

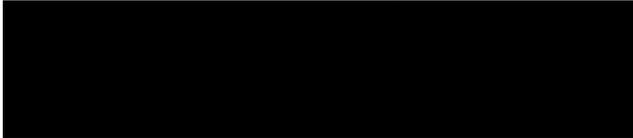
CI

U.S. Department of Homeland Security

Citizenship and Immigration Services

Identifying data deleted to
prevent identity information
invasion of personal privacy

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



DEC 18 2003

File:

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE: Petitioner:
Beneficiary:

Petition: 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: SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Cindy M. Goman for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO). The appeal will be rejected.

The petitioner seeks classification 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 "Pastor." The director determined that the petitioner had not established that he had been engaged continuously in a qualifying religious vocation or occupation for the two full years immediately preceding the filing of the petition. The director also determined that the petitioner had not established that his prospective employer had the ability to pay the proffered wage as of the filing date of the petition.

The Form I-360 petition indicates that the Centro Misionero Iglesia Presbiteriana, Corcoran, California, is the petitioner. The petition, however, is signed by Mr. Jose Ramon Palafox Valles. Francisco Duarte, of Centro Misionero Iglesia Presbiteriana, signed only as the preparer of the Form I-360. Therefore, the Centro Misionero Iglesia Presbiteriana cannot be considered as having filed a petition on behalf of Mr. Palafox, and Mr. Palafox shall be considered as the petitioner.

On appeal, the Form I-290B, Notice of Appeal, was signed by Jacob M. Weisberg, as Attorney of Record for "Centro Misionero Church."

8 C.F.R. § 103.3(a)(1)(iii)(B) states:

Meaning of affected party. For purposes of this section and §§ 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding... An affected party may be represented by an attorney or representative in accordance with part 292 of this chapter.

8 C.F.R. § 292.4(a) states, in pertinent part, that "An appearance shall be filed on the appropriate form by the attorney or representative appearing in each case.... A notice of appearance entered in application or petition proceedings must be signed by the applicant or petitioner to authorize representation in order for the appearance to be recognized by the Service."

As noted above, the record reflects that the Form I-360, Petition for Amerasian, Widow, or Special Immigrant, was signed by Jose Ramon Palafox Valles, with Francisco Duarte signing as the preparer

of the Form I-360. The Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been signed by the attorney and by Reverend Clark Cowden. The Form I-360 does not include the signature of Reverend Cowden. The petitioner, Mr. [REDACTED] furthermore, has not signed the Form I-290B, Notice of Appeal.

8 C.F.R. § 103.3(a)(2)(i) states, in pertinent part: "The affected party shall file an appeal on Form I-290B." Under the provisions of 8 C.F.R. § 103.3(a)(2)(v), "An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded."

In this case, the appeal has not been filed by the petitioner, or by any entity with legal standing in the proceeding. Therefore, the appeal has not been properly filed, and must be rejected.

Upon review of the record, the following is noted.

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 October 1, 2008, 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 October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the

¹ It is noted that the director did not recognize that the petition had been signed by Mr. Jose A. Palafox, who must, therefore, be considered the petitioner.

religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal 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).

8 C.F.R. § 204.5(m)(1) states, in pertinent part:

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.

The petition was filed on April 30, 2001. Therefore, the petitioner must establish that he was engaged continuously as a religious worker from April 30, 1999 until April 30, 2001. The petitioner indicated that he last entered the United States without inspection on October 12, 1995. Part 4 of the I-360 petition indicates that the petitioner has worked in the United States without permission.

The requisite two-year period during which the petitioner must have been continuously engaged in religious work occurs during the timeframe in which the beneficiary was in California. In the initial letter dated April 30, 2001, Pastor Duarte of Centro Misionero Iglesia Presbiteriana, stated that Reverend Palafox has "worked with us on a voluntary basis as pulpit supply, and as an

instructor in Christian Education since September of 1997." This letter indicated that Reverend Palafox "has also occupied the position as Pastor within several evangelical denominations in our county." The initial application included a copy of a diploma from the "Biblic Institute, Presbyter Eusebio Herrera, Christian Church Council, Assembly of God," dated May 22, 1992, and a copy of an "Ordained Minister" card signed by officials of the West Coast Hispanic Conference of the International Pentecostal Holiness Church, valid through February 17, 2002.

In response to the director's request for additional evidence, a letter dated October 4, 2002, from Reverend Clark Cowden, the Evangelist Presbyter, or church official, of the Presbytery of San Joaquin, California, states that Pastor Palafox "has served as a pastor at Centro Misionero Church in a paid basis since May of 1999... Prior to going on salary at Centro Misionero in January of this year, it was necessary for Rev. Palafox to supplement his income by working as a farm laborer." The letter dated September 24, 2002, from the Clerk of Session of the Centro Misionero Iglesia Presbiteriana, indicates that:

In May 1999, Pastor [REDACTED] began working with our congregation as an Assistant Pastor under the supervision of the Pastor and the Session. He taught Sunday School classes and Bible studies and preached on Sunday evenings and whenever the Pastor was absent on Sunday mornings, for an average of 10 to 15 hours per week. From May 1999 thru [sic] December 2001, we paid him \$75 a month, plus meals for him and his family on Sundays. In January 2002 Pastor [REDACTED] became our solo Pastor at a monthly salary of \$800 plus medical insurance. He preaches at all our services, teaches Sunday School and Bible studies, and cares for the people of the congregation.

The petitioner's resume and documents submitted on appeal indicate that he worked:

- in Mexico, as:
 - o Sunday School Coordinator from 1992 to 1995;
- in California, as:
 - o Youth Pastor, approximately nine hours per week at the Church of Christ from January 1996 to March 1997,
 - o Youth Pastor, approximately 12 hours per week at Emmanuel Church from April 1997 to February 1999,

- o Pastor, approximately 12 hours per week at the Family Worship Center (a sister church to West Coast International Pentecostal Holiness Church) from February 1999 to December 2001,
- o Assistant Pastor, 10 to 15 hours per week at Centro Misionero Iglesia Presbiteriana from May 1999 to December 2001, and,
- o Pastor, approximately 40 hours per week at Centro Misionero Iglesia Presbiteriana from January 2002 to present.

The record also reflects that between February 13, 1999 and May 15, 2001, Reverend [REDACTED] worked varied hours and days as a laborer at several farms.

On appeal, counsel states that for the relevant two-year period, Reverend Palafox "was engaged as a pastor at two separate churches in continuous religious work totaling approximately 27 hours a week." Counsel asserts, "The requisite two-year continuous work experience is not required to be with the petitioner but simply needs to be in the same position for which special immigrant status is sought. Since Rev. [REDACTED] worked as a pastor with the two churches listed above for the relevant two-year period, he has served in the same position as the position offered by petitioner and for which his status as a special immigrant is sought."

The record, however, indicates that Reverend [REDACTED] served as Assistant Pastor with Centro Misionero from May 1999 until he became "solo Pastor" and went on salary in January 2002. A letter dated October 4, 2002, from Reverend Cowden, indicates the proffered position is full-time, but states Reverend [REDACTED] often works more than 40 hours per week. Although the record lacks a breakdown of the precise number of hours Reverend [REDACTED] spends performing each type of duty, it is not clear how he could have been performing precisely the same duties over the two year period as an Assistant Pastor working only 10-15 hours per week, as compared to the duties and responsibilities of a full-time Pastor position. It is noted that Reverend [REDACTED] also worked approximately twelve hours per week at the Family Worship Center. This church is affiliated with a different denomination. While evidence was submitted that, under the Constitution of the Presbyterian Church (USA), it may recognize the ordination of a minister of another Christian denomination, and may enroll a new immigrant minister even though the minister lacked the educational history required for other ministers, the record does not demonstrate that his duties were the same in the two churches.

In this case, the record reflects that the petitioner was engaged in secular employment during the two-year period prior to the filing date of the petition. The record also reflects that his religious work was on a part-time basis. During the requisite two-year period, the record reflects that Rev. Palafox received payments of \$75 per month beginning in May 1999. The record does not reflect whether he was paid by the other church at which he also worked part-time. However, the record is clear that Reverend Palafox required secular employment in order to support his family until going on salary in January 2002. The April 30, 2001 letter from Pastor Duarte also indicated that Reverend [REDACTED] earlier work with Centro Misionero was "on a voluntary basis" since September 1997. The paid employment beginning in January 2002, falls outside the two-year timeframe prior to the date the petition was filed. On appeal, counsel makes reference to *Matter of Z-*, 5 I&N Dec. 700, 704 (BIA 1954). The facts of this case are not analogous. While the petitioner might establish eligibility in a new petition, in light of the discussion above, the petitioner has not established that he worked continuously in a religious occupation during the required timeframe for this petition.

The director also commented on whether the petitioner had received a qualifying job offer. 8 C.F.R. § 204.5(m)(4) states that each petition for a religious worker must be accompanied by a job offer from an authorized official of the religious organization at which the alien will be employed in the United States. The official must state how the alien will be "solely carrying on the vocation of a minister," including the terms of payment for services or other remuneration, and "should clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support."

In this case, counsel refers to a letter from the church official, Reverend Cowden, when stating, "Half of the congregations are small churches with less than one hundred people attending their worship. Some of the churches are now employing part-time pastors or sharing a pastor with another church because it is getting too expensive to employ their own full-time pastor. Many pastors have to hold down a second job as well as their job as a minister." The petitioner's prospective employer has not established that the needs of the church will support a full-time permanent position, in which the petitioner would be solely carrying on the vocation of a minister.

Also related to the issue of the qualifying job offer, is whether the petitioner has established the proposed employer's ability to pay him the proffered wage. The director determined that "the

petitioner has not satisfied the documentary requirement of this provision."

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.

The initial filing contained no evidence of the prospective employer's ability to pay the petitioner the proffered wage. In response to the director's request for additional evidence, the prospective employer submitted a "Salary Package Offer for Pastor Jose Ramon [REDACTED] 2002," with a basic salary of \$7,200 per year and a total package of salary and benefits totaling \$17,302.

On appeal, the petitioner submitted canceled checks showing payments from Centro Misionero totaling \$800 per month from January 2002 through November 2002. These wages appear to correspond to the submitted bank statements. The United California Bank, Checking Statement, and Bank of the West, Business Checking, for "Centro Misionero Iglesia Presbiteriana," for the period January 2002 through November 2002, hold an average balance of \$12,920.93. While the record demonstrates that Reverend Palafox has been paid, and the bank statement balances would appear adequate to cover the petitioner's proffered wage, it is noted that the 2002 budget statement for the Centro Misionero Iglesia Presbiteriana details the expenses of the pastor's proffered position, but also shows an operating deficit of -\$1,350.

In a letter dated December 12, 2002, Reverend Cowden, the church official of the Presbytery of San Joaquin, California, indicated that the Presbytery would ensure payments to the petitioner if the church were unable to pay his wages. The submitted balance sheets for the Presbytery of San Joaquin, however, reflected a 2002 budget deficit of -\$167,374, with a "Projected Actual As Of 12/31/02" of -\$269,202, and a "Proposed 2003 Budget" of -\$300,456. In light of the deficits, it is not clear that the Presbytery can guarantee

coverage of the proffered wage to Reverend Palafox. It is also not clear whether the submitted budget reports are audited.

Moreover, it is noted that the budget information submitted is for the years following the requisite time period for this petition, and thus do not establish the petitioner's ability to pay the proffered wage at the time of filing the petition. It is noted that a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The petitioner has not submitted annual reports, federal tax returns, or audited financial statements for the requisite time period for this petition, that would illustrate the liabilities of the church and permit a conclusive determination on the church's ability to pay the proffered wage in accordance with 8 C.F.R. § 204.5(g)(2).

Beyond the decision of the director, another issue is whether the petitioner submitted sufficient evidence to establish that the prospective employer is a bona fide nonprofit religious organization.

8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

- (3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:
 - (i) Evidence that the organization qualifies as a nonprofit organization in the form of either:
 - (A) Documentation showing that it is exempt from taxation in accordance with § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or
 - (B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations...

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations, may be submitted. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement which applies to churches, and a copy of the organizing instrument of the church which contains a proper dissolution clause.

The record includes an IRS letter dated January 31, 1964, granting federal tax-exempt status in a group ruling to "synods, presbyteries and churches whose names appear on pages 542 through 620 inclusive, of the May 1963 edition of part III of the minutes of your general assembly." The record does not include a letter of recognition issued by the IRS to Centro Misionero Iglesia Presbetiriana, nor does it include a listing of the Centro Misionero's recognition as an approved subordinate operating under the group ruling of 1964. The record does not include a completed IRS Form 1023, the Schedule A supplement which applies to churches, or a copy of the organizing instrument of the church which contains a proper dissolution clause and which specifies the purposes of the organization. The submissions do not meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A) or (B).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is rejected.