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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[REDACTED]

FILE:

SRC 06 087 53010

Office: TEXAS SERVICE CENTER

Date: MAR 07 2004

IN RE:

Petitioner:

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.

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 petitioner is an international association of churches. 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 a church planter at the petitioner's church in Philadelphia, Pennsylvania. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a church planter immediately preceding the filing date of the petition.

On appeal, counsel argues that the petitioner has established that the beneficiary was compensated for his work on behalf of the church.

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) 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 January 24, 2006. Therefore, the petitioner must establish that the beneficiary was

continuously performing the duties of a church planter throughout the two years immediately prior to that date.

A section of Part 3 of the Form I-360 petition is marked "Complete the items below if this person [*i.e.*, the beneficiary] is in the United States." The petitioner left the section blank, except for the annotation "N/A," meaning "not applicable." Thus, the petitioner indicated on the petition form that, as of the filing date, the beneficiary was outside the United States. (If he were in the United States, then the section would be applicable.) Subsequently, however, it has become clear that the beneficiary has been in the United States since 2003.

Documentation accompanying the initial submission indicates that the beneficiary entered the United States on April 11, 2003¹ as an R-1 nonimmigrant religious worker, a status that was extended until June 11, 2005. A partial copy of the beneficiary's passport shows no subsequent departure stamp. There is no evidence in the record that the beneficiary's R-1 status extended past June 2005. An application to extend the beneficiary's status, receipt number EAC 05 185 51368, was denied on August 17, 2005.

The above information indicates that the beneficiary has not been authorized to work in the United States since June 2005, when his R-1 status expired and was not renewed. On the Form I-360, however, the petitioner answered "No" to the question "Has the person this petition is for ever worked in the U.S. without permission?"

In a letter accompanying the petitioner's initial submission, [REDACTED] the petitioner's Senior Pastor and International Field Director, did not provide any details regarding the beneficiary's past experience.

Many of the documents submitted with the petition concern the beneficiary's activities before the 2004-2006 qualifying period. Others, however, are relevant to the issue at hand. The petitioner initially submitted photocopies of canceled checks that the petitioner's Philadelphia branch issued to the beneficiary between December 2003 and November 2004, and between May 2005 and October 2005, in amounts ranging from less than \$40 to nearly \$4,000. The handwritten "Memo" line on each check is often only partially legible; several checks appear to contain the word "Refund," sometimes followed by initials such as "CJ" or "McC." Other checks, again in varying amounts, appear to be marked "Stipendio." Sometimes the church would issue three checks to the beneficiary on the same day; other times, weeks would pass without a payment.

On February 8, 2006, the director issued a request for evidence (RFE), instructing the petitioner to "[s]ubmit a detailed description of the beneficiary's prior work experience," as well as evidence of compensation including Internal Revenue Service (IRS) Form W-2 Wage and Tax Statements for the preceding two years (*i.e.*, 2004 and 2005).

¹ This was not the beneficiary's first entry into the United States, but the earlier entries are not relevant to the 2004-2006 qualifying period and therefore need not be analyzed in detail.

In response to the RFE [REDACTED] stated that the beneficiary "has been assigned to our church in Philadelphia since 1999 in the position of Church Planter." [REDACTED] added that the petitioner "has agreed to support [the beneficiary] in an amount not to exceed \$52,800.00 per year. This amount has been and will be paid" by the church's Philadelphia branch and its Miami headquarters.

The petitioner's response to the RFE includes copies of checks to the beneficiary from December 2004 through May 2005, thus filling the gap in the initial submission. These checks are comparable to those reproduced in the petitioner's initial submission. The checks show that the beneficiary received \$35,703.63 in 2004 and \$46,820.13 in 2005. Additional checks show payments to the beneficiary's spouse. We will not consider these latter checks as evidence of the beneficiary's compensation, as the petitioner has offered no explanation for why these checks were issued to the beneficiary's spouse instead of the beneficiary. It is difficult enough to discern the purpose of the checks paid directly to the beneficiary, without having to make the tenuous assumption that checks paid to someone else were actually intended for the beneficiary.

An IRS-generated transcript of the beneficiary's 2004 tax return indicates that the beneficiary's income derived not from wages or salaries, but from business income reported on Schedule C. The beneficiary reported gross receipts of \$19,230, reduced to net income of \$2,878 after expenses. The transcript further indicates that the petitioner, in Miami, issued two IRS Form 1099-MISC Miscellaneous Income statements to the beneficiary for the 2004 tax year, one showing \$9,119 in "Nonemployee Compensation," the other showing \$13,704 in the same category, for a total of \$22,823. The petitioner did not explain why it issued two Forms 1099-MISC to the beneficiary for 2004 instead of consolidating the information onto one form. The petitioner also did not explain why the beneficiary's "Nonemployee Compensation" does not match his claimed gross business income or the total value of the checks he received.

The petitioner did not provide any tax documents for 2005, despite the director's request and the fact that such information should have been available in February 2006. The petitioner does not explain, or even acknowledge, this omission.

The director denied the petition on March 24, 2006. In denying the petition, the director acknowledged that the petitioner issued checks, in varying amounts, to the beneficiary between December 2003 and May 2005, but found "It could not be determined that they were paychecks." The director also noted: "Nothing was submitted from June 2005 through January 2006." We note, here, that some of the copied checks appear in reduced size as part of the church's bank statements. This appears to explain why the director mistakenly found that the checks stopped in May 2005. The director was, however, correct in observing that the petitioner failed to show that the checks correspond to payments to the beneficiary for his own use.

The director acknowledged that the petitioner reported "nonemployee compensation" issued to the beneficiary on IRS Form 1099-MISC, but concluded that the evidence "does not indicate a salary received by the beneficiary for the entire two years preceding the filing of the petition." The director therefore found that the petitioner had failed to establish "that the beneficiary was employed professionally in the same capacity as the proffered position for at least two years prior to filing the instant I-360 petition."

On appeal, counsel asserts that the beneficiary received “‘support’ from the ministry rather than a salary.” We agree with counsel that the manner in which the petitioner and the beneficiary reported his income (on Form 1099-MISC rather than on Form W-2, or as “business income” versus “wages”) is not in itself a serious issue. Nevertheless, there remain serious apparent discrepancies on the various documents.

Counsel asserts that the beneficiary “provided evidence that [the petitioner] provided him with support in the amount of \$50,000+ per year.” The record does not support this claim. The record shows that the petitioner wrote checks to the beneficiary totaling roughly \$38,000 in 2004 and \$47,000 in 2005, but it is not clear how much of this was “support” as opposed to other types of payment. For instance, if the beneficiary made a purchase on behalf of the church, and the church reimbursed him, the resulting check would not be “support” or any comparable remuneration. Such reimbursements would be consistent with what appears to be the word “refund” on many of the checks. They would also be consistent with the extreme fluctuation, by several orders of magnitude, in the amounts on the various checks. The checks, as a whole, do not show a consistent pattern of steady or regular payments.

The amounts on the checks issued to the beneficiary do not match the amounts on the Forms 1099-MISC, and the amounts on the Forms 1099-MISC do not match the amount that the beneficiary claimed as “business income” on his tax return. Although the petitioner issued nearly \$9,000 in checks to the beneficiary’s spouse during 2004, the tax documents do not show that the beneficiary’s spouse reported any income at all that year. (The amounts on the checks issued to the beneficiary’s spouse also fail to match either of the Forms 1099-MISC issued to the beneficiary in 2004. Both of those forms show name and Social Security Number of the beneficiary, not those of his spouse.)

The checks show that the beneficiary was involved, to some extent, in church affairs during the qualifying period, but the record is so pervaded with inconsistencies that we cannot find that the petitioner has met its burden of proof in this matter. If the beneficiary did work for the petitioner throughout 2005, and received compensation or material support from the petitioner during that time, then the petitioner made a false statement on Form I-360 by stating that the beneficiary had never worked in the United States without authorization (such authorization having expired in June 2005).

Thus, the AAO is not making a finding that the beneficiary did not work for the petitioner during the 2004-2006 qualifying period. Rather, we find that the petitioner has failed to establish the extent of this work. The major discrepancies between the checks, the Forms 1099-MISC, and the beneficiary’s tax return give rise to questions of credibility. 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. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988). The AAO will not ignore these questions of credibility simply because the evidence indicates that the beneficiary performed at least some quantity of compensated work for the petitioner.

Beyond the decision of the director, another issue arises upon review of the record. 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).

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.

Furthermore, 8 C.F.R. § 204.5(m)(4) requires the prospective employer to state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration). As noted above, the petitioner has indicated that the beneficiary's compensation will be "an amount not to exceed \$52,800.00 per year." Because this amount is expressed as a maximum, rather than a minimum, it demonstrates no firm commitment at all. The petitioner cannot establish its ability to pay the beneficiary's proffered compensation unless and until it specifies what that compensation is. Furthermore, the petitioner has submitted copies of bank statements, but none of the evidence that the above regulation specifically requires.

When the director advised the petitioner that bank statements are not sufficient evidence, the petitioner submitted additional copies of bank statements. The petitioner also submitted a financial compilation, prepared but not audited by a certified public accountant (who advised: "Management has elected to omit substantially all of the disclosures fund balance required by generally accepted accounting principles"). The petitioner submits a similar unaudited "Balance Sheet" labeled "Virginia," rather than for the church in Pennsylvania that has been issuing checks to the beneficiary.

We find that the petitioner has not submitted adequate evidence of its ability to pay the beneficiary's proffered wage. The petitioner has not even clarified what the proffered wage is; the vague assertion that the beneficiary's compensation is less than \$52,800 per year cannot suffice in this regard.

The appeal will be dismissed 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. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.