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Citizenship and Immigration Services

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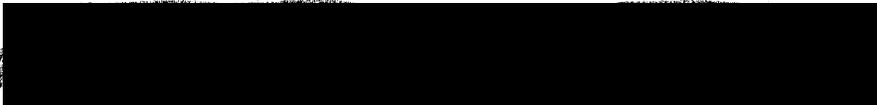
Office: VERMONT SERVICE CENTER

Date: DEC 18 2003

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:



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. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification of 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), in order to employ her as a pastor.

The director determined that the petitioner had not established that the proffered position qualified as that of a religious occupation, that the beneficiary was qualified for a religious worker position, and that the petitioner qualified as a bona fide nonprofit religious organization. The director also determined that the petitioner had not established its ability to pay the beneficiary the proffered wage.

On appeal, counsel argues that the petitioner has demonstrated through the evidence submitted that all of the director's findings were overcome.

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 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;

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-

year period described in clause (i).

Regulations at 8 C.F.R. § 204.5(m)(1) state, in pertinent part, that:

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.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

The first issue raised by the director to be discussed in this proceeding is whether the petitioner qualifies as a bona fide nonprofit religious organization as stated in 8 C.F.R. § 204.5(m). This section 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 section 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 section 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.

The petitioner has submitted a letter of recognition issued by the IRS on October 26, 1972, to the Church of God, Cleveland, Tennessee. The director found that the IRS letter did not contain the name of the petitioning organization and, therefore, did not establish that the petitioner "shared that church's tax exempt status."

On appeal, counsel argues that the Church of God, "including its subordinate, the Southern New England Executive Office," is a tax-exempt religious organization. Counsel contends that the Internal Revenue Service has held that the 501(c)(3) tax certificate for the Church of God "covers all subordinate churches and subordinate organizations under the Church of God, General Church." Counsel further contends that:

All entities and subordinate ministries of the Church of God that are constituents of the General Church are tax exempt pursuant to the Church's 501(c)(3) tax certificate. The IRS had established this fact and it is routine operating procedure at this time. The Church had submitted documents to evidence this fact.

Counsel is correct in stating that the IRS's letter indicates that the Church of God and its subordinates "are not required to file Federal income tax returns." The IRS letter also indicates that it was notified by the Church of God of all subordinates it operates, supervises and controls. However, it is noted that the record does not contain information indicating if the petitioner is recognized by the IRS as one of these named subordinate organizations. Consequently, it cannot be determined if the petitioning organization is a subordinate of the Church of God and meets the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A) or (B) regarding its tax exempt status as a bona fide nonprofit religious organization. The evidence submitted is not sufficient in meeting the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A) or (B). Thus, the petition must be denied for this reason.

The second issue raised by the director that shall be discussed in this proceeding is whether the position qualifies as that of a religious occupation.

Regulations at 8 C.F.R. § 204.5(m)(2) state, in pertinent part,

that:

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in the above cited regulations. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an "activity which relates to a traditional religious function."

CIS interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed or beliefs of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination. CIS must consider each petition on its individual merits.

In a letter dated April 23, 2002, the petitioner's bishop states that the beneficiary's duties are those of a traditional full-time pastor, and that she is responsible for "all the ministerial and pastoral duties of our church." The letter describes the beneficiary's duties, in pertinent part, as:

A. Preparing and Delivering the Weekly Sermon.

Pastor [REDACTED] responsible for preparing and giving the weekly Sermons when called upon. This responsibility takes approximately 14 to 18 hours of preparation to properly prepare a sermon. In addition, Pastor Siqueira is required to fulfill and assist in all other pastoral duties of the Church. These duties include marriage counseling for prospective married couples. She has received the education for this duty. In addition she has experience addressing the issues that face individuals contemplating marriage. Her education and experience allow her to address the spiritual aspects of marriage, while simultaneously

addressing the practical and secular aspects of marriage. Pastor [REDACTED] also deals with other pastoral duties including bereavement counseling, youth counseling, at-risk youth ministries, and other Church and Community ministry. She also assists with all aspects of wedding ceremonies, funerals, Baptism, ordinances of Communion and the Last Supper, and all other important ordinances of the Church.

B, Christian Education for the Church Members and the Community.

Pastor [REDACTED] is also responsible for teaching our Religious Education classes at the Church.

C. Bible Study and Outreach with the Community.

Her position entails outreach work in the community, making missionary visits to peoples homes and strengthening peoples' spiritual and physical health and character through education, personal counseling, and prayer. A full-time Minister must be able to attend to his or her duties whenever called. These duties not only include the presentation Bible studies, but also include follow up study, spiritual guidance, and in-home bereavement and family counseling. In her position, Pastor [REDACTED] has the authority to prepare and recommend individuals for Baptism. Although any dedicated lay member can help with Bible study, only a qualified Minister can prepare and recommend an individual for Baptism.

D. Hospital and Nursing Home Ministry.

An important aspect of Pastor [REDACTED] position is to conduct hospital and nursing home ministry. Pastor [REDACTED] has been very successful in this endeavor. Not only does she conduct this ministry herself, but she is responsibility [sic] for training her church staff, including the deacons to conduct this ministry.

E. A Professional Full-time Pastor Conducts Professional and Intense Bible Study Seminars and Evangelism with Individuals and Families.

Although, all dedicated members of the Church of God can and should participate in Bible studies, the Pastor, as a Minister of the Church, is solely responsible for these duties. As stated, Pastor [REDACTED] will prepare the individual for Baptism and promote an in-depth knowledge of our church's doctrines and beliefs.

F. Community Service

Pastor [REDACTED] has been an exemplary example of the commitment and dedication required to successfully meet the responsibilities of her position. She is responsible for all social services provided by the Church of God. These types of social services include food and clothing services to the needy, as well as services for children, the disabled, and senior citizens. Other services that he [sic] is responsible for includes inner city programs, services for the grieving, temperance programs, and help for other community members in need of help. The individual responsible for community Service is also responsible for interfacing other Christian programs and agencies to further this goal.

G. Other Local Church Duties.

Such duties include communicating with the district church organizations, denominational duties, various government agencies and social service agencies, scheduling training and seminars, scheduling qualified speakers, and overseeing the day to day business of the church. She will also be responsible for overseeing the weekly music program, including the other music ministries within the Church.

Although some of the above duties appear to be traditional religious functions, a great deal of the duties suggest they can be performed by a dedicated member of a religious organization rather than a position that would be filled by a salaried employee who completed training in preparation for a career in religious work. Further, the petitioner has not demonstrated that the offered position is a traditionally full-time salaried occupation within its denomination. The evidence presented does not demonstrate that the proposed position is a traditional religious occupation of the petitioning church. For this additional reason, the petition will be denied.

The third issue raised by the director that shall be discussed in this proceeding is whether the beneficiary qualifies as a religious worker.

In a letter dated April 16, 2001, the petitioner's bishop states that the beneficiary is an "ordained Minister and Pastor" of the petitioner's church. The letter also states that the beneficiary has a "Degree in Theology from the Marlborough School of Theology, a member school of the Oral Roberts University Educational Fellowship." The letter further states that the beneficiary is currently serving as pastor of the petitioner's [REDACTED]

Church in Rhode Island, and that she works in excess of 40 hours per week and is paid a monthly stipend.

On appeal, counsel argues that the beneficiary is extremely qualified for her position with the petitioning organization. Counsel contends that the beneficiary has completed religious training in the following:

First Year Fall Classes

Christian Ethics
Induction to Biblical Geography
The Book of Matthew to Acts
The Pentateuch

First Year Spring Classes

Hermeneutics
The Book of Romans II Thessalonians
Theology of God
Old Testament Historical Books

Second Year Fall Classes

Christology/Soteriology
Homiletics
The Book of Timothy to Revelations
Old Testament Poetics

Second Year Spring Classes

Anthropology/Pneumatology
Exegesis of Daniel
Exegesis of Mark
Major Prophets of the Old Testament

Third Year Fall Classes

Ecclesiology
Eschatology
Exegesis of Philippians
Minor Prophets of the Old Testament

Counsel contends that in addition to the above subjects, the beneficiary has completed a Theology course taught by the Assemblies of God in Boston, the Mission Seminar taught by the Gethsemane church, and numerous other courses and educational seminars. The record contains the beneficiary's certificates of completion of the Theology course and the Mission Seminar.

The record contains a copy of a Lay Minister's Certification, which was awarded to the beneficiary from the Church of God International Offices on October 13, 2000. The petitioner provided a copy of its by-laws in which the qualifications to receive a certificate as a lay minister are described as follows;

I. Qualifications

The candidate must

1. Be a loyal member of the Church of God, adhering to its teachings.
2. Be baptized in the Holy Spirit.
3. Be faithful in tithing.
4. Be a regular church attendant.
5. Be one who works in harmony with the local, state, and international church's program and one who reflects a cooperative attitude toward the progress of the church.
6. Have completed at least one year of apprenticeship in local church ministry under the supervision of the pastor. The apprenticeship should consist of successful completion of the Church of God Leadership Development program (levels 1 and 2), formerly called The Timothy Plan.
7. Have the approval of the local church governing body with a recommendation from the pastor and church council.

The by-laws describe the responsibilities of a lay minister, in pertinent part, as follows:

II. Responsibilities and Authorities

3. The lay minister shall serve as a helper to the pastor and shall be eligible to conduct various services and ministry activities sponsored by the local church under the supervision of the pastor.

In the above-mentioned letter, dated April 23, 2002, the petitioner's bishop states that the beneficiary has completed all the requirements for full-time "Minister status" in the Church of God and that she is currently awaiting her ministerial credentials.

In reviewing the evidence presented, it is determined that the petitioner has not submitted sufficient evidence to demonstrate that the beneficiary is qualified to perform the duties of either a pastor or minister. Despite the petitioner's statement that the beneficiary is "currently serving as a full-time Pastor and Minister" of its church in Rhode Island, the petitioner has not established that the beneficiary has the credentials to serve in either capacity. In fact, the petitioner states that the beneficiary is "currently awaiting her ministerial credentials." Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective

evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

In this case, the record does not contain a certification of ordination, or other evidence establishing by what authority the beneficiary was recognized as a religious worker. Simply stating that the beneficiary is a "full-time Pastor and Minister" is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). In view of the discussion, the petitioner has not established that the beneficiary is qualified as a religious worker. For this additional reason, the petition may not be approved.

The final issue raised by the director concerns the petitioner's ability to pay the beneficiary's salary. 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.

The petitioner's bishop, in a letter dated April 12, 2001, states that the beneficiary "will be eligible to receive a minimum weekly salary of \$525.00 as soon as the church is able to do so." In his letter of April 23, 2002, the petitioner's bishop states that the beneficiary "will continue to be paid a salary by the Church of God" and "she will be paid a full-time salary of \$515.00 plus other benefits including health insurance, a retirement pension, travel and utilities reimbursement and other benefits." The petitioner provided its Church of God, Southern New England, Statement of Assets, Liabilities and Fund Balance-Cash Basis as of August 31, 2001, which shows total liabilities and fund balance as \$742,749. The petitioner also provides its Statement of Changes in Funds-Cash Basis for the Year Ended August 31, 2001, which reflected a deficit of \$36,818.

In reviewing the evidence presented, it is apparent that the petitioning organization can not guarantee payment of the proffered wage to the beneficiary. Further, by its own admission, the petitioner cannot pay the beneficiary a salary "until the church is able to do so." The petitioner has not established its ability to pay the beneficiary the proffered wage. For this additional reason, the petition must be denied.

Beyond the decision of the director, the record is not sufficient in demonstrating that the beneficiary has been continuously carrying on a religious occupation for at least the two years preceding the filing date of the petition. As the appeal will be dismissed on the grounds discussed, this issue need not be examined further.

In reviewing an immigrant visa petition, the CIS must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

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 sustained that burden.

ORDER: The appeal is dismissed.