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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

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DATE **MAY 10 2011** OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the Director, California Service Center, determined that the petition had been approved in error. 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 the United States headquarters of a Christian denomination founded in Korea. 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 church worker. The director determined that the petitioner had failed a compliance review, based on insufficient evidence of qualifying employment and the beneficiary's documented secular employment.

On appeal, the petitioner submits arguments from counsel, witness statements, and other exhibits.

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 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 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 December 3, 2004. In an accompanying letter, counsel stated that the petitioner "operates as a single Church. . . . Approximately 650 members of the church devote themselves full-time to Church activities, including teaching, evangelism, community outreach, and conducting various forms of religious worship."

identified as a director of the petitioning church, stated in an affidavit:

THAT [the beneficiary] served as a full-time Church Worker for the [petitioner] from July 2001 through to present . . . [in] Washington, DC. . . .

THAT [the beneficiary's] duties as a Church Worker from July 2001 through to present . . . involved the following:

- (a) Witnessing to persons, discussing with them the concepts of the Church with the intent of leading such persons to understand Church theology and tradition and embrace Church membership;
- (b) Helping to organize and participate in prayer meetings, Sunday worship service, Sunday pledge service and special Church events and holidays;
- (c) Assist Church Pastor in counseling young members in the teachings and traditions of the Church;
- (d) Leading discussion groups on Divine Principle;
- (e) Helping to organize and participate in witnessing activities, revivals meetings, rallies and community service work such as charitable food distribution to needy families;

THAT the so-called “full-time” members are a special and select group who completely devote their lives to their vocation. . . .

THAT there are currently approximately 650 members out of a total of 30,000 Church Members in the United States (2%) who devote their full-time services to Church activities, performed in about 500 cities throughout the country.

THAT . . . As a full-time church worker, [the beneficiary] is provided with modest but adequate necessities of life: living space, food, essential medical care, essential travel expenses and necessary clothing and personal items.

██████████, the petitioner’s corporate secretary, repeated the last paragraph above, almost verbatim, and added: “The Church also extends this support to [the beneficiary’s] family. This support is guaranteed by the Church for as long as [the beneficiary] continues her full-time service and dedication to her religious work for the [petitioning] Church.”

The petitioner submitted a copy of the “typical daily schedule” for a “full-time religious worker”:

- 5:30 a.m. Rise
- 6:00 Prayer Meeting
- 7:00 Breakfast
- 8:00 Study and Lecture Practice
- 9:00 Witnessing, Community Service, etc.
- 1:00 p.m. Lunch
- 2:00 Witnessing, Community Service, etc.
- 6:00 Lecturing/Evening Evangelical Program/Teaching Theology to Guests
- 10:00 Closing Prayer Service
- 11:00 Bed

The director, Nebraska Service Center, approved the petition on August 26, 2005. Shortly afterward, the beneficiary filed a Form I-485 adjustment application. In furtherance of that application, the beneficiary submitted a copy of the 2006 and 2007 federal income tax returns that she filed jointly with her spouse. Both of those returns, which the beneficiary signed, identified the beneficiary’s occupation as “Housewife.”

On July 20, 2010, the director notified the petitioner of USCIS’s intent to revoke the approval of the petition, based on information obtained through the compliance review process (including several site inspections in 2007 and 2008). The director stated:

FDNS [Fraud Detection and National Security] Immigration officers met with ██████████ ██████████ stated that the congregation is made up of fifty families, and not the 650 church members as claimed with the petition. ██████████

further stated that the organization received approximately \$71,000 in donations in 2007, and spent \$77,000 in expenses. Service records further show that the petitioner has filed thirty-eight Form I-129's, Petition for Nonimmigrant Worker, and five Form I-360's, Petition for Amerasian, Widow, or Special Immigrant, at the site address. However, it appears that the petitioner does not have sufficient funds to employ any beneficiaries. On one visit, stated that several of the missionaries do the janitorial work, one was doing construction, and one missionary was out selling Peruvian handicrafts. According to the Maryland Wage history, the beneficiary was employed at

It appears the church is providing a home to 5 or 6 members of the church. The beneficiaries are working in non religious occupation in violation of their R-1 status. The church does not appear to be able to be financially able to provide the "essential medical care" and "essential travel expenses" as claimed in the petition. Pastor Takami indicated that prior "missionaries" left as soon as they obtained legal permanent resident status. Regional Head claimed not to even know two of the beneficiaries of prior petitions. . . .

The beneficiary is in violation of her R-1 status because she has obtained outside employment. The petitioner has failed the site check and satisfactory completion of such inspection is a condition for approval of any petition.

In response, counsel stated that the director "has mixed up site visits from two separate locations." Review of the site visit documentation confirms counsel's assertion that " is the pastor for the petitioner[']s area" and that the information regarding and concerns "the petitioner[']s Chicago Church."

Regarding the beneficiary herself, counsel stated: "The record shows that [the beneficiary] has worked for the petitioner's church in Washington, DC from July 2001 until now." Regarding the beneficiary's work at the Japanese restaurant, counsel stated "the referenced employment was only for a short time period and only on weekends and therefore did not interfere with her church work." He added that the beneficiary held employment authorization from her pending adjustment application, and "[a]ny work at the Niwanohana restaurant was therefore not a violation of her status."

The director revoked the approval of the petition on October 5, 2010, repeating the grounds cited in the July 2010 notice. The director stated that the regulations require "that the alien must also be coming solely to perform the duties of a religious worker," which rules out secular work such as the beneficiary's admitted job at the Japanese restaurant.

On appeal, counsel repeats the observation that the director had cited findings from site inspections in both Chicago and Washington. Counsel also repeats the assertion that the beneficiary's employment authorization card has "no restriction on what kind of work she can do with this card." Counsel adds that the figure of 650 members refers to the entire church nationwide, not to any one location, and therefore the absence of 650 members from one site is not evidence of false claims by the petitioner. With respect to the petitioner's financial status, counsel cites an audited financial report showing that the petitioner spent over \$9.5 million on salaries in 2008.

Counsel makes some valid points on appeal, such as the observation that a failed site visit in Chicago should not taint every petition filed by the petitioning organization nationwide. These assertions, however, do not fully overcome the director's concerns.

██████████ vice president of ██████████ (owner of ██████████), stated that the beneficiary worked for the restaurant "from Feb. 6 to March 19, 2008." More specifically, the beneficiary worked on "February 6 (4 hours), February 13 (4 hours), February 20 (5 hours), February 27 (5 hours), March 5 (5 hours), March 12 (5 hours), March 19 (5 hours) in 2008." An accompanying IRS Form W-2 Wage and Tax Statement shows that the restaurant paid the beneficiary \$297.00 in 2008.

Counsel claims that this letter shows that the restaurant employed the beneficiary "only for a short time and only on weekends. Therefore it did not interfere with her church work." ██████████ letter contradicts counsel's claim that the beneficiary worked "only on weekends" for the restaurant, because every one of the specified dates fell on a Wednesday in 2008. The beneficiary's "typical daily schedule," full from 5:30 a.m. to 11:30 p.m., does not appear to allow time for the beneficiary to work a five-hour shift at a restaurant.

Counsel is correct that the employment authorization the beneficiary received through her adjustment application did not limit where she could work. It is, therefore, instructive that the beneficiary worked only for the church when her R-1 nonimmigrant status allowed no other employment, but found outside employment when permitted to do so. This is entirely consistent with the concern the USCIS officer voiced in the compliance review reports – the concern that aliens were entering the United States ostensibly to work for the petitioner, but finding other employment after securing immigration benefits.

In this context, it is highly relevant to examine the beneficiary's income tax returns from 2006 and 2007, submitted in furtherance of the beneficiary's adjustment application. Both of those tax returns identified the beneficiary's occupation as "housewife." The beneficiary hand-signed both tax returns, her signature less than two inches from the word "housewife" on the same line (which effectively rules out any claim that the tax preparers used the term "housewife" without her knowledge and consent). This evidence continues the pattern already established – there is negligible evidence that the beneficiary's work for the petitioner continued after the approval of the petition. Instead, her own tax documents indicate that she was a "housewife" for two years before briefly accepting part-time employment at a restaurant.

The tax documents show the beneficiary's residential address on [REDACTED]. The petitioner has not submitted any evidence to show that the church owns, rents, or otherwise controls the property at that address, even though the beneficiary's "modest" compensation supposedly includes "living space."

The submission that included the tax returns also included an affidavit from [REDACTED], a district director of the petitioning church, who "extend[ed] an invitation for [the beneficiary] to undertake duties as a full time Church Worker" who "will be provided" basic material support. Tellingly, [REDACTED] described this work and compensation strictly in the future tense, and gave no indication that the beneficiary was, at that time, actively working for the church. The date on the affidavit is March 17, 2009, several years after the petitioner had supposedly begun her church work.

A supplement to the appeal focuses mainly on the financial status of the national organization and ongoing religious activity in Chicago. Counsel maintains "there is no requirement for the beneficiary to perform full time church work between the approval of the petition and when permanent residence is granted." Nevertheless, there is also no requirement that the beneficiary stop performing church work already in progress, and no requirement that we ignore the beneficiary's activities during that period. This is not an instance in which a newly-arrived alien is waiting for her paperwork to be completed before she begins a new position. The petitioner claims that the beneficiary has already been doing this work for several years in the United States. The beneficiary sought and accepted employment at a Japanese restaurant, which raises questions that the petitioner cannot answer simply by noting that she held valid employment authorization.

The petitioner has represented the beneficiary's work as a religious vocation, defined at the time of filing as "a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows." 8 C.F.R. § 204.5(m)(2) (2004). [REDACTED] previously defined "church workers" as "a special and select group who completely devote their lives to their vocation." Whatever else we may say about the beneficiary's church activities, the record is not persuasive about her complete devotion. We are left with the following:

- The petitioner claims the beneficiary "completely devote[d]" her life to the church many years ago.
- The petitioner claims that it intends to continue employing the beneficiary's services in the same manner.
- Counsel has repeatedly stressed that the beneficiary holds unrestricted employment authorization.
- Nevertheless, despite being free to continue working for a church to which she has "completely devote[d]" her life, the beneficiary herself repeatedly identified herself as a "housewife" on federal tax returns before accepting employment at a Japanese restaurant. Counsel's initial reaction to this employment was to claim, incorrectly, that the beneficiary worked "only on weekends" even though the employer's own words said otherwise.

USCIS compliance reviews at several sites have revealed a pattern in which aliens secure immigration benefits as “completely devote[d]” church workers and then, soon afterwards, secure other employment and reduce or end their commitment to the petitioning church. The existence of this pattern does not, by itself, justify broad-brush denials or revocations of all petitions from this petitioner, but it is highly relevant when the facts of an individual petition conform to that pattern.

We agree with the director’s finding that “[t]he petitioner has not submitted valid, documented evidence to establish employment on behalf of the beneficiary,” and that the failed compliance review casts significant doubt on the claims put forth in the petition. 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). 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.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the AAO will dismiss the appeal.

ORDER: The appeal is dismissed.