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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

[Redacted]

DATE: **OCT 29 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
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 AAO dismissed the petitioner’s appeal from that decision. The matter is now before the AAO on a motion to reopen. The AAO will grant the motion and affirm the revocation of the approval of the petition.

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, and the AAO agreed, that the petitioner had not satisfactorily completed compliance review and submitted credible, consistent evidence regarding the beneficiary’s intended compensation.

On motion, the petitioner submits a brief from counsel, financial documentation, and other evidence.

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 . . . ; 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 credibility issues that led to the revocation of the approval of the petition concern two matters: the compliance review process and the beneficiary's compensation. First, this decision will address the compliance review. 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.

The petitioner filed the Form I-360 petition on April 15, 2002, and the NSC director approved the petition on April 27, 2004. Subsequently, on Monday, July 13, 2009, a USCIS officer conducting a compliance review site inspection found the petitioning church locked. Contacted by telephone, the beneficiary informed the inspecting officer that the church is closed on Mondays but (in the officer's words) "would be open on any other day." The beneficiary also indicated that he was in [REDACTED] Texas, at the time of the telephone call and would remain there "for another six months," with [REDACTED] acting as pastor during the beneficiary's absence. At 11:20 a.m. on Thursday, July 16, 2009, the officer returned to the church and again found it locked and unoccupied. The officer reported that an unnamed representative of the business next door, [REDACTED]

“advised [the officer] that 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.”

In response to the notice, [REDACTED] administrator/secretary of the petitioning church, stated that the church was empty during the second attempted site inspection because “the pastor had gone out to lunch,” and 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.” Mr. [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.”

The director revoked the approval of the petition on September 7, 2010. In that notice, the director repeated the assertion that the petitioner had not satisfactorily completed the compliance review, but did not elaborate. The petitioner’s appeal focused on the financial issues, to be discussed later in this decision.

The AAO, in its May 16, 2012 dismissal notice, stated:

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.

On motion from the AAO’s decision, counsel states:

The allegation that “no one is at the church location on a daily basis and that every once in a while they see someone there” came to the petitioner as a surprise. The petitioner stated that it could not understand why anybody would say that. The petitioner then went further to inquire from the “business next door” why they would say something that is untrue. However, every employee of the “business next door” denied making the statement. “[T]he business next door” went further to write a letter confirming the petitioner’s service times and office hours. In addition, the petitioner also obtained a letter from the landlord of the premises confirming the petitioner’s activities on the premises.

The petitioner submits a letter on [REDACTED] letterhead. The letterhead shows the [REDACTED] address of the corporate headquarters, rather than the [REDACTED] address of the local office near the site of the petitioning church. The letter reads:

We write this letter to state that the [petitioning church] is our neighbor and we currently lease an office suite; that they hold their services at this location on Sundays, Wednesdays and every first Fridays [sic] of the month. They also maintain regular office hours during the week.

There is one partially legible signature below the body of the letter, with no title stated. This letter does not support counsel's claim that "every employee of the [company] denied making the statement" to the inspecting USCIS officer; the letter does not mention the site visit at all. Furthermore, the letter is undated and there is no indication that the letter refers to the period when the site visit took place.

A notarized May 24, 2012 letter from [redacted] of the [redacted] contains more information, indicating that the petitioner has leased the space in question since 2007. The letter refers to "our building," but the information below Ms. [redacted]'s signature indicates that the [redacted] is not the owner of the building, but rather the "Agent for Owner / [redacted]". Ms. [redacted] added: "We also wish to confirm that they conduct mid-week bible study services on Wednesdays, Worship services on Sundays, and maintain regular office hours on weekdays, at this location." Like the other letter, Ms. [redacted]'s letter does not specify the extent of activity at the church in 2009 when the site visit took place.

The letters quoted above do not contain sufficient information to rebut the findings reported by the inspecting USCIS officer, and they do not substantiate many of counsel's specific claims on motion. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner had previously submitted a copy of its lease for the church property. At issue was not whether the petitioner leases the property, but the extent of activity at the site. The assertion that the church is open for "regular office hours on weekdays" does not explain why the church was apparently locked and vacant during office hours on two different days of the week.

The petitioner, on motion, has not overcome the credibility issues arising from the site visits.

The second ground for revocation, to which the director devoted the most attention, concerns the beneficiary's compensation. When the petitioner filed the Form I-360 petition in 2002, 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] stated:

[The beneficiary will] work with us as the Pastor-in-Charge of this Church here in [REDACTED]

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," Mr. [REDACTED] indicated that the beneficiary would receive benefits, including housing, in addition to his \$28,000 annual salary.

In the notice of intent to revoke, 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, Mr. [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." Mr. [REDACTED] also signed an accompanying employer attestation, indicating that the beneficiary "will receive a total Salary of \$30,869.8[0]." Mr. [REDACTED] did not explain why these two figures did not match. The submission did not indicate that the beneficiary receives, or will receive, any benefits apart from the salary.

The petitioner submitted an SSA printout with the beneficiary's earning information for 2006 (and no other year). The printout specifically identified the "YRS REQ" (years requested) as "2006," indicating that the beneficiary did not request the information for any other years. The printout showed that the beneficiary received \$5,400 in salary from the petitioner, and \$1,848 from self-employment.

The petitioner submitted copies of IRS Form W-2 Wage and Tax Statements for 2007-2009 and IRS transcripts for those forms for 2005-2009. The documents showed that the petitioner paid the beneficiary the following compensation:

Year	Wages, tips	Clergy Housing
2005	\$5,400.00	—
2006	\$5,400.00	—
2007	\$5,400.00	\$27,600.00
2008	\$6,237.00	\$29,243.00
2008	\$450.00	\$2,300.00
2009	\$5,102.80	\$26,837.20

The amounts shown as “clergy housing” appear on the Forms W-2, but not on the IRS transcripts. The petitioner did not explain why it issued two IRS Forms W-2 for 2008. The beneficiary’s 2008 income tax return did not reflect the smaller amount.

The Forms W-2 reproduced in the petitioner’s submission were generated with Taxslayer software, and are not the forms issued by the beneficiary’s employer. Many of the submitted forms show information for the beneficiary and his spouse (a pharmacist) on the same page; the petitioner would not have prepared Forms W-2 for the beneficiary’s spouse.

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.”

In the revocation notice, the director stated that the evidence does not show “that the petitioner has fully supported the beneficiary as agreed.” The director also stated 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 stated: “The evidence on record raises significant questions and discrepancies regarding the full-time employment of the beneficiary.”

On appeal, counsel stated that the beneficiary’s spouse received several benefits through her employment, and therefore the petitioner has not needed to provide the level of benefits originally stated in 2002. The AAO, in dismissing the appeal, stated:

The petitioner had never stated that the beneficiary’s benefits were contingent on his spouse’s continued [] employment. . . .

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 Mr. []’s 2002 letter. . . .

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 "[redacted] 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 [redacted] Texas. It is, therefore, a matter of demonstrable fact that the beneficiary has provided inconsistent information about his place of residence.

. . . [T]he 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.

On motion from the AAO's decision, counsel states: "The beneficiary claimed mortgage interest on his tax return despite receiving housing allowance because IRS rules permit[] it, see IRS publication 1828, page 19." The petitioner submitted IRS materials to support this assertion. Other claims are less easily resolved.

Counsel states: "The beneficiary has never worked for any other employer apart from the petitioner since he came to the United States. . . . The petitioner submitted printouts for only the years specifically requested by USCIS. . . . We now have attached other years of beneficiary's Tax Return[s]."

Counsel's assertion that the petitioner had previously "submitted printouts for only the years specifically requested by USCIS" is not fully accurate. The director had previously instructed the

petitioner to “submit an itemized record from the Social Security Administration . . . on the beneficiary’s annual earnings.” This instruction, issued in 2010, was not limited to a particular year or range of years. Nevertheless, the previously submitted SSA printout indicated that the beneficiary had only requested the data from 2006, and the printout only reported earnings from that year. The petitioner did not explain this limited response. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the benefit request. 8 C.F.R. § 103.2(b)(14).

The petitioner submits copies of the beneficiary’s IRS Forms W-2 for 2003 through 2011 and copies or transcripts of his income tax returns from 2005 to 2011. The jointly filed tax returns do not differentiate between the beneficiary’s income and that of his spouse, but the IRS Forms W-2 show the following compensation paid to the beneficiary:

Year	Wages, salaries	Clergy housing
2003	\$14,721.65	—
2004	\$15,138.33	\$17,195.00
2005	\$5,400.00	\$27,600.00
2006	\$5,400.00	\$27,600.00
2007	\$5,400.00	\$27,600.00
2008	\$450.00	\$2,300.00
2009	\$5,102.80	\$26,837.20
2010	\$4,854.20	\$26,015.60
2011	\$9,667.50	\$25,015.00

The newly submitted IRS Forms W-2 do not match the format of the previously submitted (computer-generated) forms, but contain the same wage/salary information (apart from some differences in rounding). The information on the 2008 IRS Form W-2 in the latest submission matches the data on one of the previously submitted forms. The petitioner has submitted two different versions of IRS Form W-2 for 2008, with no explanation.

IRS transcripts of the Forms W-2 do not reflect the housing allowance which, the petitioner claims, constituted the bulk of the beneficiary’s compensation. Also, the IRS documentation submitted on motion shows that parsonage housing is excludable from gross income, but remains taxable for “self-employment for Self-Employment Contributions Act (SECA) tax purposes.” The IRS transcripts of the beneficiary’s income tax returns do not show payment of SECA tax, or that the IRS had previously granted him an exemption from that tax.

The materials submitted on motion, like those submitted previously, do not establish that the petitioner abided by the originally claimed terms of compensation (\$28,000 per year plus – not including – housing and other expenses).

Counsel does not address or rebut the AAO’s assertion regarding the petitioner’s and counsel’s claim that the beneficiary never worked in the United States without authorization. The petitioner submits

copies of several Form 1-766, Employment Authorization Cards issued to the beneficiary, but the earliest one dates from 2006-2007. Previously, the petitioner established that the beneficiary held R-1 nonimmigrant religious worker status from December 5, 2002 to December 5, 2005, but was a B-2 nonimmigrant visitor prior to that time. The submitted evidence does not address or overcome the information indicating that the beneficiary unlawfully worked for the petitioner as a B-2 nonimmigrant. This information is not, by itself, grounds for denial or revocation, but it does reflect on the credibility of the petitioner's unsupported claims.

Another credibility issue concerns the beneficiary's documented use of conflicting addresses. As stated above, in July 2009, the beneficiary told a USCIS officer that his family's [REDACTED] address is [REDACTED] but his income tax returns before and after that date showed his address as [REDACTED] (including returns that he filed while living in Texas).

On motion, counsel states: "the beneficiary inadvertently did not change his address with his tax preparer who continues to use his address on record in his office." The record contains no statement from the beneficiary himself (or his tax preparer) to corroborate this claim. Again, the unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Furthermore, the IRS Forms W-2 for 2005 through 2011, submitted on motion, all show the [REDACTED] address. The petitioner, not the beneficiary's tax preparer, would have prepared the Forms W-2, and therefore counsel's uncorroborated explanation does not adequately address the discrepancy.

The above issues are factors to consider when reviewing the petitioner's denials of the facts in the compliance review report, and the petitioner's attempts to reconcile discrepancies relating to the beneficiary's compensation.

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.

For the reasons stated above, the petitioner's motion fails to overcome the AAO's prior decision, and the AAO will therefore affirm that decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The motion is granted. The prior decision of the AAO is affirmed. The petition remains revoked.