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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE: [Redacted]  
SRC 05 217 51328

Office: TEXAS SERVICE CENTER Date: NOV 14 2006

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:



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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, Chief  
Administrative Appeals Office

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

The alien beneficiary seeks classification 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 a minister at [REDACTED] (hereinafter "the church" or [REDACTED] in Midland, Texas. 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 beneficiary possessed the necessary qualifications for the position; (3) the church's ability to pay the beneficiary's salary; or (4) the church's tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986.

Part 1 of the Form I-360 petition identifies the church as the petitioner. Review of the petition form, however, indicates that the alien beneficiary is the petitioner. An applicant or petitioner must sign his or her application or petition. 8 C.F.R. § 103.2(a)(2). In this instance, Part 9 of the Form I-360, "Signature," has been signed not by any official of the church, but by the alien beneficiary himself. Thus, the alien, and not the church, has taken responsibility for the content of the petition. This will not affect the adjudication of the appeal, because the record shows that the attorney who filed the appeal represents the alien beneficiary. Thus, the appeal has been properly filed.

We note that, in denying the petition, the director cited 8 C.F.R. § 103.2(b)(13), a regulation that deals with petitions denied due to abandonment. The director then, however, went on to cite several substantive grounds for denial. The director also stated that the petitioner had the right to file an appeal, a right that does not apply in instances of abandonment. Therefore, the AAO will not consider the petition to have been denied due to abandonment.

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

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<sup>1</sup> The Form I-360 petition and other materials in the record identify the church as [REDACTED]. The church's own printed letterhead, however, utilizes the English-language name cited above.

(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 record does not reflect that the initial filing of the petition included any evidence at all, or any substantive claims except for Form G-325, Biographic Information, on which the petitioner indicated that he had been a "religious worker" for the church since February 2001. On August 25, 2005, the director issued a comprehensive request for evidence (RFE), requesting information about the beneficiary, the position offered, and the intending employer. We shall discuss various elements of the response to the RFE as appropriate, below.

The first issue concerns the petitioner's past experience in the proffered position. 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 experience in the religious vocation, professional religious work, or other religious work. The petition was filed on August 18, 2005. Therefore, the petitioner must establish that he was continuously performing the duties of a minister throughout the two years immediately prior to that date.

In a letter on church letterhead, Rev. [REDACTED] states:

[The petitioner] is a minister that has been working with us at [REDACTED] since January of 2003 and continues to do so. . . . The services he participates in vary, and are as follows: Wednesday 7:30 P.M. – 9:30 P.M., Friday 7:30 P.M. – 9:30 P.M., Sunday 9:45 A.M. – 12:30 P.M., Sunday 5:00 P.M. – 8:00 P.M. These are our regular hours of church services. The first Saturday of the month we have fraternity services in different cities in the area. We have twelve youth services per year and one Youth Convention in Texas which lasts 3 days.

Visitation varies according to the needs and times the members ask. The hours are on Mondays, Tuesdays, and Saturdays – one hour per household. The visits to the sick in the hospital are two or three times a month. He receives donations in the form of cash. Each service gives an average – eighty to a hundred dollar donation.

The petitioner submits a copy of a letter from [REDACTED] Office Administrator at GLAD Youth Ministries. The letter does not include the petitioner's name. Instead, it begins: "Dear Youth Leader: This letter serves to verify your attendance at the 2004 GLAD Youth Convention. Please note that you have officially registered the following number of registrants 27 single and 1 couples, which equal to a total of 29 registrants."

Without contemporaneous evidence to show that the petitioner was the church's youth leader in 2004, this general correspondence offers little support for the petitioner's claim.

The director denied the petition in part because of the lack of evidence to show that the petitioner worked continuously as a minister throughout the two-year qualifying period. The director also stated that Rev. [REDACTED] "letter clearly states that the beneficiary was not paid a salary during part of the two years." On appeal, the petitioner submits four letters, signed by Rev. [REDACTED] and other witnesses, attesting to the petitioner's work as a youth pastor. The four letters are identical except for the names of the individuals signing each one.

The petitioner also submits a letter from Rev. [REDACTED], Presbyter of the Lamesa Section—Gulf Latin American District of the Assemblies of God, who states:

I have known [the petitioner] since the fall of 2001. . . . At that time he was a visitor at [REDACTED] Andrews, Tx. Later on, he became a member of [REDACTED], Midland, Tx. . . .

Currently, [the petitioner] is helping us by ministering as an intern-pastor at [REDACTED] Odessa, Tx. He is under the supervision of Rev. [REDACTED] . . . and of the directors of the Lamesa Section, of which I am its presbyter.

The petitioner submits copies of checks that show [REDACTED] in Odessa, Texas, paid the beneficiary between \$500 and \$700 each month from January 2005 to October 2005. There is no documentation of payments in 2003 or 2004. There is no explanation as to why the petitioner's initial submission contained no mention of [REDACTED] even though the petitioner was supposedly working there at the time he filed the petition. Most of the checks are in the amount of \$500, which cannot corroborate Rev. [REDACTED] earlier claim that the beneficiary received between \$80 and \$100 in cash at each of four weekly services.

The available evidence suggests that the petitioner has been active with Assembly of God churches in Texas for at least part of the 2003-2005 qualifying period, but the fragmentary and inconsistent evidence is not sufficient to support the finding that the petitioner worked continuously as a minister throughout that period. We therefore affirm the director's finding in this regard.

We now turn to the issue of the petitioner's qualifications. 8 C.F.R. § 204.5(m)(3)(ii)(B) requires the petitioner to demonstrate 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.

In the RFE, the director instructed the petitioner to describe the proffered position, and to "[s]ubmit a copy of [the alien's] qualifying credential for the proffered job." In response, Rev. [REDACTED] refers to the petitioner as a "minister," and states that the petitioner "preaches at our regular services, which are on Wednesdays, Fridays, and Sundays. He also has collaborated in the youth department as a youth pastor. He visits members

at their homes, at hospitals, and funerals.” The petitioner’s response to the RFE does not include any documentation to show that any competent body of the Assemblies of God has ordained, licensed, or certified the petitioner as a minister. The only documentation from the General Council is a certificate indicating that Templo Jerusalem “has become a ‘Fellowship Partner’ in supporting Assemblies of God World Ministries.” This certificate does not mention the petitioner.

In a letter, Rev. [REDACTED] indicates that the petitioner graduated from “the Bible Institute Filadelfia” in Andrews, Texas, in May 2004 after two years of study. Accompanying the letter is a Spanish-language diploma from the Instituto Biblico Nocturno Filadelfia. The petitioner supposedly began serving as a minister well before he received this diploma in May 2004. Therefore, we cannot consider the diploma to be a required qualifying credential. We must conclude that the petitioner’s RFE response did not include any qualifying credential for the petitioner.

The director, in denying the appeal, cited the petitioner’s failure to provide the requested copy of a qualifying credential. On appeal, counsel cites a passage from the Bylaws of the General Council of the Assemblies of God. Specifically, Article VII, Section 3 reads, in pertinent part:

**d. Licensed minister.** Qualifications for license shall be in two categories:

(1) *Preaching ministry.* Clear evidence of a divine call, a practical experience in preaching, together with an evident purpose to devote one’s time to preaching the gospel. Licensed ministers shall preach at least 15 times a year, except in case of ill health or infirmity.

Counsel then observes that the petitioner “is addressed as a Minister by another Minister working in the church, i.e. Reverend [REDACTED].” Counsel contends that, by referring to the petitioner as a “minister,” Rev. [REDACTED] has “duly authorized” the petitioner to perform the duties of the clergy. This, however, is a *non sequitur*; the cited passage does not show or imply that a “licensed minister” earns that title simply by being called a “minister” by another minister. Rather, the term “licensed minister” implies the issuance of some kind of license.

The denomination’s Bylaws state, at Article VII, Section 5: “The General Council Credentials Committee is authorized to issue . . . licenses to preach . . . to all properly qualified and approved candidates.” Here, the petitioner has not shown that the petitioner has received a license to preach from the Credentials Committee, or that the petitioner has undergone any process to determine that he is “properly qualified and approved.” Because the Bylaws specifically indicate that licenses are issued by a central church authority, counsel’s assertion that the beneficiary must be a minister because Rev. [REDACTED] called him a “minister” disintegrates utterly. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 2, 4 (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).

We find that the director correctly found that the petitioner had not established his credentials as a minister. The petitioner’s submission on appeal, including the cited Bylaws, serves only to highlight the evidentiary deficiencies in the petitioner’s claim by identifying the exact evidence that the petitioner failed to provide.

The next issue concerns the church's ability to compensate the petitioner. 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.

In this instance, Rev. [REDACTED] states that the petitioner "will receive \$300.00 dollars a week which will result in an annual amount of \$15,600." The petitioner submits a copy of a bank statement, showing that the church had a balance of \$74,611.22 as of September 30, 2005. A bank statement does not provide a complete picture of the church's finances, and it is not evidence in the form of copies of annual reports, federal tax returns, or audited financial statements.

The director, in the denial notice, quoted the evidentiary requirements at 8 C.F.R. § 204.5(g)(2), and stated: "A bank statement is insufficient to determine the [employer's] ability to pay the proffered wage." On appeal, counsel states: "The evidence that the [church] has the ability to pay the wage is offered via **Attachment E**: the letter from the financial institution constitutes the requisite proof." Counsel does not explain why a "letter from the financial institution constitutes the requisite proof." Even then, Attachment E is not a "letter" at all. It is, instead, another copy of the church's September 2005 bank statement, this time including copies of canceled checks and deposit slips processed during the statement period. This more comprehensive copy includes the statement regarding the church's savings account. Thus, in response to the director's specific finding that "[a] bank statement in insufficient," the petitioner has re-submitted the same bank statement.

The petitioner has not submitted any of the required types of evidence listed at 8 C.F.R. § 204.5(g)(2). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). We uphold the director's finding that the petitioner has not satisfactorily established the church's ability to pay the proffered wage.

Finally, we turn to the issue of the intending employer's tax status. 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 director's RFE quoted the above regulations in full. In the petitioner's response, the only document that had anything to do with taxation is a Form 4904 letter from the Internal Revenue Service (IRS) to the church, dated July 29, 1983. This letter indicates that the church had failed to file a Form 941E Employer's Quarterly Federal Tax Return for the second quarter of 1982, and had failed to respond to several inquiries regarding that return. The letter warned of possible "criminal prosecution" if the church did not respond and account for its failure to file the return. This letter does not indicate that the church is recognized as a tax-exempt religious organization.

The director cited the pertinent regulations in the denial notice, and found that the petitioner had failed to establish the church's status as a 501(c)(3) tax-exempt religious organization. On appeal, the petitioner submits a copy of [REDACTED] Articles of Incorporation. This document is not sufficient to establish qualifying status.

8 C.F.R. § 204.5(m)(3)(i)(B), cited above, indicates that, in the absence of an actual determination letter from the IRS, an organization can show its qualifying status by submitting such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations. The necessary documentation is described in a memorandum from William R. Yates, Associate Director of Operations, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003):

- (1) A properly completed IRS Form 1023;
- (2) A properly completed Schedule A supplement, if applicable;
- (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization;
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The memorandum specifically states that the above materials are, collectively, the "minimum" documentation that can establish "the religious nature and purpose of the organization." Thus, an organization cannot meet this burden by submitting only its articles of incorporation. The petitioner has therefore failed to establish that his intending employer qualifies as a 501(c)(3) tax-exempt religious organization.

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.