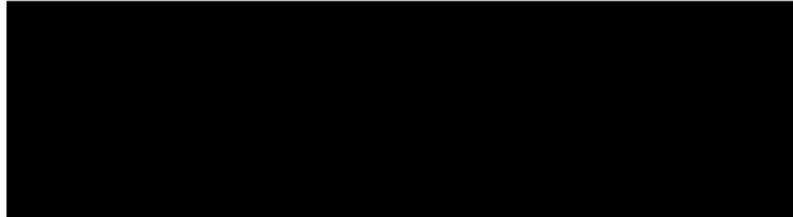


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



C,

Date: **AUG 01 2012** 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 May 22, 2006. On further review, the director determined that the beneficiary was not eligible for the visa preference classification. Accordingly, the director properly served the petitioner with Notices of Intent to Revoke (NOIR) the approval of the preference visa petition stating the reasons therefore and subsequently exercised her discretion to revoke the approval of the petition on June 23, 2011. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

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 assistant religious education director/instructor. In the Notices of Intent to Revoke, issued on July 11, 2008 and January 20, 2009, the director questioned whether the petitioner had established that the beneficiary had the requisite two years of qualifying work experience immediately preceding the filing of the petition, and discussed the negative findings of a site visit conducted at the petitioner's location which called into doubt the petitioner's credibility. In the final decision, issued on June 23, 2011, the director found that the petitioner had not submitted sufficient evidence to overcome the grounds for revocation.

On appeal, the petitioner submits a brief from counsel, copies of the beneficiary's tax returns for the years 2007 to 2010, and a copy of the petitioner's response to the January 20, 2009 NOIR with accompanying evidence.

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).

At the time the petition was approved in 2006, the regulation at 8 C.F.R. § 204.5(m)(1) provided:

(m) *Religious workers.* (1) An alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a 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 a member of a religious denomination which has a bona fide nonprofit religious organization in the United States. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or 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. All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition. Professional

workers and other workers must obtain permanent resident status through immigration or adjustment of status on or before September 30, 1997, in order to immigrate under section 203(b)(4) of the Act as section 101(a)(27)(C) special immigrant religious workers.

The Form I-360 petition was filed on January 9, 2006. In a letter accompanying the petition, the petitioner stated, in part:

We are petitioning to have [redacted] assume, permanently, the duties as an [redacted] and Bethlehem Academy.

[redacted] was established on February 2, 1979. Since our Church established in 1979, our church has experienced steady growth in serving the spiritual needs of the Korean-American community in Los Angeles area. We have now grown to the point we require and we can support an [redacted] to support our Church and Academy.

[redacted] duties will be conduct Bible Study Sessions, discussion groups, and retreats. Also plan religious mission studies and activities. Responsible to develop, organize and religious program and promote religious education to church members. Creates religious study courses and program, provide spiritual counseling and guidance and assistance to church members. Also make Bible Study Book on text, and other material for Sunday School and Academy After School Program. Also teaching and educating all the religious instructors with in Bible, New project program and Special Activities.

The letter further stated that, in the prospective position, the beneficiary would work 40 hours per week and be paid \$2,200.00 per month. The petitioner also submitted a "Certificate of Employment," dated December 29, 2005, which asserted that the beneficiary held the position of assistant religious education director/instructor from February 2003 to the present and listed the same duties, hours per week, and salary as those for the prospective position.

At the time of filing the petition, the petitioner submitted a copy of a Form I-797, Approval Notice, indicating that the beneficiary was granted R-1 nonimmigrant status which authorized his work for the petitioner for the period of February 10, 2003 to February 10, 2006. The petitioner also submitted copies of Form 941, Employer's Quarterly Federal Tax Return, for all of 2004 and the first three quarters of 2005, along with forms showing the breakdown of wages paid to individual employees for the last quarter of 2004 and the first three quarters of 2005. Additionally, the petitioner submitted copies of the beneficiary's Forms W-2 and Forms 1040, indicating that he earned \$14,400 from the petitioner in 2003 and \$21,600 in 2004. Copies of processed paychecks from the petitioner to the beneficiary indicated approximately monthly payments of \$1,612.35 for the period from November, 2004, to June, 2005, and \$1,790.95 from July, 2005, to November, 2005. The petitioner also submitted a letter from California Graduate

School of Theology, dated December 7, 2005, stating that the beneficiary is "currently enrolled" at the school and "pursuing a Bachelor of Arts degree."

The petition was approved on May 22, 2006.

On July 11, 2008, the director issued a Notice of Intent to Revoke the petition which stated, in pertinent part:

The petitioner, [REDACTED], is located at [REDACTED]. The church has approximately 300 members. The petitioner has petitioned for 8- I-360 religious workers and multiple I-129 petitions as well. On or about June 15, 2007 a site check was conducted at the location in Los Angeles. According to the investigating officer, the site check was done between 11:20 am and 1:00 pm. No employees other than the signatory, [REDACTED], were available at the church for interview. According to the senior pastor, [REDACTED], all the employees were at lunch. According to the investigating officer, no one was seen entering or leaving the church during the site check. According to the DE6 wage reports and information given by the petitioner, the church employs at least 8 full time individuals. The I-360 petitions submitted by the petitioner are for full-time employees.

The investigating officer contacted [REDACTED], the director of the day care located [REDACTED]. According to [REDACTED], several of the full time I-360 religious workers work at this location. [REDACTED] stated when questioned about the employment of the different individuals said in part, 3 of the named individuals only worked part time. The service questions whether or not the individuals worked as religious workers at a day care facility.

According to [REDACTED], one of the I-360 beneficiaries no longer works for the church. The investigating officer called the beneficiary. The beneficiary claimed he currently worked for the church. Of the eight I-360 petitions filed, half appear to be questionable in their claim of full time employment. When over half of the I-360's petitioned for are not working in a full time religious capacity, this fact of record raises doubt on the petitioner's claim of full-time religious work for the beneficiary, [REDACTED], in this instant petition.

According to the I-360 petition, the beneficiary is to work full time as an educational pastor. However, there are two other supposedly full time employees with similar titles and duties which also have I-360 petitions, and would work full time. The service questions the petitioner's need for 3-employees involved in religious education for a congregation of 300 members.

In the NOIR, the director also stated that the beneficiary's enrollment in college further called into doubt the beneficiary's full time employment in a religious occupation. The notice instructed the petitioner to submit further evidence, including the following:

Submit a detailed time line of the beneficiary's work history. Show time and day for all activities which require the work of an educational pastor on a full time basis. Explain why it takes 3 full time employees with similar job descriptions, in the area of religious instruction, to meet the needs of a 300 member congregation.

In a letter dated August 4, 2008, responding to the notice, the petitioner stated the following with regard to the site check:

On June 15, 2007, a site check was performed by a representative from the Service at the church location located at [REDACTED]. On said date, as the agent will so confirm, the Beneficiary, [REDACTED], had experienced car trouble and had taken time off to address this. The investigating officer was so informed, the office telephoned [REDACTED] and [REDACTED] confirmed this fact to the investigator. Furthermore, said site check was performed during the lunch hour as previously noted and all of the church's employees were at lunch. I was exceptionally cooperative with the investing [sic] officer and it seemed after his site check that everything was in order, as it should have been. ...

[REDACTED] is employed off site, at [REDACTED] facility. [REDACTED] is employed at our [REDACTED] site. [REDACTED] is a day care director and did not specifically state that [REDACTED] was a part time employee. If [REDACTED] would have been questioned as to [REDACTED] specific duties, hours, or any other information, [REDACTED] would not have represented specifically that he was a part time employees, since he is not.

With regard to the director's questions regarding the beneficiary's employment, the petitioner asserted that the beneficiary "has been working continuously as an Assistant Religious Education Director/Instructor from February 2003 to present as a full time employee," and submitted a copy of the beneficiary's R-1 approval notice and copies of the beneficiary's Forms W-2 and tax returns for the years 2003 to 2007. The petitioner stated that people frequently work full time while attending school and commended the beneficiary for wanting to further his religious education. The petitioner asserted that the beneficiary "continues to study in the evening and on his days off on Mondays." In the letter, the petitioner also provided a weekly breakdown of the beneficiary's duties as well as a daily schedule.

Although the petitioner asserted that the beneficiary pursues his studies on Mondays and in the evenings, the daily schedule submitted by the petitioner indicated that the beneficiary works until at least 8 pm every day except Tuesdays, when he works until 5 pm, and Mondays when he does not work. No documentary evidence was submitted to establish the beneficiary's class schedule and verify that it would not interfere with the beneficiary's purported full time work schedule.

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)). Additionally, the petitioner's assertion that the beneficiary is employed only at the church's South Hoover Street location directly conflicts with statements at the time of filing that the beneficiary would be working at both [REDACTED]

[REDACTED] 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). 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. *Id.* at 591-92.

The petitioner did not respond to the director's questions regarding the need for the beneficiary's full time services in addition to two other full time employees involved in religious instruction. Nor did the petitioner provide any explanation for the inconsistencies revealed during the site visit regarding the part time schedules of other beneficiaries whom the petitioner had claimed were full time employees.

On January 20, 2009, the director issued a second NOIR. In the notice, the director again discussed the negative findings of the June 15, 2007 site visit, specifically noting various assertions made by [REDACTED] and [REDACTED] regarding several other beneficiaries which were either found to be false through further investigation or which contradicted assertions by the petitioner on the Form I-360 petitions regarding the full time status and religious nature of the aliens' work. The director stated:

In view of the investigating officer's findings, the petitioner failed (with findings of fraud) the religious worker compliance review. As such, it appears that the petitioner did not meet the filing requirements of the category, and therefore, the beneficiary of this petition and/or other petitions may have been approved in error.

The director afforded the petitioner 30 days to submit additional information, evidence or arguments to support the petition, and instructed the petitioner to complete a spreadsheet with additional information regarding all employees hired by the petitioning organization since 2004. The notice also instructed the petitioner to submit a copy of an organizational chart showing the petitioner's hierarchy and staffing levels, as well as copies of the petitioner's Form 941, Quarterly Wage Reports, for the last six quarters including the names, social security numbers, and total wages earned by every employee for each quarter.

In a letter dated February 18, 2009, the petitioner repeated the statements made in its August 4, 2008 letter that, on the date of the site visit, the beneficiary was having car trouble and all other employees were out to lunch. In response to the request for the spreadsheet, the petitioner provided information on one employee, [REDACTED], asserting that the petitioner filed an I-129

on his behalf and that he left the church in November 2008 because “his I-129 R visa was expired.” The director had noted in the NOIR that, while [REDACTED] had been petitioned by the church as a full-time assistant director for the Sunday school, [REDACTED] stated that [REDACTED] works part-time as the driver for the day care facility. The petitioner did not attempt to explain the inconsistencies regarding [REDACTED] or any of the other aliens discussed in the NOIR.

The petitioner asserted that the “Academy” has four employees, and the church has five including the beneficiary, listed as “Assistant Education Director/Instructor,” as well as an “Education Missionary (Young Adult) and an “Education Director (Junior & High School).” The petitioner submitted Quarterly Wage Reports for the third and fourth quarters of 2007 and all four quarters of 2008, but did not include the names, social security numbers and total wages earned by each employee as requested. The petitioner again submitted copies of the beneficiary’s R-1 approval notices and copies of the beneficiary’s tax documents for 2003 to 2007.

The director issued a Notice of Revocation of the petition on June 23, 2011. In the decision, the director noted that the regulation at 8 C.F.R. § 204.5(m)(1), as was in effect at the time the petition was approved, required that religious workers “must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.” The director noted that, in determining whether the beneficiary has performed the same religious work continuously, USCIS will look to the individual’s actual duties, and that it will also refer to the mandatory site review for evidence of consistency in the full-time employment of religious workers. The director stated that the petitioner had failed to address inconsistencies cited in the NOIRs, including the beneficiary’s purported engagement in full-time work while enrolled in school and the petitioner’s need for the beneficiary’s full time service despite two other full-time employees in similar positions “to meet the needs of a 300 member congregation.” The director also determined that the petitioner had not sufficiently addressed the inconsistencies and findings of fraud from the site visit regarding the other aliens for whom the church has filed petitions. The director concluded that the petitioner had not submitted sufficient evidence to overcome the grounds for revocation.

On appeal, the petitioner resubmits a copy of the letter and accompanying evidence originally submitted in response to the January 20, 2009 NOIR. In his brief, counsel for the petitioner states, in part:

On or about June 15, 2007, a compliance review was conducted by the Service, which occurred during the lunch hours of the church. It was not until January 20, 2009, was then a Notice of Intent to Revoke submitted to the Petitioner requesting additional information and documentation. Petitioner forwarded the requested information to the Service within in [sic] the allotted time. However, on or about June 23, 2011, the Service submitted its Notice of Revocation of Immigrant Petition. ...

It is important to note that the decision was rendered on June 23, 2011, based on a Response to a Notice of Intent to Revoke issued in 2009, which was based on information which was allegedly gathered at an on site inspection in 2007.

Answers would clearly seen [sic] confusing at the least considering the fact that many of the former employees were not or had left their place of employment over this long period of time.

Since no information had been previously requested of the Petitioner regarding the Beneficiary, there should be no issue presently relevant as to the qualifications of the beneficiary.

The AAO notes that, contrary to the statements of counsel, USCIS first issued a NOIR regarding the site visit on July 11, 2008. In that notice, the director specifically instructed the petitioner to submit additional evidence in support of the petitioner's assertions regarding the beneficiary's full-time employment.

The AAO agrees with the director's finding that the petitioner failed to establish that the beneficiary meets the eligibility requirements under 8 C.F.R. § 204.5(m)(1)(2006), and that the petitioner has not resolved inconsistencies which call into doubt its credibility. In both of the NOIRs, the director noted findings from the June 15, 2007 site visit which called into doubt assertions made by the petitioner on behalf of several aliens for whom the church had filed petitions. Apart from the petitioner's assertion that all of its employees were at lunch throughout the 11:20 am to 1:00 pm site visit as an explanation for their absence, the petitioner has not offered explanations or evidence for any of the serious inconsistencies discussed in the notices. The AAO agrees with the director that these unresolved inconsistencies call into doubt the reliability and sufficiency of the evidence and assertions offered in support of the instant visa petition. *Matter of Ho*, 19 I&N at 582, 591.

The petitioner has asserted that the beneficiary was continuously employed as a full-time assistant religious education director/instructor since 2003. However, the petitioner has made inconsistent statements about the beneficiary's employment history which have not been resolved. At the time of filing, the petitioner indicated that the beneficiary had been and would continue to be employed at both the church and the "academy." However, in response to the July 11, 2008 NOIR, in which it was noted that [REDACTED] stated several of the academy's employees are working part-time performing secular duties, the petitioner argued that [REDACTED] remarks did not apply to the beneficiary as he was only employed at the church address. Further, in response to the director's questions of whether the beneficiary had in fact been employed full-time as claimed while enrolled in California Graduate School of Theology, the petitioner asserted without evidence that the beneficiary studies in the evenings, but submitted a purported work schedule indicating that the beneficiary worked at the church five evenings per week. The petitioner has not provided an explanation regarding the its need for a full-time assistant religious education director/instructor in addition to a full-time education missionary and a full-time education director for a 300 member congregation. The petitioner's failure to resolve the inconsistencies regarding the beneficiary's employment history and schedule, together with the credibility issue discussed

above, lead the AAO to agree with the director's conclusion that the petitioner has failed to establish that the beneficiary has the requisite two years of continuous, qualifying work experience immediately preceding the filing of the petition.

Because the AAO agrees that the petitioner failed to overcome the grounds for revocation, the AAO will affirm the director's decision and dismiss the appeal.

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.