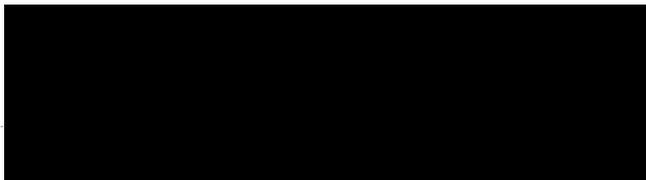


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U.S. Citizenship  
and Immigration  
Services

*01*



FILE: [REDACTED]  
EAC 04 038 50475

Office: VERMONT SERVICE CENTER

Date: DEC 22 2005

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:

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.

*Maiphusse*

*Σ* Robert P. Wiemann, 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 (AAO) 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 (the Act), 8 U.S.C. § 1153(b)(4), to perform services as an associate pastor. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition, that it has extended a qualifying job offer to the beneficiary, or that it has the ability to pay the proffered wage.

On appeal, the petitioner submits a letter and additional documentation.

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 first issue presented on appeal is whether the petitioner established that the beneficiary had been continuously employed in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. 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 regulation 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.”

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.

The petition was filed on November 23, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as an associate pastor throughout the two-year period immediately preceding that date.

In its November 14, 2003 letter accompanying the petition, the petitioner stated that the beneficiary had been working for the petitioning organization pursuant to an R-1 nonimmigrant religious worker visa. Documentation indicated that an R-1 nonimmigrant visa was approved for the beneficiary and was valid from June 1, 2003 to June 1, 2006. According to the petitioner, the beneficiary was paid \$2,000 per month for her services. The petitioner submitted copies of canceled checks reflecting that it paid the beneficiary \$2,100 in July, August, September and October 2003.

The petitioner also submitted a March 18, 2003 "certificate of employment" form The General Assembly of Presbyterian Church in Korea, certifying that the beneficiary had worked as a pastor for that organization from January 1991 to July 2000. The petitioner did not indicate any other work that the beneficiary performed during the qualifying period. However, copies of church flyers list the beneficiary as an instructor during the petitioner's revival worship service of May 16 to 18, 2003.

In a request for evidence (RFE) dated November 2, 2004, the director instructed the petitioner to:

Submit evidence that the beneficiary has the continuous two years full-time experience in the religious vocation, professional religious work, or other religious work of the period immediately prior to November 21, 2003. Such evidence may be statements which include all of the following information: detailed listing of the beneficiary's duties, the commencement and termination dates of employment, and the time spent per week by the beneficiary performing those duties . . . However, documentation to establish the employment dates, training, and salary of the beneficiary should consist of more than a statement. Objective documentary evidence, such as payroll records, tax return forms, contracts, etc., should be submitted to confirm the claimed employment dates and compensation for services performed.

In response, the petitioner, in its letter of January 4, 2005, stated:

[The beneficiary] had experience as a full time pastor at [the petitioning organization] from June 1, 2003 to present time. She had experience full time education pastor at The General Assembly of Presbyterian Church in Korea from January 1991 to July, 2000 located at Seoul, S. Korea. She has total 9 years and 6 month[s] experience in Korea. And [s]he had 6 month[s] experience. Total 10 year[s] experience prior to November 21, 2003.

The petitioner also stated, "She started to work as [sic] a voluntary basis from May 1, 2003. She has worked a full time salaried associate pastor upon the approval R-1 Visa since June 1, 2003. She got paid \$25200 a year." Although the petitioner indicated that it was "enclosing pay roll checks for 2 years," it submitted copies of only those checks that it had previously submitted with the petition. The petitioner also submitted a copy of the beneficiary's year 2003 Form 1040, U.S. Individual Income Tax Return, on which she reported wages of \$14,700 and a "wire transfer from KO" in the amount of \$7,000. The return does not specify the source or purpose of this wire transfer or why the beneficiary reported it as income on her tax return.

The petitioner did not submit a copy of a Form W-2, Wage and Tax Statement, or a Form 1099-MISC, Miscellaneous Income, reflecting compensation that it paid the beneficiary in 2003. We note, however, that the petitioner initially stated that it paid the beneficiary \$2,000 per month. Canceled checks indicate that she was paid \$2,100 per month, which corresponds with the wages the beneficiary reported on her Form 1040. In response to the RFE, the petitioner stated that it paid the beneficiary \$25,200 per year. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The petitioner submitted no evidence that the beneficiary worked full time as a minister at any other time during the qualifying period.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was 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).

In the rare case where volunteer work might constitute prior qualifying experience, the petitioner must establish that the beneficiary, while continuously and primarily engaged in the traditional religious occupation, was self-sufficient or that his or her financial well being was clearly maintained by means other than secular employment.

On appeal, the petitioner stated that the beneficiary entered the United States on March 22, 2003, and that she was employed by the Dongpyeongyang Presbytery in Korea as a vice pastor and youth director from August 2000 to March 2003. The petitioner submitted a copy of a "letter of experience" from the General Assembly of Presbyterian Church in Korea, "certifying" that the beneficiary had served as a vice pastor at the

Dongpyeongyang Presbytery from August 2000 to March 2003. The petitioner submitted no explanation as to why it had not included this work experience when it initially submitted the petition or in response to the RFE. Further, the petitioner submitted no evidence corroborating the beneficiary's work prior to June 1, 2003. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

We note, however, that the petitioner initially alleged that the beneficiary had ten years experience as a minister, yet on appeal it adds another year and eight months to her experience, for which it offers no explanation or documentary proof.

The record before the director does not establish that the beneficiary was continuously engaged in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa petition.

The second issue on appeal is whether the petitioner established that it had extended a qualifying job offer to the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

*Job offer.* The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

The petitioner stated that the position offers full-time employment with an annual salary of at least \$2,000 per month.

The director determined that, as the evidence did not establish that the beneficiary had been compensated during the qualifying period and did not establish that she was not dependent upon supplemental income for her support, the evidence did not establish that the petitioner had extended a qualifying job offer to the beneficiary.

We withdraw the director's statement. This petitioner relates to an offer of prospective employment. There is no statutory or regulatory requirement that the beneficiary work for the petitioner during the qualifying period. The record also reflects that petitioner paid the beneficiary during at least part of the period that it states she worked for the petitioning organization.

We note, however, that the petitioner identifies its address as [REDACTED] in Browns Mills, New Jersey. The beneficiary's Form W-2 reflects that the petitioner is located at [REDACTED] in Ridgefield Park, New Jersey. The petitioner submitted no evidence to explain this inconsistency. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The evidence, therefore, raises questions as to where the petitioner is located and whether it exists as a functioning entity. As such, the record does not sufficiently establish where and at what job the beneficiary will be engaged.

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 does not identify all of 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).

As the record contains conflicting information about the location of the petitioner, the petitioner has not established that it has offered a qualifying job offer to the beneficiary.

The third issue on appeal is whether the petitioner not established that it has the ability to pay the proffered wage.

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 stated that it would pay the beneficiary \$2,000 per month for her services. The record contains copies of canceled checks reflecting that the petitioner paid the beneficiary \$2,100 per month from July through October 2003. The beneficiary's Form 1040 reported wages of \$14,700 for 2003; however, the petitioner submitted no evidence such as a Form W-2 or Form 1099-MISC reflecting that it was the source of all of the beneficiary's reported wages.

With the petition, the petitioner submitted a copy of its unaudited financial statement for the period ending 2002 and copies of its year 2003 and 2004 budgets.

On appeal, the petitioner submits a copy of a Form W-2 reflecting that it paid the beneficiary \$25,200 in 2004, and copies of canceled checks reflecting payments to the beneficiary of \$1,976.33 for January through

March 2005. The petitioner also submitted a copy of its unaudited financial statements for 2004 and a copy of its 2005 budget.

The above-cited regulation 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 submitted a copy of the Form W-2 that it issued to the beneficiary in 2004; however, it submitted no similar evidence for 2003. Further, as the petitioner submitted no competent evidence of the compensation that it paid to the beneficiary during the latter months of 2003, it has failed to establish that it has the continuing ability to pay the beneficiary the proffered wage.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.