



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

DATE: **MAR 15 2013** 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.

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, approved the employment-based immigrant visa petition. The Director, Spokane Field Office, revoked the approval of the petition on notice. The Administrative Appeals Office (AAO) rejected the petitioner's appeal as untimely, and subsequently moved to reopen the proceeding. The AAO will withdraw the field office director's decision. Because the record, as it now stands, does not support approval of the petition, the AAO will remand the petition to the Director, California Service Center, for further action and consideration.

The petitioner is a member of the [REDACTED]. At the time it filed the petition, it sought 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 pastor. The field office director revoked the approval of the petition based on credibility issues arising from inconsistent information provided by the petitioner and the beneficiary. Among other things, the beneficiary had begun working at a different church, and the petitioner and the beneficiary created an impression of continued employment at the petitioning church by essentially sending the same money back and forth.

The field office director lacked authority to revoke the approval of the petition, according to policy in effect since 1997. *Cf.* memorandum from Paul W. Virtue, Acting Executive Associate Commissioner for Programs, *Revocations of Employment-Based Petitions (I-140s)* (February 27, 1997) ("all petitions which are believed by field offices to have been incorrectly approved are to be returned to the approving center along with a memorandum of explanation"). Therefore, the revocation cannot stand, and the AAO hereby withdraws that decision. Rather than remanding this matter to the approving service center in Nebraska, the AAO shall remand it to the California Service Center, which currently holds centralized jurisdiction over special immigrant religious worker petitions.

Several of the petitioner's recent submissions, including the latest submission received on February 11, 2013, include bank documents intended to show the petitioner's financial viability. These materials do not address the issues of greatest concern to the AAO.

The field office director's notice of intent to revoke the approval of the petition referred to the USCIS regulation at 8 C.F.R. § 204.5(m)(7)(xii). That regulation appears only in the current version of the relevant regulations, which took effect November 26, 2008. Supplementary information published with the new rule specified: "All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008). The present petition, however, was not pending on the rule's effective date. The Nebraska service center director approved the petition on August 25, 2005, and the field office director initiated revocation proceedings on December 29, 2009. Between those dates, the petition was not pending. Therefore, the current regulations at 8 C.F.R. § 204.5(m) do not apply to this petition. Any further action taken on this petition must conform to the previous version of the regulations at 8 C.F.R. § 204.5(m).

Any further action must also reflect the factors discussed below.

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 . . . ; 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 USCIS regulation at 8 C.F.R. § 204.5(m)(4) in effect in 2005 reads:

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.

The petitioner filed the Form I-360 petition on March 1, 2005. The petitioner's initial submission included copies of Internal Revenue Service (IRS) Form W-2 Wage and Tax Statements, indicating the petitioner paid the beneficiary \$24,000 per year in 2003 and 2004. The IRS Forms W-2 showed \$2,370.36 in withholding for each of the two years, meaning that the beneficiary's net pay was \$21,629.64 per year. The petitioner also submitted photocopies of the beneficiary's pay checks from late 2004 and early 2005, showing that the petitioner paid the beneficiary's salary on a monthly basis. Given the figures on the IRS Forms W-2, each monthly paycheck should have been in the amount of \$1,802.47. The checks, however, were for \$1,716.99, leaving \$85.48 unaccounted for each month.

The IRS Forms W-2 for 2003 and 2004, as well as the beneficiary's IRS Form 1040 income tax returns for those years, all show a residential address for the beneficiary in Pullman, Washington, about 350 miles east by northeast from Portland. The 2003 tax return included Schedule C-EZ, Net Profit from Business, identifying the petitioner as the sole proprietor of a "News Paperer [sic] delivery" business.

Following the approval of the petition in August 2005, the beneficiary filed a Form I-485 adjustment application. That application includes materials that the petitioner did not submit with the Form I-140 petition. Nevertheless, the present remand order is not a final dispositive decision, but rather an intermediate notice that will result in a new decision from the California Service Center. As such, by discussing evidence from the adjustment application in this remand order, the AAO notifies the petitioner of the existence of that evidence as required by the regulation at 8 C.F.R. § 103.2(b)(16)(i).

On Form I-485, the beneficiary indicated that he resided on [redacted] Portland, Oregon. On an accompanying Form G-325A, Biographic Information, the beneficiary indicated that he had resided at various addresses in Portland or a nearby suburb (Aloha) from May 2002 until the date on the form (September 7, 2005). He identified only one employer, the petitioning church in Portland. Thus, the Portland-area residential addresses that the beneficiary claimed for 2002 through 2005 on Form G-325 do not match the Pullman address shown on the beneficiary's 2003 and 2004 IRS documents, including tax returns that the beneficiary himself signed.

By signing the income tax returns, the beneficiary declared, under penalty of perjury, that the returns were true and correct to the best of his knowledge. The Form G-325A advised that "[s]evere penalties are provided by law for Knowingly and willfully falsifying or concealing a material fact." On Form G-325A, past and present residential addresses and employers are material facts. Nevertheless, the beneficiary signed these documents even though they contained contradictory information.

More recently, the petitioner has submitted further tax documents indicating that the beneficiary filed Oregon Individual Income Tax Returns as a "Part-Year Resident" for 2003 and as a "Nonresident" for 2004, claiming the same Pullman address shown on the IRS documents. If the beneficiary resided in Portland in those years (as he claimed on Form G-325A), then his filing an Oregon nonresident tax return appears to constitute misrepresentation. If, on the other hand, the beneficiary resided in Pullman in 2004, then his Form G-325A contains false information. The two forms contradict each other and cannot both contain true and correct information regarding the beneficiary's residence during 2004.

During the adjudication of the adjustment application, the beneficiary submitted the following letters:

- A September 6, 2005 letter from Rev. [REDACTED], senior pastor of the petitioning church, stating that the beneficiary "currently serves in the position of Assistant Pastor . . . [earning] at least \$24,000.00 per year," and that the beneficiary "will be employed in the same capacity on a permanent and full-time basis."
- An undated letter from [REDACTED], elder and director of the [REDACTED] Lynnwood, Oregon, "offering [the beneficiary] full time employment as a pastor" including "a salary of approximately \$2500 per month."
- A July 26, 2006 letter from Rev. [REDACTED], general secretary of the [REDACTED] indicating that the beneficiary had worked as assistant pastor of the petitioning church from May 2002 to March 2006, and as senior pastor of [REDACTED] from April 2006 onward.
- A May 15, 2007 letter, also from Rev. [REDACTED], indicating that the beneficiary had worked as assistant pastor of the petitioning church from December 2002 to March 2006, and as senior pastor of [REDACTED] from April 2006 onward.
- A July 11, 2007 letter from [REDACTED], senior pastor of [REDACTED] Lynnwood, Washington, stating that the beneficiary "is the pastor of The [REDACTED], and has been pastoring the church since April of 2006. [The beneficiary] and his congregation meet here at [REDACTED] on Sunday afternoons at 1:00 PM." The beneficiary's adjustment application also included a copy of a second letter from [REDACTED], dated December 17, 2008 and addressed to an official of the [REDACTED]. The AAO will discuss pertinent aspects of this letter further below.
- A September 16, 2009 letter from [REDACTED], pastor of the petitioning church, stating: "[the beneficiary] was the assistant pastor of our church from July, 2002 through March, 2006. During that time he planted a church in August 2003, called [REDACTED] of Pullman, Washington and in April, 2005 called, the [REDACTED] of Seattle, Washington."

There are discrepancies in the various letters, disagreeing over when the beneficiary began working for the petitioner and later for [REDACTED]. Rev. [REDACTED] of the petitioning church originally stated that the beneficiary began working for the petitioner on January 1, 2004, but in a letter dated July 18, 2005, Rev. [REDACTED] stated that the earlier date was incorrect, and should have read "January 1, 2003." That date is consistent with the beneficiary's R-1 nonimmigrant religious worker status, which commenced in

December 2002. Most witnesses (including the beneficiary himself) stated that the beneficiary began working for [REDACTED] in April 2006, but Pastor [REDACTED] stated that the employment began in April 2005 (which would have been immediately after the petition's March 31, 2005 filing date). Rev. [REDACTED] in correspondence dated July 18, 2005, indicated that the beneficiary was still at the petitioning church at that time. The preponderance of available evidence indicates that the beneficiary left the petitioning church in 2006.

On December 29, 2009, the field office director issued a notice of intent to revoke the approval of the petition. That notice reads, in part:

On April 10, 2009, immigration officers . . . interviewed [the beneficiary] with his attorney, and he admitted that he received \$1,700 per month from the [petitioning church], with the agreement that he would return that money back each month to [the petitioning church]. In return the petitioner . . . agreed to sponsor the beneficiary . . . for his adjustment of status.

. . . The Church therefore, was not paying him a salary as required; the beneficiary was returning his salary to the church. The beneficiary stated that the money he returned to the church was not a tithe.

Although the beneficiary . . . worked at [the petitioning church] as an assistant pastor until July 2003, USCIS alleges that he submitted fraudulent employment verification letter [sic] and entered into a fraudulent agreement in an attempt to circumvent immigration laws and to obtain immigration benefits.

The petitioner's response included two letters. The beneficiary himself stated:

I believe that the adverse conclusion made by the USCIS regarding the approved petition is likely to be the result of misunderstanding or misinterpretations on the part of interviewing USCIS examiners and/or myself.

I wish to take this opportunity to affirm that I was employed by [the petitioner] from July 2002 to March 2006 and I was paid \$1,700.00 per month (after withholding deductions). In August 2003, the church dispatched me to a newly established church of the same denomination, [REDACTED] of Pullman, Washington. But, officially, I continued to remain a ministerial member of the petitioning church . . . and remained on its payroll. . . .

As to the issue of making monetary contribution in donations and tithes to the petitioning church, I donated similar or equal amounts of my salary because I could afford to make such donations and the money would serve useful purpose in the church's religious activities. The attached list of the sources and amounts of monies

given to me to support my mission activities, will show that I had sufficient amounts left to support myself after making donations to the petitioning church.

The list mentioned by the beneficiary identified ten churches in five different states and South Korea, each of which purportedly gave the beneficiary between \$100 and \$2,000 per month, the highest figure coming from the petitioning church in Oregon. The beneficiary claimed that, in total, he received \$3,950 per month from the various churches. The beneficiary does not explain why he accepted payment from such a broad range of churches but not from his putative employer.

The petitioner had previously submitted documentation of its own payments to the beneficiary, but the response to the notice of intent to revoke included no evidence to support the new claim of payments from nine other churches. 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)). As noted previously, when the beneficiary filed his 2003 income tax return, he reported income from newspaper delivery, but did not report any income from any church other than the petitioner. The beneficiary's 2004 income tax return reported no income from any source other than the petitioner.

Rev. [REDACTED]

Please bear in mind that [the beneficiary's] knowledge and understanding of English is rudimentary and not comprehensive. And, the statements alluded to in the Notice of Intent to Revoke could have been taken out of context and/or misinterpreted by either the Service examiners and/or by [the beneficiary] during the interview.

We hereby verify that this church employed and paid [the beneficiary] as assistant pastor from July 2002 to March 2006. In August 2003, this church dispatched [the beneficiary] for mission work to a newly established church of the same denomination called the [REDACTED] of Pullman in Washington which subsequently renamed to [sic] the [REDACTED] of Seattle, Washington. [The beneficiary], however, continued to remain as a ministerial member of this church and remained on our payroll.

We also verify that [the beneficiary] contributed to this church a monthly sum of approximately \$1,700.00 in donations or tithes for altruistic reasons. It is our understanding that [the beneficiary] was able to make such monetary contribution from the monies he received from various sources to support his mission work.

Pastor Park's letter contains the claim that "the [REDACTED] of Pullman in Washington [was] subsequently renamed . . . the [REDACTED] of Seattle, Washington." The petitioner submitted no evidence (such as copies of corporate filings) of this claimed name change. Pullman and Seattle are nearly 300 miles apart, making it unlikely that any one church would be known as a "[REDACTED]" and, later, as a "[REDACTED]"

Furthermore, the record contains a copy of a State of Washington Certificate of Incorporation for “[REDACTED],” dated August 27, 2002. This state-issued document shows that LWC has used the same name since its incorporation in 2002, and was not renamed later. Because this is a Washington document, it cannot refer to the parent [REDACTED] church in Oregon. Other materials in the record place the Washington [REDACTED] in the Seattle area rather than Pullman. [REDACTED], which hosted the [REDACTED] congregation, is in Lynnwood, a suburb north of Seattle.

Also, numerous witnesses have indicated that the beneficiary did not begin working at [REDACTED] until April 2006. The beneficiary himself, in a letter dated September 15, 2009 (submitted in support of his adjustment application), stated that he left “the Oregon church” (*i.e.*, the petitioning church) to “move to a new church” shortly after filing his adjustment application in late 2005. This timing is consistent with the April 2006 date provided by other witnesses.

For the above reasons, [REDACTED] statement that the [REDACTED] of Pullman is the same church as the [REDACTED] appears to be false.

In the same September 15, 2009 letter mentioned above, the beneficiary blamed any apparent inconsistencies in his statements on “mistaken interpretations between the English speaking investigators, and [him]self.” In light of efforts by the beneficiary, counsel, and [REDACTED] to cite a language barrier, it is instructive to return to Pastor [REDACTED] letter of December 17, 2008 (written before the contested interview took place). Pastor [REDACTED] stated that the beneficiary “now ministers to between 30 and 40 people each Sunday afternoon. All this while continuing to work full-time as an interpreter for several Seattle area hospitals.”

With respect to the reference to the beneficiary as a “full-time . . . interpreter,” the petitioner’s most recent submission includes copies of the beneficiary’s income tax filings since 2002. Schedules C included in the beneficiary’s federal income tax returns indicated that the beneficiary was the sole proprietor of a “translation & interpretation servic[e]” that earned \$14,366 in 2007, \$23,104 in 2008 and \$13,652 in 2009.

If the beneficiary worked as a professional translator as early as 2007, then it is unclear why the petitioner is claiming that the beneficiary’s poor English skills interfered with his ability to understand questions and express himself clearly during a December 2009 interview. If, on the other hand, the beneficiary did not work as a translator, then his tax returns contain false statements. Neither alternative bolsters the beneficiary’s credibility.

Section 212(a)(6)(C)(i) of the Act states: “Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.” It is not the purpose of this proceeding to make findings regarding the beneficiary’s admissibility. *See Matter of O*, 8 I&N Dec. 295 (BIA 1959). Nevertheless, the AAO can take note of facts that are consistent with a later finding of inadmissibility. As shown above, the beneficiary has claimed poor understanding of

English, while also submitting evidence that he works as a translator and interpreter. The beneficiary provided tax returns showing a Pullman address in 2003 and 2004, but submitted a Form G-325A showing Portland-area addresses from 2002 to 2005. Because these contradictory claims cannot all be true, it appears that the beneficiary provided false information in the course of his efforts to obtain immigration benefits.

The beneficiary's work as an interpreter is of concern for another reason besides credibility. Section 101(a)(27)(C)(ii)(I) of the Act requires that the beneficiary seeks to enter the United States solely for the purpose of carrying on the vocation of a minister of the petitioner's religious denomination. The record indicates a pattern of secular employment by the beneficiary, including newspaper delivery in 2003 and several years as an interpreter. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication. 8 C.F.R. § 103.2(b)(1). The adjudication of the petition is not yet complete, and therefore disqualifying actions by the beneficiary in 2007-2009 are relevant and material to the proceeding at hand.

The following passages in Pastor [REDACTED] 2008 letter raise another, related issue:

I am writing this letter to recommend that you grant Pastor [REDACTED] his [REDACTED] credentials. . . .

[The beneficiary] and I have been working together toward the goal of planting what will be known as "[REDACTED]" [The beneficiary] has already fulfilled the [REDACTED] requirements for church planters and is ready to move ahead in this venture. For the past two years he has been growing a core group of people who will eventually step out and plant his church with him.

The above letter indicates that the beneficiary intends to start a church of the [REDACTED] denomination, which is not the petitioner's denomination. (As noted above, the petitioner belongs to the [REDACTED].) If the beneficiary does not intend to enter the United States solely to work as a minister of the [REDACTED], then he is statutorily ineligible for classification as a special immigrant minister. Because the beneficiary has seriously compromised his credibility by submitting contradictory information about his past addresses and his language skills, further unsupported statements from the beneficiary cannot suffice to resolve this issue. 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. *Matter of Ho*, 19 I&N Dec. at 591-92.

¹ The record does not otherwise refer to the beneficiary as "[REDACTED]" but there is every indication the beneficiary and "[REDACTED]" are one and the same. If they are not the same person, then the beneficiary submitted an irrelevant letter about someone else, in an attempt to secure immigration benefits for himself.

The 2010 revocation cannot stand, because of its issuance by a field office rather than by a service center, and because it relied on regulations that were not yet in effect at the time of the petition's approval. Therefore, the AAO must withdraw the decision and remand this matter for a new decision. Nevertheless, for reasons discussed above, major credibility and eligibility issues remain, and no USCIS office can properly uphold the approval of the petition until and unless the petitioner produces credible, verifiable evidence to overcome those concerns. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The field office director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.