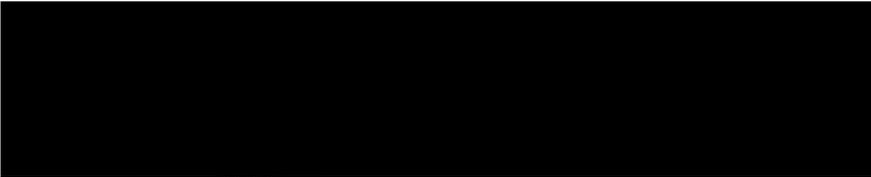




U.S. Citizenship
and Immigration
Services

C-1



FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: AUG 04 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:

SELF-REPRESENTED

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.

for Robert P. Wiemann, Director
Administrative Appeals Office

PUBLIC COPY

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 a minister. The director determined that the petitioner had not established (1) that the beneficiary had the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition; (2) that the position offered to the beneficiary is a qualifying position; (3) the petitioner's ability to pay the beneficiary's proffered wage; or (4) its status as a qualifying tax-exempt religious organization.

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).

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 October 25, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a minister throughout the two years immediately prior to that date.

_____ is the founder and president of the petitioning church. The petitioner's letterhead states that the petitioner is "Affiliated to: Intn'l Family Church _____". A letter in the record, signed _____ and by _____, senior pastor of the International Family Church, indicates that the petitioner "is affiliated to Intn'l Family Church," and that _____ the founder president is ordained and licensed with us."

Under the heading "EXPERIENCE," [REDACTED] states:

[The beneficiary] graduated with a Doctor in Theology in 1999. . . .

[The beneficiary] entered the U.S. on a B1/B2 visa and changed status to an F1 in February 1994 to pursue theological studies. Since entering the U.S. she has been supported financially by her husband from England, by friends, relatives and various affiliates from abroad. Her current status is 245(i).¹

Rev. Keisler does not specify when the beneficiary began working as a minister, nor does she specify that the beneficiary has continuously worked as a minister throughout the two-year qualifying period that ended on October 25, 2002.

The petitioner submits church brochures and fliers, some of which refer to the beneficiary. The earliest such document to mention the beneficiary is dated May 26, 2002.

The beneficiary provides a statement of her own experience and education. The statement is on the letterhead of Leadership International, and that letterhead in turn bears the names of [REDACTED] of Brockport, New York; Teen Action International, [REDACTED] South Carolina. The beneficiary states that she received her ordination in 1995, doctorate in Theology in 1999, and "will graduate next year" from a program of study in [REDACTED] of Theology. Under "Ministerial Experience," the beneficiary states that she was a teacher at Long River Church from 1998 until May 2001. The statement indicates, elsewhere, that the beneficiary "has been conducting, performing and officiating all the sacraments, rituals and ordinances" of the church, but the record contains nothing from [REDACTED] to indicate that the beneficiary worked there as a minister rather than as a teacher. The itemized list of the beneficiary's duties at that church does not include ministerial functions.

The director requested further evidence of the beneficiary's past experience. In response, the petitioner has submitted various letters and documents. [REDACTED] states "during the period of October 22, 2000 till October 22, 2002, [the beneficiary] has put forth an average of 40 to 48 hours of work in the field of Gospel Ministry. . . . During the above period, she has served, officiated and performed all the [REDACTED] sacraments and ordinances." [REDACTED] does not state where these activities purportedly took place. Rev. Raiborde also indicates that the beneficiary "developed and taught courses . . . that covered 16 weeks."

Section 101(a)(27)(C)(iii) of the Act requires that an alien who seeks to enter the United States to work as a minister must have been working *continuously* in that capacity throughout the preceding two years. The regulation at 8 C.F.R. § 204.5(m)(1) echoes this requirement. The term "continuously" has been interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948). The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

¹ "245(i)" is not an immigration status. Rather, section 245(i) of the Act relates to aliens who seek to adjust status despite having failed to maintain lawful immigration status. Thus, the petitioner's repeated references to "245(i)" as an immigration status are, essentially, an acknowledgement that the beneficiary is unlawfully present in the United States.

The petitioner has submitted a copy of a 2002 Form W-2 Wage and Tax Statement, indicating that the International Family Church paid the beneficiary \$1,200 that year, but this document does not establish anywhere near a year's pay, let alone show that the beneficiary was paid throughout the qualifying period.

The director, in denying the petition, acknowledged the submission of the 2002 Form W-2, but the director noted that there is no other documentation of any salary received during the qualifying period.

On appeal, Rev. Keisler asserts that the beneficiary "was paid from abroad" during the qualifying period "and continued to work in the same position as an ordained minister." The petitioner submits a copy of a contract, with the purported date June 1, 1999, indicating that the church "hires the Employee in the capacity of Religious Minister." If this document did in fact exist in 1999, it is far from clear why the petitioner did not submit this document until after the petition was denied four years later.

We note that, earlier, when the director had requested evidence to show how the beneficiary had supported herself during the qualifying period, the petitioner made no claim that the mother church paid the beneficiary "from abroad" (despite having its headquarters in the United States). Rather, the petitioner had responded with a letter from the beneficiary's spouse, who stated "I have supported my wife from England *out of my income*" (emphasis added). Copies of bank statements show that the beneficiary made frequent withdrawals from a joint account at Barclays Bank. The beneficiary's spouse does not state that the petitioning church, directly or indirectly, replenished these funds. If the beneficiary had been "hired" in 1999, as the petitioner now claims on appeal, it remains that there is no evidence that any salary payments accompanied that "hiring" until three years later, as shown on a Form W-2 that reflects only a small fraction of the beneficiary's promised annual compensation.

The petitioner has submitted copies of the 2002 and 2003 Directories of the International Family Church. While these volumes identify several individuals as "Rev." or "Minister," they both identify the beneficiary as a "Counselor." The directories are contemporaneous evidence that the International Family Church did not consider the petitioner to be a minister first and foremost. June 4, 2003 lists of "Salaried Workers" and "Non-Salaried workers" at International Family Church do not include the beneficiary's name.

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).

The record is, at best, inconsistent regarding the beneficiary's experience during the 2000-2002 qualifying period. Because of gaps in the record, and at times inconsistent descriptions of the beneficiary's activities, the evidence of record is insufficient to show that the beneficiary continuously carried on the vocation of a minister throughout the two-year qualifying period.

The next issue is whether the petitioner seeks to employ the beneficiary in a qualifying position. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection

between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

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.

Rev. Keisler states:

[W]e fully recognize [the beneficiary] as a Minister in our denomination. This authorizes her to conduct religious worship, preach, teach the Scriptures, lead Bible studies and prayer meetings. It allows her to perform child dedications, administer baptisms, celebrate the Holy Communion, perform the wedding and officiate the funeral and conduct the ceremonies according to the Biblical doctrines and practices as approved by our denomination. . . .

International Family Church has recognized her ordination of 1989 and reconfirmed by issuing "Certification of Ordination" [in] 1995.

A certification of the beneficiary's job offer, signed by Margaret James, secretary of the petitioning church, lists several of the beneficiary's responsibilities, including "To Preach, Teach and conduct Sunday services, lead Intercessory sessions and oversee the running of Sunday School classes for various ages," and "To prepare candidates for Water Baptism and conduct Dedication Services, administer Water Baptism, celebrate Holy Communion, solemnize weddings, officiate funerals and perform all the rituals, sacraments and ordinances of the Bible."

The director, in denying the petition, cited regulations pertaining to religious occupations. The beneficiary, however, seeks employment in the *vocation* of a minister rather than in a religious *occupation*. The regulations distinguish between the two, and provide different standards. The director stated that the petitioner has not shown that the beneficiary meets the petitioner's requirements, but the record documents the beneficiary's religious training and ordination. The director does not clarify how the beneficiary's background is purportedly deficient.

We find that the petitioner seeks to employ the beneficiary in the vocation of a minister, and we withdraw the director's finding to the contrary. (This is entirely separate from the issue of whether the beneficiary worked as a minister during the qualifying period.)

The next issue concerns the petitioner's ability to pay the beneficiary's proffered 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.

Rev. Keisler states that the beneficiary's "salary will be \$28,500 per year." The petitioner submits copies of documents regarding the finances of International Family Church. These documents, such as budgets (which reflect anticipated income rather than document existing assets), do not conform to the regulatory requirements spelled out above. To establish the church's address, the petitioner has submitted a copy of a utility bill. The bill shows that the amount due includes a "past due" amount from a previous bill (although the petitioner has crossed out the "past due" amount). The assessment of a "past due" charge does not readily attest to the church's financial solvency.

The director asserted that the petitioner has submitted no financial information regarding the petitioning church. The financial documents in the record relate to International Family Church. This, in itself, is not inherently disqualifying. We note the petitioner's submission of a Form W-2 showing that International Family Church had paid the beneficiary in 2002. Other documents indicate that International Family Church "is the main body that guarantees and pays wages to its religious workers." Nevertheless, the petitioner must still show that International Family Church is able to meet this obligation.

On appeal, the petitioner submits a "Profit & Loss" statement for International Family Church, for calendar year 2002. There is no evidence that this document was prepared via an audit. The document states that the beneficiary received \$1,350 in salary during 2002 (which conflicts with the \$1,200 reported on the Form W-2), and that the petitioner's net income after expenses was \$17,005.06. This amount is not sufficient to cover the shortfall between the beneficiary's proffered salary, and the salary she actually received. The Profit & Loss statement also lists housing allowances for several employees, but not for the beneficiary, so the document does not appear to take that expense into account.

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 documentation submitted does not conform to the regulatory requirements, and even the documentation submitted indicates, on its face, that the petitioner's ability to pay the beneficiary falls short by over ten thousand dollars.

The final issue concerns the petitioner's tax exemption. 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit 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.

The petitioner's initial submission contains a letter from the Internal Revenue Service (IRS) to the petitioning church, in care of Rev. Keisler, dated December 28, 2000. This letter acknowledges the petitioner's "request for information on your organization's exempt status." The letter does not go on to state that the IRS

recognizes the petitioner as exempt. Instead, the letter provides instructions on how to apply for such recognition, which implies that the petitioner had not yet applied for such recognition as of December 28, 2000.

The petitioner has submitted a copy of a 1984 IRS letter, indicating that [REDACTED] of Monroe County, New York, is a tax-exempt church. The letter does not state whether or not this is a group exemption, extending to all affiliated or subordinate churches. A 2001 letter from Rev. Donald P. Riling to [REDACTED] states "[a]ll of our affiliate churches may operate under our" tax exemption. This letter does not establish the petitioner's affiliation with Christian Center Church, nor does it prove that the 1984 IRS letter to [REDACTED] establishes a *group* exemption for all affiliated entities. Rev. Riling states in this letter, and in other correspondence, that the reader may contact the IRS for additional information and verification. The burden is on the petitioner to provide documentation of its tax-exempt status; it cannot suffice for the petitioner simply to recommend that we contact the IRS for this information.

[REDACTED] asserts, in another letter, that the petitioner "has the same statement of Faith and doctrine as of this organization [REDACTED] and is under the umbrella of [REDACTED] Brockport, NY which has group tax-exemption as per IRS ruling." The only documentation regarding [REDACTED] a certificate of exemption from *state* taxes in New York.

The director requested additional evidence regarding the church's structure and hierarchy, to clarify the nature of the tax exemption. The petitioner has submitted an [REDACTED] directory, which lists several entities in the United States including the petitioning church. This directory also lists, in the same section that includes the petitioning church, the names of various individuals, as well as several corporations which do not appear to be typical church activities, such as [REDACTED]. These corporations are identified as "partners"; the extent of their corporate ties to International Family Church are undisclosed. If they have no ties to the church at all, then obviously inclusion in the directory is not definitive evidence of affiliation with International Family Church.

The director requested additional information to establish the required exemption, but the petitioner's response consists of copies of the same IRS letters, additional letters from [REDACTED] advising authorities to contact the IRS, and new letters from Rev. Raiborde.

The record continues to lack definitive, objective documentation to establish that the petitioning church is covered [REDACTED] tax exemption. We note that the International [REDACTED] directory lists the petitioner and a cleaner in the same section, and the directory does not mention [REDACTED] Church at all. The petitioner has submitted documentation regarding several churches in several states, with little or no concrete documentation establishing the extent or nature of the formal connections (if any) between those churches and the petitioning entity. The petitioner has no explanation for the complete lack of official documentation establishing a formal connection between the exempt entities and the petitioning church.

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.