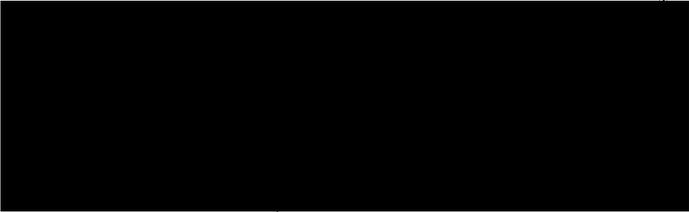




U.S. Citizenship
and Immigration
Services

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CA

FILE: [redacted] Office: TEXAS SERVICE CENTER Date **AUG 02 2004**

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

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 pastor of Jehovah Jireh Baptist Church, a Spanish-speaking offshoot of the petitioning church. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a pastor immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary, or that it had the ability to pay the beneficiary's salary.

On appeal, the petitioner submits copies of previously submitted documents, as well as arguments from counsel.

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).

Rev. Trent McLaughlin, pastor of the petitioning church, states "[w]e wish to continue to employ [the beneficiary] on a full-time basis as Pastor of the Jehova Jireh Baptist Church," which is a mission church of the petitioning church.

The regulation at 8 C.F.R. § 204.5(m)(1) indicates that the "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." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on May 15, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a pastor throughout

the two years immediately prior to that date. The beneficiary was in the United States for most, but not all of the qualifying period, having entered the United States on June 13, 2000.

In a cover letter accompanying the initial filing of the petition, counsel states that the beneficiary "has been an active pastoring Ordained Minister since 1983 with the [redacted] until 2000." In a letter dated March 7, 2001, Bill Drees, director of missions at the [redacted], South Carolina, states that the beneficiary "came to our association to begin Hispanic mission work eight months ago," i.e., circa July 2000, at which time the beneficiary founded [redacted].

A certificate from the [redacted] states that the beneficiary has been "a pastor in our organization since 1983 until the present." The certificate is dated May 12, 2000. The record also indicates that, as of May 2000, the beneficiary was the pastor of Iglesia Evangélica Cristo El Redentor in Punto Fijo, Venezuela.

The director instructed the petitioner to submit additional evidence and information regarding the beneficiary's work during the two-year qualifying period. In response, counsel states that "upon coming to the United States in June 2000 in R-1 status, [the beneficiary] worked for [the petitioner] where he continues to minister."

The petitioner submits copies of the beneficiary's federal tax returns from 2001 and 2002, on which the beneficiary identified his occupation as "minister." These returns, which include Schedule C, Profit or Loss From Business, contain the following figures:

	<u>2001</u>	<u>2002</u>
Wages, salaries, tips, etc.	\$11,362	\$18,000
<i>Gross receipts or sales</i>	<i>10,601</i>	<i>10,186</i>
<i>Gross income</i>	<i>6,121</i>	<i>6,125</i>
<i>Total expenses</i>	<i>13,087</i>	<i>14,984</i>
<i>Net profit (or loss)</i>	<i>-6,966</i>	<i>-8,859</i>
Total income	4,396	9,141

(Figures in *italics* are taken from Schedule C.) The tax returns do not identify the source of the above income, and the petitioner has not submitted copies of Forms W-2 or 1099 that would specify the amount that the petitioner had paid the beneficiary. The income is identified as coming from at least two different sources (one in the form of wages or salaries, the other as business income). On both the 2001 and 2002 returns, the beneficiary identified himself as single and claimed no dependents, but the record shows that he has (and had, in 2001 and 2002) a wife and three minor children. The petitioner had originally indicated that the beneficiary would earn \$28,800 per year, plus benefits, but neither of these returns reflects such income. The petitioner has also submitted a conflicting job description, indicating that the beneficiary would receive \$1,500 per month (or \$18,000 per year) plus non-monetary compensation such as the use of a house and vehicles. Only the 2002 return shows \$18,000 that could be from a single source. The source of the beneficiary's "gross receipts or sales" is unexplained.

The petitioner also submits a copy of a "Certificate of License" which the petitioner issued to the beneficiary on April 14, 2002, stating that the beneficiary "was licensed to function in ministry." This document is dated only one month before the petition was filed, and thus it cannot show that the beneficiary was a minister before that date. If the beneficiary was already a recognized and authorized minister before April 14, 2002, then the question arises as to why the petitioner found it necessary to issue this certificate.

The petitioner has submitted two copies of an affidavit, attesting to the accuracy of the "translation of the original 'CERTIFICATE OF ORDINATION.'" The record, however, does not contain the translation itself, or the Spanish-language original; there is only the attestation that an accurate translation was prepared. A church official states that the beneficiary was ordained in 1997, but this letter was written several years after the fact.

The director denied the petition, stating that the petitioner has not persuasively established the beneficiary's continuous employment as a minister throughout the 2000-2002 qualifying period. The director noted the beneficiary's tax documents, and stated that "secular employment cannot be ruled out." As noted above, the beneficiary has claimed at least two distinct sources of income.

On appeal, counsel claims "Baptist Ministers are not issued W-2 Forms." The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record contains no documentation to show that Baptist churches have an official policy that prevents the issuance of Forms W-2. Even if the beneficiary is considered the sole proprietor of an independent "business," as suggested by his tax forms, payments from the petitioner to the beneficiary could still be reported on a Form 1099. Counsel does not cite any portion of the Internal Revenue Code that exempts Baptist churches from reporting the income of its ministers and providing evidence of such reports through Forms W-2, 1099, or some other type of official document that records the yearly total remuneration.

Even if the 2001 and 2002 tax returns established the source of the beneficiary's income (which they do not), these documents do not address the beneficiary's income between May and December of 2000. The petitioner has shown that the beneficiary entered the United States as an R-1 nonimmigrant religious worker, but the stamp in the beneficiary's passport does not prove that the beneficiary immediately began working for the petitioner, or that the beneficiary has worked exclusively for the petitioner since that time.

The petitioner submits a copy of a letter from [REDACTED] inviting the beneficiary to be the pastor of the petitioner's "Spanish speaking church." The date on the copy is May 1, 2000, but the date is darker and in a different typeface than the rest of the letter. A copy of another letter, dated April 15, 2001, congratulates the beneficiary on "the job that you have done over the past 8 months," i.e., since August 2000. The date on this letter is in the same typeface as the body of the text.

The petitioner has submitted conflicting information regarding the first months of the qualifying period, and the beneficiary's tax returns are structured in a way that strongly suggests more than one source of income. The director's attempts to ascertain how much of the beneficiary's income derived from the petitioner have been met with the claim that no clarifying documentation is available.

Given the inconsistencies and gaps in the record, we concur with the director that the petitioner has not established that the beneficiary has worked continuously in the position sought (without interruption and without engaging in other employment), throughout the entire two-year qualifying period.

Another issue concerns the nature of the beneficiary's position. The petitioner submits a "Job Description for Hispanic Pastor," listing the following duties:

- 1) Provide Pastoral leadership to Spanish speaking people.
- 2) Provide Spiritual guidance for those people.

- 3) Have at least two services per week.
- 4) Visit sick, follow up on visitors, and bring new people into the church.
- 5) Have a time of interacting fellowship once a month.
- 6) Assist these people with translations for jobs, hospital visits, etc.
- 7) Provide ESL classes.
- 8) Keep Building clean and neat.
- 9) Have material on hand about the church and our mission.
- 10) Assist these people with childcare when they are at church.

In denying the petition, the director stated that the petitioner had failed to provide "a clear and detailed description of the duties, responsibilities, and work hours," and that the petitioner had not specified "what prescribed religious training or theological education is required by the governing body of the denomination for the proffered position." The director then cited numerous unpublished appellate decisions, all concerning religious occupations. As a pastor, the beneficiary works in the vocation of a minister rather than in a religious occupation. The director failed to take into account the petitioner's submission of an itemized list of the beneficiary's responsibilities, as well as indications that the beneficiary is, and has been, an ordained minister. While some of the duties listed above are secular, such as English classes and building maintenance, it does not appear that the beneficiary is actually teaching the English classes or performing custodial work. Rather, it appears that the beneficiary is simply responsible for making sure that arrangements are in place for these functions. This is compatible with the general principle that a pastor is a top church official, responsible for all aspects of that pastor's church. We hereby withdraw this particular ground for denial, because the director appears to have relied on an incorrect understanding of the beneficiary's job.

The final ground cited by the director concerns the petitioner's ability to pay the beneficiary's salary. The petitioner states that the beneficiary will earn \$28,800 per year "plus fringe benefits." 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 initial submission contained no financial documentation. In response to the director's request for such evidence, the petitioner has submitted (as noted above) copies of the beneficiary's income tax returns for 2001 and 2002.

Apart from the petitioner's initial claim that the beneficiary would earn \$28,800 per year *in addition to* fringe benefits, a subsequent submission indicates that the beneficiary's salary is \$1,500 per month, which equals \$18,000 per year, supplemented with use of two vehicles and a three-bedroom house. Yet another letter indicates that the beneficiary "receives his compensation from the South Carolina Baptist Convention \$416 Per Month, the [redacted] \$1280 per month [redacted] \$1200." The petitioner has thus presented several conflicting claims regarding the beneficiary's compensation. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any

inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988).

Documents in the record appear to show that the \$416 a month from the South Carolina Baptist Convention derives from "an anonymous one-time gift . . . in the amount of \$5,000.00." If the source is a *one-time* gift, then the money will be exhausted after one year, and will not remain available as a source of remuneration. The record shows canceled checks for \$416.00, payable to the petitioner; there is no evidence that this money was passed on to the beneficiary. The church's operating funds are not identical to the beneficiary's personal remuneration.

The petitioner has submitted other documents showing one-time or limited-term payments. The petitioner has also submitted bank statements and unaudited financial statements. As noted above, the beneficiary's tax returns raise more questions than they answer.

The director denied the petition, in part because the record lacks the required documentation to establish the petitioner's ability to pay the beneficiary's salary.

Counsel argues "[redacted] is a large, solvent, and powerful religious organization." The petitioner, however, has not shown that [redacted] has taken responsibility for paying the beneficiary's salary. The record contains copies of checks issued to the beneficiary; printed on these checks is the name of the petitioning church. Because the petitioner has not shown that it is able to draw on the resources of the Baptist Church, the financial solvency of the denomination as a whole is irrelevant to this petitioner's ability to pay the beneficiary's salary.

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. In this instance, the petitioner has not submitted any of the required types of evidence. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The petitioner has not submitted the required types of documentation, and the petitioner has submitted, at best, circumstantial evidence that it has been paying the beneficiary the full wage ever since the petition's filing date.

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.