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

**identifying data deleted to
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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, DC 20536

[Redacted]

File: [Redacted]

Office: VERMONT SERVICE CENTER

Date: SEP - 2 2005

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]

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 the Bureau of Citizenship and Immigration Services (Bureau) 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. Wiernann, 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 The decision of the director will be withdrawn, and the petition will be remanded for further action and consideration.

The petitioner is a church. 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 religious minister. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience immediately preceding the filing date of the petition.

The petitioner seeks to employ the beneficiary as a “religious minister.” The petitioner does not appear to contend that the beneficiary has the responsibilities or privileges of an ordained member of the clergy. Rev. Chan Oh Kwon states that the beneficiary’s work as a “Religious Minister” will benefit the church by “freeing the overworked clergy to perform other duties.” The beneficiary’s duties, while religious in nature, do not include Sunday services or sacraments such as weddings. The petitioner asserts that the position requires a degree in theology. Given this information, the beneficiary’s position appears to constitute a religious profession rather than the vocation of a minister as defined at 8 C.F.R. § 204.5(m)(2).

In denying the petition, the director stated that a letter from the petitioner “stat[es] that the beneficiary has been serving voluntarily as a minister of the petitioning church. The letter states that the beneficiary has been a church member since December of 1997. The letter fails to specifically state the date the beneficiary began serving as a volunteer minister.” The record actually contains several letters from Reverend Chan Oh Kwon, senior pastor of the petitioning church. In one of three letters submitted with the petition, the pastor has stated that the beneficiary “has been voluntarily working in this capacity [i.e. as a religious minister] since December 1997.” While the petitioner does not provide an exact date, the record refutes the director’s implied finding that the petitioner has merely stated when the beneficiary became a member of the church, without stating when she became a volunteer religious minister.

Where an exact date would be most helpful is with regard to the issue of continuous employment. The beneficiary left her job in Korea on October 30, 1997, meaning that there was a lapse of at least one month in her work as a religious minister even assuming she began working for the petitioner on December 1, 1997. The director did not explore this issue.

Prior to the denial of the petition, the director had instructed the petitioner to submit further information about the beneficiary’s past work. In response, the petitioner has submitted a weekly schedule from the beneficiary’s former church in Korea, indicating that the beneficiary worked Tuesday through Friday, 9:00 a.m. to 5:00 p.m.; Saturday, 9:00 a.m. to 8:00 p.m., and Sunday, 8:00 a.m. through 8:00 p.m. Regarding her schedule for the petitioner, Rev. Chan Oh Kwan provides the following information:

Monday	OFF DAY
Tuesday	Studying Bible, helping with administrative work (schedule events)

Wednesday Visiting church members at their home, Wednesday church service 1:00 p.m. – 7:00 p.m.
Thursday Studying Bible, helping with administrative work (schedule events) 9:00 a.m. – 3:00 p.m.
Friday Studying Bible, visiting church members at their home 9:00 a.m. – 3:00 p.m.
Saturday Prepare for Sunday service including sermon, Visiting church members at their home, Practice choir 9:00 a.m. – 3:00 p.m.
Sunday Church service for the Korean congregation, 8:30 a.m. – 6:30 p.m.

In denying the petition, the director stated that the above schedule establishes only 34 hours per week, which is insufficient to constitute full-time employment (considered to be 35 hours or more per week). The director's total of 34 hours results from adding the hours listed for Wednesday through Sunday. Counsel states, on appeal, that the director's finding is based on a typographical error in the schedule. The record supports this assertion. The petitioner inadvertently listed no hours for Tuesday, but the schedule clearly shows that the beneficiary has duties on Tuesday. Even one hour of work on Tuesday would provide an acceptable total of 35 hours per week. On appeal, the petitioner submits an amended schedule, showing six hours on Tuesday from 9:00 a.m. to 3:00 p.m. These are the same hours listed for Thursday, a day that shows identical tasks for the beneficiary.

As shown above, the director's stated grounds for denial are based entirely on an incomplete or incorrect reading of the evidence of record. Therefore, the decision as written cannot stand and is hereby withdrawn.

Notwithstanding the above, issues remain that prevent the approval of the petition. 8 C.F.R. § 204.5(m)(4) requires the petitioner to state "how the alien will be paid or remunerated if the alien will work in a professional religious capacity or in other religious work." 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.

In this instance, the petitioner has stated its intent to pay the beneficiary \$1,500 per month, equivalent to \$18,000 per year. The petitioner has not submitted copies of annual reports, federal tax returns, or audited financial statements to demonstrate this ability. The director has not previously afforded the petitioner an opportunity to submit this necessary evidence.

We further note that the petitioner has indicated that the beneficiary served "voluntarily" at the petitioning church. The Bureau and its predecessor agency, the Immigration and Naturalization

Service, have consistently held that the required continuous employment during the two-year qualifying period must be full-time, salaried employment rather than part-time and/or unpaid volunteer work. The director did not apprise the beneficiary of this disqualifying information and to use such information now as a basis for dismissal would result in the dismissal resting on entirely different grounds than the underlying original decision. In the event that the director again denies the petition, the director should address this point.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

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 Administrative Appeals Office for review.