

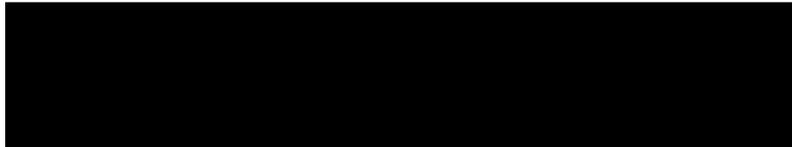
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**



C1

DATE: **APR 09 2012** 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,

2 Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director 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 a Pentecostal Christian 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 the director of arts for the petitioner's religious dance program. The director determined that the beneficiary had failed to continuously maintain lawful nonimmigrant status during the two years immediately preceding the filing date of the petition.

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 U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the beneficiary has been working as a minister or 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 USCIS regulation at 8 C.F.R. § 204.5(m)(11) requires that qualifying prior experience, if acquired in the United States, must have been authorized under United States immigration law.

An R-1 nonimmigrant religious worker may not work in the United States in any other capacity. 8 C.F.R. § 214.2(r)(1)(v). A nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status. 8 C.F.R. § 214.1(e).

The petitioner filed the Form I-360 petition on September 3, 2009. The petition form included the following information (petitioner's responses in *italics*):

Date of Arrival: *03/22/2005*

Current Nonimmigrant Status: *R-1 [religious worker]*

Has the [beneficiary] ever worked in the U.S. without permission? *No*

Detail[ed] description of the alien's proposed daily duties: *Responsible for planning, expanding and overseeing the creative dance ministry that honors God and inspires the congregation; assist in planning and implementation of major ministry events; develop programs to reach out to community youth; work with children and*

*choreograph dances set to liturgical music; seek out opportunities to spread the teachings of Christianity through dance, drama, poetry and music; work in Child Development Center; perform other duties in capacity of Director of Arts as needed.*

██████████ bishop of the petitioning church, signed the petition form, thereby certifying under penalty of perjury that the petition and the evidence submitted with it were true and correct.

The petition included a copy of the petitioner's 2009 budget, which listed the following projected expenses:

Administration	\$1,293.695
Congregational Care	38,500
Education	15,075
Evangelism	13,790
Operations	176,252
Worship	92,820
Youth	51,150
NDLC	201,500
Salt	8,000
Information Technology	162,200

On November 5, 2009, the director issued a request for evidence (RFE), instructing the petitioner to submit evidence of the beneficiary's past employment history, including evidence of compensation. The director also requested a detailed description of the beneficiary's duties. The petitioner submitted copies of Internal Revenue Service (IRS) Form W-2 Wage and Tax Statements and IRS transcripts, reporting the salary that the petitioner paid to the beneficiary in 2007, 2008 and 2009.

The petitioner also submitted a January 26, 2010 letter from ██████████ stating:

The specific duties involved with this position include:

- Provide effective management of ministry resources.
- Provide instruction for children and adults.
- Choreograph dances set to liturgical (as opposed to secular) music.
- Coordinate and supervise arts volunteers.
- Weekly worship presentations.
- Assist in planning and implementation of major ministry events, especially the Worship Explosion, Christmas, Easter, and anniversary programs.
- Seek out opportunities to spread the teachings of Christianity through dance, drama, poetry and music.
- Coordinate outside requests for special performances.
- Development, as well as participation in workshops and conferences.
- On-going departmental leadership training.
- Preparation and oversight of division budget.

- Preparation of staff report.
- Attend staff meetings.

The wording of the letter indicated that [REDACTED] described not only the job that the beneficiary would be doing in the future, but also the position that the beneficiary held at “the present time.”

An accompanying “Job Schedule for Director of Arts” showed various duties between the hours of 8:30 a.m. and 8:30 p.m. The only duties listed after 6:00 p.m. were “Prepare staff report” and “Prayer meeting” (Mondays), “Congregation Bible Study” (Tuesdays), “Step/Mime rehearsal” (Wednesdays), “Dance Rehearsal” (Thursdays) and “Extra Practices” (Fridays).

The director approved the petition on February 16, 2010, and turned to the Form I-485 adjustment application that the beneficiary had filed concurrently with the filing of the Form I-360 petition. As part of the adjustment application, the beneficiary completed and signed Form G-325A, Biographic Information. That form included the warning: “Severe penalties are provided by law for knowingly and willfully falsifying or concealing a material fact.” Instructed to list his “employment [during the] last five years,” *i.e.*, from 2004 to 2009, the beneficiary listed only his position as the petitioner’s director of arts.

On April 14, 2010, the director issued an RFE to the beneficiary, relating to his pending adjustment application. Among other things, the director requested “signed copies of the beneficiary’s 2009 federal income taxes. The copies of the annual tax returns should include all W-2s, forms (such as Form 1099-MISC), schedules, and statements.”

The petitioner’s response to the RFE included a letter from [REDACTED] dated May 3, 2010. Except for the date, the letter is identical to [REDACTED] earlier letter dated January 26, 2010, including the same list of duties.

The beneficiary’s response also included a copy of his IRS Form 1040 income tax return. The return showed \$21,569 in salary, matching the amount shown on an IRS Form W-2 from the petitioner. The return also included Schedule C, Profit or Loss from Business (Sole Proprietorship), including the following information (the beneficiary’s information in *italics*):

Principal business: *Security*

Business name: [REDACTED]

Gross income: *\$6,472*

Car and truck expenses: *\$6,023*

Utilities: *\$600*

Total expenses: *\$6,623*

Net profit (or loss): *(\$151)*

Of the total number of miles you drove your vehicle during 2009, enter the number of miles you used your vehicle for:

a. Business: *10,950*; b. Commuting: *7,550*; c. Other: *1,050*

On May 25, 2010, the director issued another RFE to the beneficiary, stating that the beneficiary's documentation contained evidence of "unauthorized employment working for [REDACTED]". The director instructed the beneficiary to submit specific information, with corroborating evidence, showing the beneficiary's work schedule, compensation, and other details regarding his work for [REDACTED].

In response, the beneficiary submitted a letter from [REDACTED] of [REDACTED] stating:

[The beneficiary] was employed by [REDACTED] for a period of time. [The beneficiary] only worked for this company from 6pm to midnight Sunday through Saturday as when he doesn't have any ministry commitments. The contract was not assigned or require day time hours [sic].

The pay for this position is \$11.00 per hour. [The beneficiary] works no more than an average of 8-12 hours per week.

My relationship with [the beneficiary] derives from our working together at [the petitioning church] where I work as the Director of Church Operations. I too, am the owner of [REDACTED] and asked [the beneficiary] to work for my company, providing security for the [petitioner's] site.

The beneficiary submitted copies of two unprocessed paychecks from [REDACTED] to the beneficiary. One, dated November 15, 2007, was in the amount of \$396. The other check, dated December 3, 2007, was in the amount of \$275. Copies of two sample biweekly schedules from 2009 indicated that the beneficiary worked 6:00 p.m. to midnight shifts on Friday, July 3; Saturday, July 4; Friday, July 10; Monday, November 16; Friday, November 20; Monday, November 23; and Friday, November 27.

The petitioner had previously submitted a schedule indicating that the beneficiary had prayer meetings on Monday nights, and meetings and practices on Friday nights. The schedule contradicts [REDACTED] claim that the beneficiary had no "ministry commitments" after 6:00 p.m.

On July 20, 2010, the director issued a notice of intent to revoke (NOIR) the approval of the Form I-360 petition. The director stated that the beneficiary's work as a security guard from at least 2007 to 2009 amounted to unauthorized, and therefore disqualifying, employment.

In response to the NOIR, the petitioner submitted a lengthy statement from [REDACTED]. Some of the bishop's claims resurface on appeal, and the AAO will address those claims in that context. [REDACTED] stated: "we were forced to hire security after break-ins and theft occurred on the church premises," and that the beneficiary "was responsible to apprehend an intruder on one occasion." The petitioner did not submit evidence, such as police reports, to corroborate these claims. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

██████████ asserted that the beneficiary only performed security work on church grounds, under the supervision of a church elder ██████████ contended that the beneficiary's employment by a secular company "does not necessarily mean that he intended or that we intended for him to engage in employment outside the employing ministry." The petitioner failed to explain, persuasively, how the arrangement described was unintentional. ██████████ repeatedly signed detailed lists of the beneficiary's duties, none of which ever showed security patrols among those duties. The beneficiary's work schedule for the petitioner showed church activities after 6:00 p.m., but no security work. The petitioner did not include the beneficiary's security salary on the IRS Forms W-2 that it issued to him, and the beneficiary himself, on his 2009 income tax return, reported his security income separately from his church income.

It is clear that all parties involved recognized the beneficiary's security work as being separate employment, compensated independently by a second employer. The owner of ██████████ may also be a church elder, but that does not cause the beneficiary's security work to be an extension of his religious occupation, regardless of the location where that security work took place.

██████████ signed Form I-360 under penalty of perjury, but that form contained the false claim that the beneficiary had not worked without authorization. Also ██████████ did not explain why the beneficiary's employment schedule listed church activities on Monday and Friday evenings, contradicting ██████████'s claim that the beneficiary had no church duties after 6:00 p.m.

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. 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. The credibility issues outlined above, therefore, cast doubt on the petitioner's unsubstantiated claim that the beneficiary's security work only took place at the church. That claim does not appear to be consistent with the beneficiary's IRS Schedule C, which indicated that he put nearly 11,000 miles on his car for "business," not counting commuting, in 2009.

The petitioner submitted copies of IRS Form 1099-MISC Miscellaneous Income statements, showing that ██████████ paid the beneficiary \$6,171 in 2008 and \$6,472 in 2009. In a new letter dated August 17, 2010, ██████████ stated that the beneficiary routinely worked one or two shifts per week, and added: "Other members of the church were also hired to provide security. Because we wanted to pay for the time they spent, my security company scheduled them and paid them for spending their evenings and night time to guard our church premises from intruders." The IRS Forms 1099-MISC show low amounts, consistent with part-time employment, but they cannot corroborate any other details of the beneficiary's employment.

The petitioner submits a facsimile copy of a contract between the petitioner and ██████████ dated May 23, 2007, setting the rate for security services at \$20 per hour. An addendum indicates that "Proposal #3" would cost \$8,160 for a month of service, while "Proposal #4" would cost \$6,240 for

a month. The submitted fragment does not include proposals 1 or 2, or indicate which of the proposals the petitioner accepted. The monthly costs described above would annualize to roughly \$97,920 for proposal 3, and \$74,880 for proposal 4. The 2009 budget, submitted previously, did not include any line item identified as security expenses, and the line item amounts that were close to the above sums clearly pertained to unrelated expenses (such as \$92,820 for “Worship”).

The petitioner submitted no verifiable first-hand evidence, such as bank records, to show what, if anything, the petitioner paid [REDACTED] on a monthly basis. The omission is significant, given that the previously submitted budget did not specifically mention security services as an expense, even though the contract with [REDACTED] was purportedly in effect when the petitioner approved the budget on January 13, 2009.

The director revoked the approval of the petition on September 7, 2010. The director quoted [REDACTED] assertion that the beneficiary only patrolled the church grounds, and that this employment “does not necessarily mean that he intended or that [the petitioner] intended for him to engage in employment outside the employing ministry.” The director stated: “The petitioner or beneficiary may have not intended the unauthorized employment to occur. However, 8 C.F.R. § 214.1(e) clearly state[s] that the beneficiary’s employment as a security guard for [REDACTED] from 2007 until 2009 constitutes a failure to maintain status.” Because the beneficiary was no longer in lawful nonimmigrant status when the petitioner filed the petition, he was not eligible for classification as a special immigrant religious worker at the time of filing. The director also discussed the potential economic impact of allowing R-1 nonimmigrants to engage in unauthorized, secular employment.

On appeal, counsel states that the director cited the wrong regulation in the revocation notice: “[the director] four times erroneously cites to 8 C.F.R. § 214.1(c) as authority to revoke the special immigrant religious worker visa petition. . . . 8 C.F.R. § 214.1(c) is inapplicable and irrelevant.” The director did not cite the regulation at 8 C.F.R. § 214.1(c) at all, let alone “four times,” in the revocation notice. Rather, the director cited the regulation at 8 C.F.R. § 214.1(e), which states that unauthorized employment constitutes a failure to maintain nonimmigrant status. That regulation is directly relevant to the matter at hand, because the regulation at 8 C.F.R. § 204.5(m)(4) requires the beneficiary to have been “in lawful immigration status” for any employment in the United States during the two years immediately preceding the filing of the petition.

The appeal includes a facsimile copy of the director’s decision. The reduced size and low image resolution of the facsimile has made the letter “e” sometimes resemble a “c.” Review of the file copy of the notice of revocation confirms that there are no typographical errors in which the director mistakenly substituted “(c)” for “(e)” in the regulatory citations. Counsel appears to have misread a poor-quality copy of the decision. Nevertheless, the director not only cited the regulation in question, but also quoted it at length, including the relevant passage about maintaining status. Counsel does not address the text of the regulation, instead asserting repeatedly (but incorrectly) that the director cited the wrong regulation.

Counsel then claims that the “[n]otice of decision utterly failed to address any of the petitioning church’s legal arguments or factual statements raised in its response to the NOIR.” Counsel goes on

to repeat many of the petitioner's prior assertions. The director acknowledged, and quoted, [REDACTED] claim that neither the petitioner nor the beneficiary intended for the beneficiary to engage in unauthorized employment. The director concluded, however, that the claimed lack of intent did not erase the petitioner's documented secular employment, and consequent failure to maintain status.

The petitioner has submitted no persuasive evidence to confirm the claim that the beneficiary worked only on church property as a security officer. Even if this claim is true, however, the beneficiary's employment with [REDACTED] was not qualifying religious employment with a tax-exempt, non-profit religious organization. Rather, the beneficiary performed inherently secular work for a secular, for-profit employer, without seeking or receiving USCIS authorization to do so. Such work constitutes a failure to maintain R-1 nonimmigrant status, whether or not he worked on church property, and whether or not the owner of the company belonged to the same church.

Counsel protests the director's assertions regarding the economic impact of the beneficiary's unauthorized employment, and states that these concerns are not good and sufficient cause to revoke the approval of the petition. The AAO agrees with counsel that the economic discussion was not directly relevant to the matter at hand. The director, however, did not state that the economic effects were, themselves, grounds for revocation. Rather, it appears that the director was offering a rationale for the regulatory requirement that unauthorized employment cannot qualify a nonimmigrant for permanent immigration benefits. This short (one-paragraph) discussion by the director does not amount to prejudicial error. One could remove the entire paragraph without in any way weakening or altering the rest of the discussion in the revocation notice.

Counsel cites section 245(k) of the Act, which reads, in full:

An alien who is eligible to receive an immigrant visa under paragraph (1), (2), or (3) of section 203(b) (or, in the case of an alien who is an immigrant described in section 101(a)(27)(C), under section 203(b)(4)) may adjust status pursuant to subsection (a) and notwithstanding subsection (c)(2), (c)(7), and (c)(8), if—

- (1) the alien, on the date of filing an application for adjustment of status, is present in the United States pursuant to a lawful admission;
- (2) the alien, subsequent to such lawful admission has not, for an aggregate period exceeding 180 days—
  - (A) failed to maintain, continuously, a lawful status;
  - (B) engaged in unauthorized employment; or
  - (C) otherwise violated the terms and conditions of the alien's admission.

The statute quoted above concerns adjustment of status, not the antecedent petition phase. The regulations at 8 C.F.R. §§ 204.5(m)(4) and (11) do not allow 180 days of unauthorized employment or failure to maintain status, and section 245(k) of the Act does not require USCIS to approve any petition on the beneficiary's behalf. Rather, section 245(k) of the Act presumes an approved petition or other avenue to adjustment of status.

Even if section 245(k) of the Act applied at the petition stage, counsel's assertions do not withstand serious analysis. Counsel states that the beneficiary qualifies for section 245(k) relief because he only worked one or two days a week, and therefore "could not have exceeded working 180 days for [REDACTED] Counsel, thus, contends that the beneficiary generally maintained lawful status from 2007 to 2009, punctuated by brief violations during his shifts as a security guard. Counsel fails to cite to any regulations or case law to support this position. By accepting unauthorized employment, the beneficiary failed to maintain status within the meaning of the regulation at 8 C.F.R. § 214.1(e). Once that occurred, it is not a question of how often future violations occurred, or how long each violation lasted. The statute does not count only active violations of status; it refers to periods of time in which the alien "failed to maintain, continuously, a lawful status." Once an alien engages in an activity that violates his status, "failure to maintain status" continues until an affirmative act restores the alien to lawful status.

Statutory interpretation begins with the language of the statute itself. *Pennsylvania Department of Public Welfare v. Davenport*, 495 U.S. 552 (1990). Statutory language must be given conclusive weight unless the legislature expresses an intention to the contrary. *Int'l. Brotherhood of Electrical Workers, Local Union No. 474, AFL-CIO v. NLRB*, 814 F.2d 697 (D.C. Cir. 1987). The plain meaning of the statutory language should control except in rare cases in which a literal application of the statute will produce a result demonstrably at odds with the intent of its drafters, in which case it is the intention of the legislators, rather than the strict language, that controls. *Samuels, Kramer & Co. v. CIR*, 930 F.2d 975 (2d Cir.), *cert. denied*, 112 S. Ct. 416 (1991).

The AAO takes particular note of the word "continuously" in the statutory language. By its plain wording, section 245(k) of the Act does not give relief to an alien who "failed to maintain, continuously, a lawful status" "for an aggregate period exceeding 180 days." Even if counsel were correct to claim that every individual shift was a separate and self-limiting failure to maintain status, the beneficiary did not "maintain, continuously, a lawful status" from 2007 to 2009, because he performed unauthorized work "once or twice a week" throughout that period. The beneficiary's failure "to maintain, continuously, a lawful status" lasted for more than two years, well beyond the statutory threshold of 180 days.

Counsel maintains that the beneficiary will, in the future, work solely as a religious worker. This assertion is not relevant to the stated ground for revocation, which concerned the beneficiary's past actions rather than his future intentions.

If the director had known about the beneficiary's secular security work at the time of adjudication, then the director would have denied the petition. The director approved the petition in error, and properly revoked the approval on notice once that error became apparent. Accordingly, the AAO will dismiss the appeal.

**ORDER:** The appeal is dismissed.