

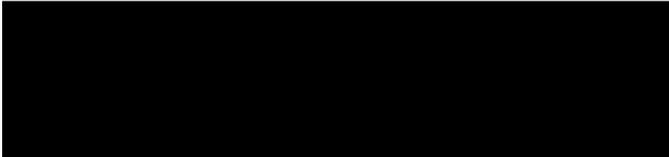
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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DATE: **MAY 16 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 with the field office or service center that originally decided your case by filing a 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, Nebraska Service Center (hereafter “NSC director”), initially approved the employment-based immigrant visa petition. Upon further review, the NSC director determined that the petition had been approved in error. The NSC director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The NSC director subsequently reopened the proceeding and reinstated the approval of the petition. Subsequently, the Director, California Service Center (hereafter “director”) issued a new notice of intent to revoke, and then 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 member church of the [REDACTED], a Pentecostal Christian denomination. 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 minister. The director determined that the petitioner had failed to pass a compliance review, and that the petitioner’s claims were therefore not credible.

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 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 April 15, 2002. At that time, the regulation at 8 C.F.R. § 204.5(m)(4) read as follows:

*Job offer.* The letter from the authorized official of the religious organization in the United States must also state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration), or how the alien will be paid or remunerated if the alien will work in a professional religious capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support. In doubtful cases, additional evidence such as bank letters, recent audits, church membership figures, and/or the number of individuals currently receiving compensation may be requested.

In a letter dated March 25, 2002, [REDACTED], administrator/secretary of the petitioning church, described the beneficiary's intended employment as the petitioner's pastor in charge:

The pastor in charge will work a regular 5 day week, Monday to Friday, 8.00am to 5.00pm work schedule. . . .

As remuneration, we will pay [the beneficiary] the sum of \$28,000 per year. This is exclusive of benefits which shall comprise of full medical coverage for his entire family, full accommodation at church expense, the use of a vehicle operated and maintained at the expense of the church. His telephone bills shall also be paid by the church, and he will receive tuition and daycare assistance from the church for any minor children. His remuneration will also be reviewed annually.

By stating that the beneficiary's salary "is exclusive of benefits," [REDACTED] indicated that the beneficiary would receive benefits in addition to – rather than as part of – his \$28,000 annual salary.

On January 9, 2003, the NSC Director instructed the petitioner to submit evidence of its ability to pay the beneficiary's salary. The petitioner responded by submitting documentation of bank transfers from an [REDACTED] in London, England, to the beneficiary, each labeled a "missionary gift" in the amount of \$1,000. The dates on the bank transfers – 19 of them between August 2001 and January 2003, plus an extra \$500 payment in December 2001 – show payments about once a month, totaling \$12,000, less than half the salary stated in [REDACTED] letter. The petitioner did not submit any other evidence to show that arrangements were in place to provide housing, medical coverage, or any of the other claimed benefits.

The NSC director approved the petition on March 12, 2003, then revoked the approval on December 12, 2003, stating that the petitioner's religious denomination had apparently filed petitions for unpaid religious workers, who supported themselves with secular employment while volunteering for the church. The NSC director later reversed this finding, reopening the petition and again approving it on April 27, 2004. Jurisdiction over the petition later transferred to the California Service Center, ending the NSC director's involvement with the proceeding.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(12) reads:

*Inspections, evaluations, verifications, and compliance reviews.* The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

While the above regulation is part of a 2008 revision to the regulations (*see* 73 Fed. Reg. 72276 (Nov. 26, 2008)), compliance review procedures were already in place before November 26, 2008. Therefore, the above regulation described an existing process, rather than created a new one.

On Monday, July 13, 2009, a USCIS officer visited the petitioning church in Bridgeton, Missouri, to conduct a site inspection as part of a routine compliance review. The officer found the building locked and contacted the beneficiary by telephone. The beneficiary stated that he was on a temporary assignment to start a new church in Dallas, Texas, where he rented an apartment and received a salary of "\$596 a week." The beneficiary later informed the inspecting officer that the petitioning church is closed on Mondays but "would be open on any other day." On Thursday, July 16, 2009, the officer returned to the church and again found it locked and unoccupied. A representative of a business next door informed the officer that (in the officer's words) "no one is at the church location on a daily basis and that every great once in a while they see someone there."

In a notice of intent to revoke dated July 20, 2010, the director informed the petitioner of the above findings and stated "the petitioner failed the religious worker compliance review." The director instructed the petitioner to submit various types of evidence to establish the extent of its regular operations. Among other things, the director instructed the petitioner to submit documentation from the Internal Revenue Service (IRS) and Social Security Administration (SSA) showing the beneficiary's income from 2004 through 2009, as well as copies of recent pay statements.

In response to the notice, [REDACTED] stated that the church was empty during the second attempted site inspection because "the pastor had gone out to lunch." (The second visit occurred at 11:20 a.m.) [REDACTED] also claimed that the church's main entrance is "locked except during services; there is a second door at the back that leads directly into the office section of the building." [REDACTED] had no response to the claims of the neighboring office worker except to say "we really do not understand their reasons for making those observations."

[REDACTED] stated that the petitioner employs the beneficiary "as a full time Pastor . . . and he receives a salary of \$31,939.80 from [the petitioner] and will continue to do so for the foreseeable future." [REDACTED] also signed an accompanying employer attestation, indicating that the beneficiary "will receive a total Salary of \$30,869.8[0]." [REDACTED] did not explain why he provided two different figures for the beneficiary's intended salary. Neither the letter nor the attestation indicated that the beneficiary receives, or will receive, any benefits apart from the salary.

Copies of joint income tax returns identify the beneficiary's occupation as "pastor" and that of his spouse as "medical personnel." IRS transcripts show the following information:

	2006	2007	2008	2009
Wages, salaries, tips, etc.	\$144,869	\$122,423	\$126,309	\$128,843
Business income	2,000	-	-	-
Home mortgage interest	16,049	19,533	19,411	18,265
Rental real estate loss	-	-	-	9,302

The record does not contain the IRS Schedule C, Profit or Loss from Business, to identify the source of the \$2,000 in reported business income.

All the tax returns show the same Missouri address for the beneficiary, even though he lived in Texas for most of 2009 and was still there in early 2010 when he filed his 2009 tax return. The residential address matches the address of the property the beneficiary rented out in 2009.

IRS Form W-2 Wage and Tax Statements (or transcripts thereof) show that the petitioner paid the beneficiary the following compensation:

	2005	2006	2007	2008	2009
Wages, tips, other compensation	\$5,400	\$5,400	\$5,400	\$6,687	\$5,103
Clergy Housing	–	–	27,600	29,243	26,837

The transcripts do not reflect clergy housing; those amounts appear only on the IRS Forms W-2 themselves, which the petitioner did not submit for 2005 or 2006. The record contains transcripts for two IRS Forms W-2 from the petitioner for 2008, one showing \$450 paid to the beneficiary, the other showing \$6,237. The petitioner submitted a copy of the IRS Form W-2 for the larger amount.

An SSA printout showed that the beneficiary received \$5,400 in salary in 2006, consistent with that year's IRS Form W-2, plus an additional \$1,848 attributed to "self-employment." It is not clear how this \$1,848 from "self-employment" relates to the \$2,000 reported as "gross receipts or sales" on the beneficiary's 2006 IRS Schedule C. The petitioner submitted no other documentation from the SSA, and the printout shows only a request for information from 2006. There is no evidence that the beneficiary sought SSA printouts from other years.

Additional IRS Forms W-2 show that various private employers in the health care industry paid the beneficiary's spouse \$117,023 in 2007, \$120,072 in 2008 and \$123,740 in 2009. The aggregate figures on the Forms W-2 match those shown on the tax returns, except that the 2008 return reflects only the larger \$6,237 Form W-2 for the beneficiary, not the second, smaller \$450 Form W-2 reflected in an IRS transcript.

Weekly pay statements from mid-2010 show that the petitioner paid the beneficiary \$593.65 per week, with \$93.35 designated as "salary" and the remaining \$500.30 as "clergy housing." The total is very close to the "\$596 per week" figure that the beneficiary provided during the compliance review; the difference is within half a percent of the total.

The director revoked the approval of the petition on September 7, 2010, stating that the evidence does not show "that the petitioner has fully supported the beneficiary as agreed." The director also observed that the IRS documentation from 2007 onward indicates that the petitioner paid for the beneficiary's housing, while at the same time the beneficiary claimed home mortgage interest as a tax deduction. The director concluded:

The evidence on record raises significant questions and discrepancies regarding the full-time employment of the beneficiary. As presently constituted, it contains significant contradictory information regarding the beneficiary's compensation and does not demonstrate credibly that the remaining evidence provided by the petitioner is factual or accurate.

On appeal, counsel states that the director's decision is "not supported by statute or regulation" to allow the director to review the compensation that the beneficiary received after the approval of the petition. Section 204(b) of the Act, 8 U.S.C. § 1154(b), provides for the approval of immigrant petitions only upon a determination that "the facts stated in the petition are true." False, contradictory, or unverifiable claims inherently prevent a finding that the petitioner's claims are true. *See Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Systronics Corp. v. I.N.S.*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988). One reason that the compliance review process exists is to ensure that the petitioner's claims are true. In section 2(b)(1) of the Special Immigrant Nonminister Religious Worker Program Act, Pub. L. No. 110-391 (Oct. 10, 2008), Congress instructed USCIS to take steps "to eliminate or reduce fraud related to the granting of special immigrant status." Verification of the petitioner's claims is one important way that USCIS follows Congress's instruction to fight fraud in special immigrant religious worker petitions.

Counsel emphasizes [REDACTED] 2002 assertion that the beneficiary's "remuneration will . . . be reviewed annually." In counsel's estimation, this phrase unequivocally relieves the petitioner of any responsibility to abide by the initially stated terms of compensation. At the time the petitioner filed the petition, the regulation at 8 C.F.R. § 204.5(m)(4) required the petitioner to set forth the terms of compensation. That requirement becomes meaningless if the petitioner simply declares those terms to be subject to arbitrary revision.

Counsel asserts that the beneficiary's spouse has worked as a pharmacist since 2005, and because her job provides medical coverage and other benefits, the petitioner has no longer needed to provide the beneficiary with the level of benefits originally promised. The petitioner had never stated that the beneficiary's benefits were contingent on his spouse's continued unemployment. Counsel also observes that the beneficiary's income has never dropped below the poverty line, an assertion that has no relevance to the question of the petitioner's credibility or the beneficiary's eligibility for the immigrant classification sought.

Furthermore, the record contains no evidence that the petitioner ever abided by the original terms, before or after 2005. The record shows that, in 2002 and early 2003, after the petitioner had filed the petition, but before enough time had passed to allow for "annual" revision of the beneficiary's terms of compensation, the beneficiary received only \$1,000 per month, or \$12,000 per year, less than half the stated salary of \$28,000 per year. The record contains no receipts or other documentation to show that the petitioner has ever paid the beneficiary's rent, provided lodging for the beneficiary in a

home owned or leased by the petitioner, covered the beneficiary's medical expenses, or met the other terms stated in [REDACTED] 2002 letter.

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.

Counsel, on appeal, does not address the serious and unresolved credibility issues arising from the compliance review. The petitioning church was locked and empty during two site visits, including on a Thursday after the beneficiary specifically assured the USCIS officer that the church was open every day except Monday. A witness next door, in a position to see the traffic in and out of the petitioning church, said that visitors to the church were rare. The petitioner has simply dismissed this witness's assertions, without offering any substantive rebuttal.

The director, in the revocation notice, pointed out that both the petitioner and the beneficiary claim to have paid for the beneficiary's housing. Counsel, on appeal, does not address this issue at all.

When he spoke to the inspecting USCIS officer in July 2009, the beneficiary stated that his family's "St. Louis address is [REDACTED]. The beneficiary's income tax returns from 2007 (filed February 2008), 2008 (filed February 2009) and 2009 (filed February 2010) all stated the beneficiary's residential address as [REDACTED].

When the beneficiary filed his 2009 income tax return in February 2010, claiming an address in Missouri, he was living in an apartment in Dallas, Texas. It is, therefore, a matter of demonstrable fact that the beneficiary has provided inconsistent information about his place of residence.

With respect to the new church in Texas that the petitioner sent the beneficiary to plant, USCIS was able to verify that the church conducts weekly services in a hotel, but there is no evidence of full-time church activity to match what the petitioner has repeatedly stated has been the beneficiary's full-time, 40-hour-a-week occupation. Instead, the Missouri church's weekday vacancy and the dramatic reduction in the beneficiary's salary are consistent with a conclusion that the petitioner's ministers work part-time rather than full-time as claimed.

Rather than resolve these credibility issues on appeal, counsel calls attention to another one, claiming that "the beneficiary has never engaged in any unauthorized employment." The petitioner, too, had previously made a similar claim. On the Form I-360 petition, asked whether the beneficiary had ever worked in the United States without authorization, the petitioner answered "no." At the time of filing, however, the beneficiary was a B-2 nonimmigrant visitor for pleasure. The USCIS regulation at 8 C.F.R. § 214.1(e) states that B-2 nonimmigrants may not engage in employment. Nevertheless, the record shows that the beneficiary received \$1,000 per month to work for the

petitioner in 2002. Thus, the record leaves little doubt that the beneficiary has worked in the United States without authorization, and that the petitioner's and counsel's claims to the contrary are false.

The compliance review process called various fundamental aspects of the petition into question. Rather than produce credible evidence to rebut the findings, the petitioner, through counsel, has asserted that the director has no authority to compare the beneficiary's actual compensation to the petitioner's prior assertions about what that compensation would be. The petitioner has not overcome the failed compliance review, and therefore the director justifiably revoked the approval of the petition.

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.