

SECRET

U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

[Handwritten signature]

[Redacted]

FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: JUN 15 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:
[Redacted]

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.

[Signature]
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 a pastor. The director determined that the petitioner had not established (1) that the beneficiary has the required two years of experience, immediately prior to the petition's filing date, performing the duties of the position offered, (2) that the petitioner had presented a qualifying offer of permanent, paid employment, (3) the petitioner's ability to pay the beneficiary's wage, or (4) that the beneficiary entered the United States solely to assume the duties of a religious worker.

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 May 7, 2001. 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.

Edward Olufelo, acting pastor of the petitioning entity, states "[w]e desire to have [the beneficiary] assume the duties of Minister of our church to be primarily in charge of religious education and spiritual leadership." Mr. Olufelo asserts that the beneficiary has served as a minister within the denomination "continuously since the date of his ordination" in November 1997.

The petitioner submits a copy of a January 1996 "Letter of Appointment as a Pastor" issued by the denomination's headquarters in Nigeria, and a copy of the beneficiary's certificate of ordination, issued by the same authority in November 1997. Elder J.O. Uwajubogu, secretary general of the petitioner's denomination, states that the beneficiary "has faithfully served as the Pastor of our Ikeja Branch, in Lagos, Nigeria since his ordination."

The director requested "a detailed description of the beneficiary's prior work experience" accumulated during the two-year qualifying period, as well as proof that the employment took place. In response, the petitioner has submitted copies of Form W-2 Wage and Tax Statements, reporting that the petitioner paid the beneficiary \$3,000.00 in 2000, and copies of canceled checks, showing that the petitioner paid the beneficiary \$1,020.00 per month from May 2000 through December 2000. These eight payments add up to \$8,160.00 paid to the beneficiary during 2000, which indicates that the petitioner drastically underreported the beneficiary's 2000 income on the Form W-2. The beneficiary's Form W-2 from 2001 indicates wages totaling \$20,000.00 for the year. This payroll information does not establish the beneficiary's employment prior to May 2000. The record does not contain certified copies of the beneficiary's income tax returns, so we cannot determine how much income the beneficiary claimed to have earned in 2000.

In a new letter, [REDACTED] states that the beneficiary "has faithfully served as the Pastor of our Ikeja branch in Lagos since his ordination on a salary of Twenty Thousand Naira (excluding his transportation and housing, which were provided by his branch). He is currently serving as the Pastor of our Atlanta Branch." This statement is somewhat ambiguous. Because the beneficiary is no longer in Nigeria, he clearly no longer serves as the pastor in Ikeja. The record does not establish when the beneficiary stopped working in [REDACTED] or when he began working in Atlanta. A substantial interruption in the beneficiary's work would mean that the beneficiary was not continuously carrying on the vocation of a minister throughout the two-year qualifying period. As noted above, the beneficiary entered the United States in early January 2000, but the petitioner has documented no payments prior to May 2000, suggesting a gap of several months during which the beneficiary could not have worked in Nigeria and was not paid for work in the United States. The beneficiary's B-1/B-2 nonimmigrant visa bears a notation that indicates the purpose of the beneficiary's travel to the United States was a three-week visit to the petitioner's address. Those three weeks would have ended in late January 2000.

The director denied the petition, stating that the evidence submitted lacks necessary details regarding dates, compensation, and other factors.

On appeal, counsel asserts that the beneficiary "entered the United States . . . to temporarily assist the struggling [petitioning] Church during a crisis of leadership," and the petitioning church subsequently asked him to remain in the United States. Counsel cites previously submitted letters to show that the beneficiary has continuously worked as a pastor since well before the qualifying period began in May 1999.

The record, however, still contains several gaps. The petitioner has documented payments to the beneficiary beginning in May 2000, which raises the question of why such documentation is apparently unavailable for the period before May 2000. With regard to the beneficiary's work in Nigeria during the second half of 1999, we have no contemporaneous documentation at all, relying only on the vague, after-the-fact statement that the beneficiary has worked as a pastor in Nigeria. Even when the beneficiary's payments are documented, those documents contain numerous inconsistencies, as listed above. These inconsistencies call into question the credibility not only of the financial and tax documents, but the record as a whole. 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 petitioner has not credibly documented the beneficiary's continuous (i.e., full-time and uninterrupted) work as a minister throughout the two-year period that ended May 7, 2001.

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) defines a "minister" as 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.

The director concluded that the petitioner has not provided sufficient information regarding the beneficiary's duties or the training that led to the beneficiary's 1997 ordination. The director also found that there was not sufficient evidence to establish that the petitioner has offered the beneficiary a paid position. As noted above, the petitioner has been paying the beneficiary for his work. On appeal, the petitioner documents the beneficiary's Diploma in Pastoral Ministry and Evangelism at the [REDACTED] operated by the petitioner's denomination. The available evidence appears to be sufficient to justify the finding that the beneficiary's ordination derives from formal divinity training, and that the beneficiary is a paid employee of the petitioning church. We withdraw the director's finding that the petitioner has not shown that the beneficiary qualifies as a minister.

The third issue raised by the director concerns the petitioner's ability to pay the beneficiary's 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.

Counsel states that the initial submission includes a "letter from TREM headquarters in Nigeria showing monthly allowance of \$2000.00 to support [the beneficiary]." The record contains no letter matching this description. [REDACTED] states that the beneficiary "will be paid a monthly stipend from [REDACTED] in Nigeria of \$2,000.00 per month for his services to our Church," but [REDACTED] is with the petitioning branch in Georgia, not the denomination's "headquarters in Nigeria." A 1996 letter from Church officials in Nigeria states that the beneficiary's "monthly remuneration has been fixed at N20,000.00 (Twenty Thousand Naira)," but this sum reflects the beneficiary's remuneration in Nigeria, several years before his arrival in the United States. The record does not establish that N20,000.00 is roughly equal to \$2,000.00 in United States currency. The initial submission contains nothing to establish the financial status of the United States entity where the beneficiary will work, nor any documentation to show that the denomination's overseas headquarters has executed a binding commitment to pay the beneficiary \$2,000.00 per month (or to establish its ability to honor such a commitment).

The director requested further evidence to establish the petitioner's ability to pay the proffered wage. In response, the petitioner has submitted documentation of wire transfers to the beneficiary from the

denomination's headquarters, and copies of canceled checks paid to the beneficiary (as discussed elsewhere in this decision). Pay stubs dated July and August of 2002 list the beneficiary's salary as \$1,666.67 per month. The checks, pay stubs, and Forms W-2 reflect payments considerably lower than the promised \$2,000.00 per month.

Branch secretary [REDACTED] states that the beneficiary's "current remuneration includes a monthly stipend of \$1666.67 and housing and transportation needs provided (approximately \$1130.00) by our church." The petitioner has submitted copies of canceled checks for rent payments and car payments.

The director denied the petition, stating that the available evidence does not sufficiently demonstrate the petitioner's ability to pay the salary offered to the beneficiary. The petitioner, on appeal, has submitted a copy of an audited financial statement for the petitioner's parent organization in Nigeria. This statement does not establish the financial status of the individual branches. Counsel maintains that the beneficiary's "salary is paid directly by [the petitioner] and not the World Headquarters," meaning it is incumbent upon the petitioner to establish that it, not its overseas parent entity, is able to pay the beneficiary's salary. The petitioner has submitted copies of bank statements, showing that the petitioner maintains a balance between \$6,000 and \$7,000. The amount that the petitioner has heretofore paid the beneficiary is unclear, because of the discrepancies between the canceled checks and tax documents in the record. The record does not establish that the petitioner has, ever since the filing date, been able to pay the beneficiary the full proffered wage.

The final issue raised in the director's decision concerns the beneficiary's entry into the United States. Section 101(a)(27)(C)(ii)(I) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(I), requires that the alien seeking classification "seeks to enter the United States . . . solely for the purpose of carrying on the vocation of a minister." In this instance, the beneficiary initially entered the United States as a B-1 nonimmigrant visitor, later changing status to an R-1 nonimmigrant religious worker. The director concluded that the beneficiary did not enter the United States solely for the purpose of working as a minister.

This finding is not defensible. The inscription on the beneficiary's nonimmigrant visa, regarding the purpose of his visit, includes the petitioner's address, which demonstrates that the beneficiary did not come to the United States for reasons unrelated to his vocation. More importantly, the AAO interprets the language of the statute, when it refers to "entry" into the United States, to refer to the alien's intended *future* entry *as an immigrant*, either by crossing the border with an immigrant visa, or by adjusting status within the United States. This is consistent with the phrase "*seeks to enter*," which describes the entry as a future act. Furthermore, the beneficiary entered the United States as an R-1 nonimmigrant religious worker, and thus religious work was clearly the purpose of the beneficiary's entry. We therefore withdraw this particular finding by the director.

While not all of the director's findings are warranted by the evidence of record, we concur that the petitioner has not adequately established its ability to pay the beneficiary's full wage, and that the petitioner has not persuasively documented that the beneficiary worked continuously as a pastor throughout the entire two-year qualifying period from May 1999 to May 2001. These grounds are sufficient to warrant denial of the petition and dismissal of the appeal.

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.