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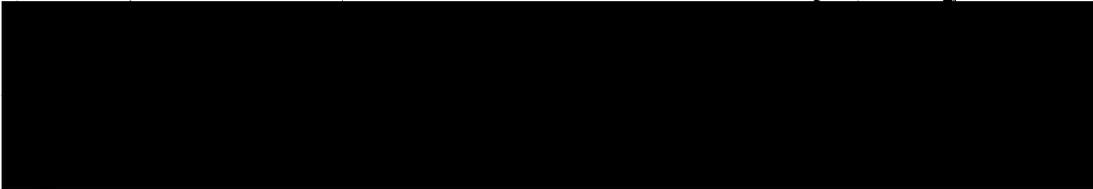
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U.S. Department of Homeland Security
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Washington, DC 20536



U.S. Citizenship
and Immigration
Services

M



FILE: [REDACTED] Office: VERMONT SERVICE CENTER

Date: JUL 28 2004

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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 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
Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner 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 deacon. The director determined that the petitioner had not established that the past and proposed duties of the position require advanced religious training and, therefore, that the position does not qualify as a religious occupation.

On appeal, counsel for the petitioner submits a brief arguing that the petitioner has established that the position in question can only be filled by a member of the clergy, a deacon, and that deacons require advanced religious training.

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; 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) states, in pertinent part:

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.

The Form I-360, Petition for Amerasian, Widow or Special Immigrant, was filed by the petitioner, through counsel, on February 26, 2001. The petition was denied on July 30, 2002. This is the second Form I-360 filed by the petitioner on the beneficiary's behalf; the first petition, filed on November 1, 1999, was denied by the director on September 21, 2000.

The petitioner is described as a church having a congregation of 73 members. The petitioner states that it does not have any salaried employees, but that the beneficiary and two priests receive allowances for their services. The petitioner indicates that one of the priests is the beneficiary of a Form I-360 petition filed by the petitioner on the alien's behalf, and approved by Citizenship and Immigration Services (CIS) on an unspecified date.

The petitioner states that the beneficiary receives \$100 per week, and each priest receives \$130 per week. The petitioner states that it also covers the priests' expenses, but does not specify what those expenses include. The petitioner also states that it directly pays for the beneficiary's rent and utilities.

The record reflects that the beneficiary is a native and citizen of Ethiopia who was last admitted to the United States as a nonimmigrant visitor (B-2) on December 26, 1998, with authorization to remain until June 25, 1999. The beneficiary was subsequently granted a change of nonimmigrant status to that of a nonimmigrant religious worker (R-1) on April 30, 1999, with authorization to remain in that status until April 15, 2001. The Form I-360 petition indicates that the beneficiary has not been employed in the United States without CIS permission.

Documentation submitted by the petitioner in support of the petition includes the following:

- A letter from the Internal Revenue Service (IRS) recognizing the petitioner as exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code (IRC), as an organization described in sections 509(a)(1) and 170(b)(1)(A)(i).
- The petitioner's preliminary by-laws, dated 1996.
- The petitioner's 1999 and 2000 IRS Forms 990-EZ, Short Form Return of Organization Exempt from Income Tax; an un-audited financial statement for the month of May 2000; and various bank statements, dated March through November 1999. According to the petitioner's IRS Forms 990 EZ, salaries, other compensation and employee benefits totaled \$25,000 in 1999, and \$23,230 in 2000.
- Photocopies of cancelled checks issued to the beneficiary, dated May 1999 through June 2000. A total of 55 checks for \$100 each were issued during the 13-month period, totaling \$5,500.

- The beneficiary's resume; a photocopy of a certificate issued to the beneficiary in September 1987 for having attended the [REDACTED], Diocese of South Shoa, Ethiopia; a photocopy of a certificate of attendance at the [REDACTED] issued to the beneficiary on February 23, 1993, by the Ecumenical Institute of the [REDACTED], in co-operation with the [REDACTED] and additional information concerning the beneficiary's work history and academic studies.
- Letters, dated December 29, 2000, from the president of the petitioner's executive committee, Yeshi [REDACTED] of the [REDACTED] in Seattle.
- A weekly and hourly schedule of the beneficiary's duties and responsibilities.
- Copies of pages from an untitled document containing sections on the "Anaphora of the Apostles" and "Preparatory Service," indicating that a deacon takes part in the celebration of mass.

The petitioner's preliminary by-laws note its name as [REDACTED] The [REDACTED] referred to as [REDACTED] Church. It is noted, however, that the petitioner's name is also variously referred to in documentation contained in the record as [REDACTED]

(the IRS letter); [REDACTED] financial statement.

2000

(1999 IRS Form 990-EZ); [REDACTED]

[REDACTED] (bank statements); and [REDACTED] 360).

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements. The sole issue raised by the director to be discussed in this proceeding is whether the proposed position qualifies as a religious vocation or occupation.

The regulation at 8 C.F.R. § 204.5(m)(2) states, in pertinent part, that:

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.

Professional capacity means an activity in a religious vocation or occupation for which the minimum of a United States baccalaureate degree or a foreign equivalent degree is required.

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.

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) 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; and

(B) That, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested, or,

(C) That, if the alien is a religious professional, he or she has at least a United States baccalaureate or its foreign equivalent required for entry into the religious profession. In all professional cases, an official academic record showing that the alien has the required degree must be submitted; or

(D) That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother, or that the type of work to be done relates to a traditional religious function.

In his letter of December 29, 2000, [REDACTED] states, in part, that:

[The petitioner] was founded in 1996 and now has attendance of over 400 people. . . .

A deacon in our church is a member of the clergy. The position was established by our founding fathers and has developed through the centuries of religious practice. . . . [A deacon] has an essential role in our very traditional ceremonies and services. . . . No lay persons are allowed to lead the hymns or assist the priest during the ceremony. These things can only be

done by a highly trained member of the clergy, which would be at least a deacon, if not a priest.

Besides assisting the priest in the celebration of mass, our most important ritual, a deacon's duties include preaching, visitation and counseling of the sick and other persons in need; coordination of youth activities, teaching church doctrine and many other specialized religious duties. . . . From the time he is ordained, [a deacon] cannot hold another job. He must live a life of humble means provided only by the church.

It is noted that this "attendance" figure of 400 [as] provided by [REDACTED] differs significantly from the "membership" total of 73 subsequently provided by [REDACTED] in a letter dated December 5, 2001. This discrepancy has also not been explained.

In his letter [REDACTED] states, in part, that:

Deaconhood in the E.O.C. [REDACTED] was established by the founding fathers along with the four other positions of the clergy: priests, bishops, archbishops and the Patriarch. A monk is any one of these who has also made a vow of chastity. The initial church dictates relating to Deacons are established in the "Fetha Negast." This name means literally, "Book of Religious Ordinance." It was written by our church fathers in the earliest years after our split with the [REDACTED]. Written in the official church language [sic] Geez, it is followed strictly by the E.O.C. in all matters of religious practices.

The Archbishop further provides a summary of the provisions of the [REDACTED] relating to the personal and spiritual characteristics, academic requirements, ordination, consecration, duties and responsibilities, and suspension of a deacon. The summary indicates that a deacon is an ordained position within the E.O.C., and that in order to celebrate mass, the presence of a deacon with a priest is a minimum requirement. A deacon must: learn a special language used only for religious purposes; have advanced knowledge of psalms, scriptures, and canon law; have mastery of 14 prayer books for different rituals; and, have a basic knowledge of "Christology and Sacramental Theology." The summary further reflects that a deacon "is entitled to get benefits from the church proceeds."

There is no indication in the summary that a deacon has the traditional duties of a "minister," as that term is defined in the regulation at 8 C.F.R. § 204.5(m)(2). A deacon does not perform mass, or officiate at weddings, funerals, and baptisms, etc. A deacon merely "assists" in such duties. There is also no indication that the position of a deacon is a "religious vocation," as that term is defined in the regulation at 8 C.F.R. § 204.5(m)(2). As indicated by [REDACTED] the position of a monk in the E.O.C. requires the taking of vows; however, the position of deacon does not.

The statute is silent on what constitutes a "religious occupation" and the regulation at 8 C.F.R. § 204.5(m)(2) states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples (cited above). CIS interprets the term "traditional religious function" to require a demonstration that the duties of the position are

directly related to the religious creed 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.

Here, the petitioner has not provided sufficient evidence to establish that the proposed position is traditionally a permanent, full-time, salaried occupation within the denomination. The petitioner has also made no claim, and submitted no evidence to establish, that the beneficiary has been a salaried employee. Furthermore, the petitioner has not provided a detailed description and evidence of the beneficiary's means of financial support in this country, supported by corroborating evidence such as certified tax documents. 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). For these reasons, the petition must be denied.

Furthermore, it is noted that, in addition to the discrepancies encountered with regard to the petitioner's name and its number of congregants, there is also a discrepancy in the information submitted regarding the beneficiary's wage. In his letter of December 29, 2000, [REDACTED] states that the petitioner "is prepared to continue paying [the beneficiary's] monthly stipend of \$1,000 per month." However, elsewhere in the record, the petitioner indicates the beneficiary's wage to be a weekly stipend of \$100, in addition to direct payments for his rent and utilities. These discrepancies in the petitioner's submissions call into question in the petitioner's ability to document the requirements under the statute and regulations, and have not been explained satisfactorily. 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).

Beyond the decision of the director, the petitioner has not submitted sufficient evidence to establish that it has extended a valid job offer to the beneficiary. The petitioner has also not submitted sufficient evidence to establish its ability to pay the beneficiary the proffered wage. Therefore, the petition also must be denied for these reasons.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center or District Office does not identify all the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal 2001) *aff'd*. 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir 1989) (noting that the AAO reviews appeals on a *de novo* basis).

In reviewing an immigrant visa petition, 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 beneficiary in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of B. Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).



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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.