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U.S. Department of Homeland Security  
Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street N.W.  
Washington, D.C. 20536



APR 05 2004

File: [redacted] Office: California Service Center Date:

IN RE: Petitioner:  
Beneficiary:



Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)

IN BEHALF OF PETITIONER:



**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was revoked by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn, and the case will be remanded for further consideration.

The petitioner is a non-profit religious organization. It seeks to employ the beneficiary permanently in the United States as a trilingual secretary. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor. The director determined that the petitioner had not established that it had the financial ability to pay the beneficiary the proffered wage as of the priority date of the visa petition.

On appeal, counsel submits a brief.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

Eligibility in this matter hinges on the petitioner's ability to pay the wage offered beginning on the priority date, the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. Here, the request for labor certification was accepted for processing on December 16, 1996. The beneficiary's salary as stated on the labor certification is \$2,033.20 per month which

equals \$24,398.40 annually.

With the petition, counsel submitted no evidence of ability to pay the proffered wage. The petition was approved, however, on January 5, 2001. On the basis of the approved petition, the beneficiary filed for adjustment of status to permanent resident on February 1, 2001.

On July 6, 2001, in processing the adjustment application, the California Service Center sent counsel a request for evidence. Pertinent to the issue of ability to pay the proffered wage, the center requested that counsel provide copies of the beneficiary's Form 1040 tax returns for 1997, 1998, 1999, and 2000, Federal Form W-2 wage and tax statements for those same four years, copies of the beneficiary's three most recent pay stubs, and copies of the petitioner's 1999 and 2000 tax returns. The center further requested that, if the beneficiary was not employed during any of those four years, or was employed only part-time, she should explain how she was able to support herself during that period.

In response, counsel submitted a letter, dated September 24, 2001, in which he stated:

Please be advised that [the beneficiary] was not authorized to work in the United States until this year, therefore, she was employed in the United States prior to this year and thus has no federal tax returns.

Apparently counsel intended to say that the beneficiary was not employed in the United States prior to 2001, but stated the contrary because of a typographical error.

Counsel also provided copies of the petitioner's Form 941 quarterly returns for the last quarter of 1998, all four quarters of 1999, the first and second quarters of 2000, and the first and second quarters of 2001, as well as the petitioner's Form 199C1 Annual Information Form for the years 1998 and 2000. Finally, counsel submitted unaudited balance sheets for the years 1998, 1999, and 2000.

On January 29, 2002, the center requested additional evidence. Specifically, the center requested copies of the beneficiary's three most recent pay stubs and copies of the petitioner's Form 990 Return of Organization Exempt from Tax.

In an envelope postmarked April 2, 2002, counsel submitted copies of the petitioner's Form 990 returns for 1997, 1998, 1999, and 2000. Line 18 of those returns shows that the petitioner had an

excess of \$6,123 in 1997, a deficit of \$4,146 in 1998, a deficit of \$15,903 in 1999, and an excess of \$24,523 in 2000.

Further, counsel submitted a copy of the petitioner's quarterly return for the last quarter of 2001. Counsel also submitted copies of 2001 Form W-2 wage and tax statements showing wages the petitioner paid to two employees during that year. One of those W-2 forms apparently shows wages paid to the beneficiary during 2001. Although the family name shown on that form is different from the family name shown on the petition, the AAO notes that the name shown is the beneficiary's husband's family name. The beneficiary has apparently taken her husband's family name since the petition was filed.

Finally, counsel submitted copies of five pay stubs and paychecks. Those checks are payable to the same name shown on the W-2 form discussed above, and counsel stated that they include the three most recent paychecks the petitioner paid to the beneficiary. Each of the checks is for \$1,760.28. The checks purport to be wage payments for October 2001 through February 2002.

On April 17, 2002, the Acting Director, California Service Center, issued a Notice of Intent to Revoke the petition. The Acting Director noted that the Form 990 returns submitted showed an excess in each of the salient years which was less than the amount of the proffered wage and that, as such, those returns appeared to indicate that the petitioner was unable to pay the proffered wage during those years.

In response to that notice, the petitioner submitted, (1) a letter, dated May 11, 2002, from the Assistant General Secretary of the Section of Elders and Pastors of the General Board of Higher Education and Ministry of the United Methodist Church (UMC), (2) copies of paychecks paid to the beneficiary by the petitioner, (3) a letter from the California Employment Development Department (EDD) to the beneficiary in her capacity as an employee of the petitioner, (4) a letter from petitioner's counsel to the California EDD in response to their inquiries, (5) a pamphlet pertinent to the UMC, (6) a copy of the staff directory of the General Board of Higher Education and Ministry, (7) a copy of a letter showing that the Board of Discipleship of the UMC donated \$25,000 to a smaller ministry without evidence showing an apparent connection to the petitioner or beneficiary, (8) a copy of the petitioner's Form 990 return for 2001, and (9) a brief.

The May 11, 2002 letter states that the General Board of Higher Education and Ministry provides the petitioner with an annual grant, and would have raised that grant if necessary to pay the

proffered wage. In his brief, counsel argues that this statement establishes the petitioner's ability to pay the proffered wage. Counsel has not, however, provided any evidence which corroborates this claim.

On May 21, 2002, the director revoked approval of the petition, noting that the Forms 990 did not establish the petitioner's ability to pay the proffered wage and that the petitioner's receipt of larger grants in the future is uncertain.

On appeal, counsel submits a brief. In that brief, counsel cites the letter, described above and dated May 11, 2002, for the proposition that the larger religious organization has been making yearly grants to the petitioner and is willing to increase its grant to ensure that the beneficiary will be paid the proffered wage.

Counsel notes that, since the beneficiary received permission to work in the United States, she has worked for the petitioner and received the proffered wage which, counsel notes, is additional evidence of the ability to pay that wage.

Counsel notes that many non-profit organizations rely on donations to remain viable, and that CIS ought not to find that such organizations are not viable. Counsel cites *Full Gospel Portland Church v. Thornburgh*, 730 F. Supp. 411, for the proposition that to ignore the assets of the larger religious organization and the avowed willingness of that organization to support the petitioner was arbitrary and capricious.

The May 11, 2002 letter does state that the General Board of Higher Education and Ministry has provided a yearly grant to the petitioner. In that letter, the Assistant General Secretary of the Section of Elders and Local Pastors of the General Board of Higher Education and Ministry stated that, had the petitioner requested a budget increase to pay the beneficiary's salary, the organization would have authorized that increase.

However, the letter does not obligate any future funds, nor does it state whether the Assistant General Secretary of the Section of Elders and Local Pastors of the General Board of Higher Education and Ministry is able to obligate the larger organization's funds. The letter states, hypothetically, that the organization would have responded to a request for an increased grant, but does not demonstrate that the petitioner's budget will be increased in the future as necessary to pay the proffered wage or that the writer has the authority to make such a promise.

However, counsel submitted another letter on appeal. This other letter, dated April 7, 1997, is from the Vice President for Academic Affairs of the Claremont School of Theology. The writer states that the petitioner operates from the Claremont campus and under the school's supervision. The letter further states that all of the salaries of the petitioner's personnel are paid through the school, and that the petitioner is entitled to hire a secretary. There is no evidence, however, which supports this contention.

The May 11, 2002 letter was, by itself, insufficient. Although it stated that during past years, that the General Board of Higher Education and Ministry would have increased the petitioner's grant as necessary to pay the proffered wage, it did not promise any increase in the future. It did not make clear that the petitioner would continue to have the ability to pay the proffered wage.

The April 7, 1997 letter from Claremont School of Theology, however, appears to indicate that the petitioner may, as a matter of right, hire a secretary, and that the Claremont School is obliged to pay that secretary's salary. Thus, if the letter is accepted, the petitioner appears able to pay the proffered wage.

Some discrepancy may exist between the Claremont Vice President's statement that the petitioner's salaries are paid through the college and figures on the petitioner's quarterly returns. Further, some discrepancy may exist between that statement and the paychecks ostensibly paid to the beneficiary, and drawn on the petitioner's own account. Thus, before CIS makes a final decision, evidence more specific in nature must be requested and evaluated.

**ORDER:** The 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 AAO for review.