

U.S. Department of Homeland Security

Citizenship and Immigration Services

C/ PUBLIC COPY

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

[REDACTED]

File: [REDACTED] Office: VERMONT SERVICE CENTER

Date: NOV 21 2008

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:

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.



Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based 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 is a mission affiliated with an association of churches. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as a pastor at Missionary Christian Church in Rockville, Maryland, a member of the petitioning mission. The director determined that the petitioner had not established its ability to pay the beneficiary's proffered compensation.

On appeal, the petitioner submits letters and financial documents.

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 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).

██████████ general director of the petitioning church, states that "[h]ousing, transportation, financial remuneration and ministry expenses totaling more than \$26,000 will be covered by [the petitioner], the Missionary Christian Church, and congregations from our supporting ministry." ██████████ does not discuss the beneficiary's past compensation.

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 initial filing of the petition includes copies of a bank statement from March 1999 and canceled checks from 1999 and 2001. The account number on the bank statement matches the account number only on the earliest of the checks. The checks reflect payments to the beneficiary, typically \$950 per month, and monthly checks for \$1,050 payable to [REDACTED] whom the petitioner identifies as the beneficiary's landlord.

Because the petitioner had not submitted any of the documents required under 8 C.F.R. § 204.5(g)(2), the director instructed the petitioner to submit qualifying documents. In response, the petitioner has submitted a one-page 2001 financial statement prepared by church treasurer [REDACTED]. Counsel states that the petitioner's "accounting is not handled by a CPA." Mr. [REDACTED] statement indicates \$119,450.52 in receipts in addition to a fund balance of \$5,635.13, offset by \$131,172.60, for a net deficit of \$6,086.95 for the year. The petitioner's listed expenditures break down as follows:

Churches	\$16,977.08
Employee compensation	25,516.32
Fund raising	936.87
Mission business expense	59,091.58
Staff/staff development	28,650.75

Counsel states that the above "financial reports detailing receipts and expenditures . . . clearly complies with the requirements of 8 CFR 204.5(g)(2) because this regulation does not state that self-generated annual reports are not admissible as evidence." The above document is not an audited financial statement, as there is no indication that it was created pursuant to an audit of the petitioner's finances. Counsel's claim that the document represents an "annual report" is unsupported; the title printed on the document itself is "Financial Statement." The document contains only seven pieces of data, which does not readily suggest a comprehensive annual report.

The above-cited regulation at 8 C.F.R. § 204.5(g)(2) states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. An unaudited financial statement does not conform to the regulation cited above.

In any event, the statement on its face does not suggest ability to pay the beneficiary's proffered wage of "more than \$26,000" per year. The church paid less than \$26,000 in total employee compensation in 2001, and ended the year with a significant deficit. The petitioner has not indicated whether the beneficiary is the petitioner's only compensated employee. If he is not, then the \$25,516.32 in employee compensation was divided among two or more employees. Counsel does not address this very relevant point. Submission of financial documentation does not establish, *prima facie*, the petitioner's ability to pay the proffered wage; rather, the content of that documentation must be consistent with that ability.

The director denied the petition, because the petitioner did not submit the required types of documentation, and what documentation the petitioner did submit is not consistent with ability to pay the beneficiary's proffered compensation.

On appeal, counsel states "[t]he financial statement submitted by [REDACTED] is not an internally generated document. It was prepared by an accountant with offices in Rhode Island who does not form part of the congregation." Given counsel's own prior assertion that "self-generated annual reports are not inadmissible," it is inconsistent for counsel now to state that the document "is not internally generated."

Counsel also asserts "both the petitioner and the beneficiary are unable to afford the services of a C.P.A. to prepare their statements." [REDACTED] agrees that the petitioner "cannot afford expensive audits." This stipulation that the petitioner cannot afford an audit does little to undermine the director's finding that the petitioner has insufficient funds to cover the beneficiary's compensation.

[REDACTED] asserts "[REDACTED] the Mission's Treasurer, is in fact, an independent contractor. He is not part of the Mission's staff." [REDACTED] assertion that [REDACTED] is "the Mission's Treasurer" is entirely consistent with [REDACTED] own use of that same title on the financial statement itself. This information appears to contradict counsel's claim on appeal; counsel does not explain how a statement prepared by the Mission's treasurer "is not an internally generated document." The submission, on appeal, of a new statement from [REDACTED] this time identifying him as an accountant rather than as the Mission's treasurer, does not negate the fact that he was an officer of the entity for whom he prepared the statement. The fact that he apparently receives no compensation as the treasurer is irrelevant to the question of whether the treasurer's description of the organization's finances is an "internally generated document."

Counsel maintains that the 2001 financial statement should be considered "inherently trustworthy" but does not address the fact that this very document appears to demonstrate that the petitioner lacks sufficient funds to pay the proffered wage.

[REDACTED] states:

Doubtless your Decision is based in part on the negative cash flow balance the Mission exhibited at the close of the year 2001. Unfortunately the Mission

suffered a loss of income in the wake of the events of September 11, 2001, along with other charities and not-for-profit religious organizations.

Today, the Mission's October 2002 Financial Report shows a \$17,000 balance. 2001's Fourth Quarter income was it appears a small and momentary recession.

█ claims that the petitioner's 2001 deficit was a temporary aberration, but the petitioner does not submit long-term financial documents to prove this claim. Simply going on record without supporting documentary evidence 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). █ then asserts that the petitioner is not responsible for paying the beneficiary's salary at all:

The "proffered wage" is, in fact, paid to [the beneficiary] by the Missionary Christian Church, Rockville, MD. Like all churches and non-profit agencies income fluctuates up and down for a thousand and one reasons. But a careful review of the Church's financial records will show that the congregation is able to pay their pastor.

If the petitioner does not pay the beneficiary's salary, it is not clear why the petitioner had earlier indicated that the beneficiary's "expenses . . . will be covered by [the petitioner]" as well as the Missionary Christian Church.

The petitioner submits a "balance sheet" for fiscal year 2001, reflecting Missionary Christian Church's net income of \$12,335.37 after paying \$26,800 in "pastor salary." The balance sheet shows that the church paid \$4,192.71 in "tides" (presumably "tithes") to the petitioning entity. If this balance sheet is accurate, the petitioner did not contribute to paying the beneficiary's expenses, but rather represented an additional financial burden on the church. The petitioner also submits additional bank statements from Missionary Christian Church, covering the period from March 2001 to December 2001. These records, paired with the canceled checks provided earlier, demonstrate that the church has paid the beneficiary to some extent. They do not, however, confirm that the beneficiary has received the full wage offered to him. Also, the materials submitted do not establish the church's ability to pay the balance because the documents do not conform to the requirements set forth in 8 C.F.R. § 204.5(g)(2). The petitioner has not submitted annual reports, audited financial statements, or tax returns from any entity responsible, in whole or in part, for the beneficiary's compensation. In the absence of this documentation, the petitioner has not complied with the plain wording of the regulation.

Because the total amount of the beneficiary's compensation is not clear from the record, we note also that the petitioner has not submitted the beneficiary's tax returns or related documents such as Forms W-2 or 1099, which would establish the beneficiary's total compensation. The beneficiary's lack of lawful status does not relieve him of the legal obligation to file annual income tax returns, nor does it relieve the petitioner or Missionary Christian Church of the legal

obligation to report the beneficiary's earnings to the Internal Revenue Service. Violation of immigration law is not a mitigating factor with regard to violation of tax law.

The petitioner has presented inconsistent claims as to which entity is responsible for the beneficiary's compensation, and at no point has the petitioner submitted documents that comply with the regulatory requirements. This failure is attributed to the claim that the petitioner cannot afford to establish that it can afford to pay the beneficiary. In the absence of the documentation required under 8 C.F.R. § 204.5(g)(2), we cannot find that the petitioner has met its burden of proof.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.