

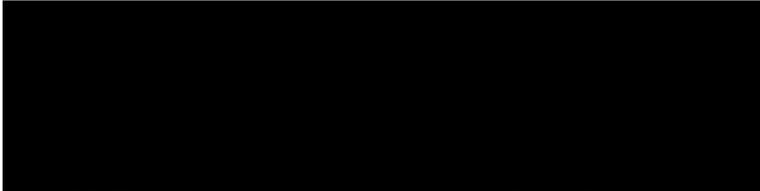


U.S. Citizenship
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Services

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01



FILE: [REDACTED]
EAC 06 095 53811

Office: VERMONT SERVICE CENTER

Date: JUN 14 2007

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.

Robert P. Wiemann

f Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

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 the pastor of the [REDACTED] Newark, New Jersey. The director determined that the petitioner had not established the church's ability to compensate the beneficiary.

Part 1 of the Form I-360 petition identifies the church as the petitioner, and the director has consistently identified 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 by the alien beneficiary himself rather than by any other church official. 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 alien beneficiary signed the Form I-290B Notice of Appeal. Thus, the appeal has been properly filed.¹

On appeal, the petitioner asserts that the available evidence supports the petition.

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 . . . ; 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 sole ground for denial issue concerns the intending employer's ability to pay the petitioner'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

¹ We note that the petitioner was originally represented by [REDACTED]. On May 18, 2007, the Board of Immigration Appeals entered an order immediately suspending [REDACTED] from practice before the Executive Office of Immigration Review and the Department of Homeland Security. Because [REDACTED] is no longer allowed to act as an attorney in this proceeding, we consider the petitioner to be self-represented.

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.

The petitioner's initial submission contained no material evidence to establish his eligibility. The director issued a request for evidence (RFE) on March 6, 2006, requesting financial documentation including audited financial statements, tax documents, and "[a]ny other documentary evidence which demonstrates your organization's ability to pay the beneficiary." The petitioner indicated that he had received \$30,008 per year. A church official named [redacted] (first name not fully legible) stated that the church has "about 100 members," and that the beneficiary receives "a compensation of \$1,600.00 per month, in addition to a housing allowance of \$1,000.00 per month."

The petitioner submitted copies of canceled checks from [redacted], payable to the petitioner and dated between August 2005 and March 2006. The petitioner signed these checks on the face, essentially making them out to himself. The checks indicate \$400 payments marked "Salary," as well as monthly \$1,000 payments marked "Rent." Some checks show other amounts as well.

The petitioner submitted copies of his income tax returns for 2003 through 2005. All of these returns were prepared on March 20, 2006, apparently in order to comply with the RFE from two weeks earlier. Thus, only the 2005 return was timely prepared with respect to annual filing deadlines. The returns indicate that the beneficiary received business income in the amounts of \$27,000 in both 2003 and 2004, and \$30,008 in 2005.

A copy of the 2005 Cooperating Church Annual Report for [redacted], dated April 2, 2006, includes the following figures:

| | | | |
|----------------------------------|-------------|------------------------------|---------|
| FINANCES AS OF DECEMBER 31, 2005 | | CHURCH MEMBERSHIP | |
| Total Church Income | \$74,073.22 | Total Church Membership | 82 |
| Total Local Expenditures | 4,227.89 | Resident Active membership | 48 |
| | | Resident Inactive Membership | 34 |
| PASTORAL COMPENSATION & BENEFITS | | AVERAGE WEEKLY ATTENDANCE | |
| Cash Salary | 20,800.00 | WORSHIP | |
| Housing Allowance | 12,000.00 | Morning/Primary Services | [blank] |
| Total Pastoral Compensation | 32,800.00 | Afternoon/Evening Services | 3 |
| | | SUNDAY/CHURCH SCHOOL | |
| | | Pre-school | 01 |
| | | Elementary | 01 |
| | | Adults | 01 |

The report lists one name, the petitioner's, under "Current Professional Staff." The report states that the petitioner is a "Pastor" who has served at the church since March 1, 2002. Under "Current Church Leadership Style," offered several choices including "Two or More Professional Staff" and "Part-time

Pastor,” the church selected “Full-time Pastor.” The amounts under “Pastoral Compensation” are consistent with weekly payments of \$400 and monthly rent payments of \$1,000.

The director denied the petition on July 13, 2006, having concluded that the petitioner had not established that the church has paid, or been able to pay, the proffered wage. The director stated that the 2005 Cooperating Church Annual Report shows “an average weekly attendance of 3 members.” The director also cited the “Total Local Expenditures” figure of \$4,227.89, and asserted that this small figure includes “everything the church and its organization spent during the year, such as pastoral salary and benefits, mortgage payments, etc.” From this information, the director concluded: “The record does not reflect that the [church] has paid the [petitioner] the proffered wage prior in the past [*sic*] or that it had the ability to pay the proffered wage as of the priority dated [*sic*]. Additionally, the [church] submitted conflicting evidence as to the source of the [petitioner’s] financial support.”

On appeal, the petitioner states: “the average weekly attendance is not 3 members.” Rather, the numeral “3” on the report refers to “the number of afternoon [or] evening services held per month.” We find this explanation to be plausible, particularly in light of previously submitted photographs showing considerably more than three parishioners in attendance at services.

The petitioner further observes that, according to the report, “the total church income is: [\$]74,073.22,” and that “total pastoral compensation” “is also already calculated in the annual report.” The director, in the denial notice, failed to acknowledge these figures. The director simply assumed that the “Total Local Expenditures” figure of \$4,227.89 represented every single dollar spent by the church in 2005, despite information elsewhere on the same report showing payments to the petitioner well in excess of that amount.

While the petitioner may have made some mistakes in compiling the report (reporting the number of services rather than the number of attendees, as the report form seems to request), and the format of the report may be confusing, the director’s interpretation of the report is simply unrealistic. Furthermore, the director has selectively quoted from the report, citing only the most superficially damaging portions while ignoring other sections that plainly show the petitioner to have been fully compensated. Copies of checks in the record serve to corroborate the figures provided in the report.

Because the director’s decision rests entirely on an untenable and incomplete reading of a single piece of evidence, that decision cannot stand. Absent another, more defensible basis for denial, we withdraw the director’s decision.

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 met that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.