediately preceding the filing of the petition. The only documentation provided by the petitioner was statements from individuals and from [REDACTED] that were unsupported by any other documentation in the record. The petitioner submitted no documentation such as compensation provided, work performed or any other documentation to establish that the beneficiary worked continuously during the qualifying period.

Furthermore, according to the June 30, 2009 letter from [REDACTED] which was submitted on appeal, the beneficiary volunteered his services for the petitioning organization.

In interpreting the regulation in effect at the time the petition was filed, the AAO continuously stated that the statute at section 101(a)(27)(C)(iii) stated that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law, a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined 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 (BIA 1980).

The AAO therefore always held that in line with past decisions and the Board of Immigration Appeals and the intent of Congress, that to be continuously carrying on the religious work meant to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

While the AAO has also held that academic studies by an ordained minister does not interrupt the continuity of experience, and that an ordained minister can meet the statutory experience requirement even though he or she may have attended school full time during the immediate two years preceding the filing of the visa preference petition, the petitioner has submitted no documentation to establish that the beneficiary attended school full time during the qualifying period. Rather, the petitioner stated that the beneficiary attended school and continued to work as an associate pastor. However, as stated above the petitioner failed to submit verifiable documentation that the beneficiary worked for the petitioner in the capacity of associate pastor at any time.

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