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

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[REDACTED]

FILE:

[REDACTED]
EAC 04 013 51318

Office: VERMONT SERVICE CENTER

Date: MAR 09 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:

[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, Vermont Service Center, denied the employment-based immigrant visa petition. Prior appeals and motions in this matter have been rejected or dismissed on procedural grounds. The matter is now before the Administrative Appeals Office (AAO) 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 presbyter at [REDACTED] S [REDACTED] ([REDACTED]), Prospect Park, New Jersey, and as an associate pastor at M [REDACTED]. Christian Reformed Church [REDACTED] in Paterson, New Jersey. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience in the types of position sought immediately preceding the filing date of the petition.

Part 1 of the Form I-360 petition identifies [REDACTED] 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 [REDACTED], but by the alien beneficiary himself. Thus, the alien, and not [REDACTED] [REDACTED] has taken responsibility for the content of the petition. Confusion as to the identity of the petitioner has led to significant procedural errors both at the Service Center and at the AAO, which the AAO hopes to remedy in this decision. We shall address these procedural issues before we proceed to the substance of the petition.

On October 10, 2003, the Service Center received the Form I-360 petition. The director denied the petition on February 23, 2005; the director addressed the notice of decision to the alien beneficiary at [REDACTED] [REDACTED] address. The alien self-petitioner filed an appeal on March 25, 2005. The director, mistakenly believing the alien to have no standing in the proceeding, rejected the appeal on June 6, 2005 pursuant to 8 C.F.R. §§ 103.3(a)(1)(iii) and (2)(v).

On July 5, 2005, [REDACTED] filed its own appeal, signed by Rev. [REDACTED]. The AAO rejected this second appeal on November 14, 2005, calling the appeal untimely under 8 C.F.R. § 103.3(a)(2)(i). The AAO, in its rejection notice, cited the prior procedural history but failed to acknowledge that it was the alien beneficiary, not Good Shepherd, who had actually filed the petition in the first place.

On December 19, 2005, [REDACTED] filed a motion to reopen the proceeding. On February 22, 2006, the director dismissed Good Shepherd's motion as untimely. On March 27, 2006, an attorney representing both Good Shepherd and the beneficiary filed a new appeal, asserting that the December 19 motion was indeed timely. 8 C.F.R. § 1.1(h) states:

The term "day" when computing the period of time for taking any action provided in this chapter including the taking of an appeal, shall include Saturdays, Sundays, and legal holidays, except that when the last day of the period so computed falls on a Saturday, Sunday or a legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, nor a legal holiday.

The 33rd day after November 14, 2005 was Saturday, December 17, 2005. Pursuant to 8 C.F.R. § 1.1(h), the appeal period did not lapse until Monday, December 19, 2005. Therefore, the motion was, in fact, timely, and

counsel's argument is meritorious in this respect. Nevertheless, the motion was not filed by an affected party. Further, the director should not have entertained the December 19, 2005 motion, as the AAO had made the finding of untimeliness that the motion sought to address. See 8 C.F.R. § 103.5(a)(ii). Nevertheless, for the very same reason, the motion should never have been necessary in the first place, because the director should have accepted the March 2005 appeal as properly filed.

As we have explained above, the alien beneficiary is the true petitioner. It is he who signed the Form I-360 and, later, the original Form I-290B Notice of Appeal that was timely filed in March 2005. Every procedural action between that time and February 2006 has been based on the false premise that the beneficiary is not an affected party, and that [REDACTED], rather than the beneficiary, has standing to file appeals or motions. Both the director and the AAO have consistently erred in this regard. At this late stage in the proceeding, the most expedient remedy is to review the record *de novo* on the basis of the original appeal. We will give later submissions of evidence due consideration as supplements to the original appeal. The original appeal should have been accepted as filed, and any further procedural roadblocks, delays or technicalities at this stage, against a comparatively blameless petitioner, would border on unconscionable.

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 October 10, 2003. Therefore, the petitioner must establish that he was continuously performing the duties of the proffered position throughout the two years immediately prior to that date.

The petitioner entered the United States on March 21, 2002, indicating that he was outside the United States for roughly the first five months of the October 2001-October 2003 qualifying period. He originally entered the United States as an R-1 nonimmigrant religious worker to serve as a presbyter at [REDACTED]

In a letter dated August 20, 2003, Rev. [REDACTED], Senior Pastor of [REDACTED], states that the petitioner is an associate pastor at that church, earning \$18,000 per year with applicable taxes withheld "and a W-2 will be issued at the end of the year." Pastor [REDACTED] does not specify when the petitioner began working at the [REDACTED] church. Budget documents indicate that the church had been paying a "Spanish Language Pastor Salary" since January 2003. There are no IRS Forms W-2 or other documents to show employment at [REDACTED] prior to 2003.

A February 25, 2002 letter from Rev. [REDACTED] of the National Presbyterian Church, Santiago, Chile, indicates that the beneficiary was, at the time, "the Executive Director of the Evangelical Institute of Chile," teaching several courses there. The beneficiary was also a part-time "Member of the pastoral team of the Presbyterian Church [REDACTED]" but his principal obligation was to the Evangelical Institute.

On September 28, 2004, the director issued a request for evidence, instructing the petitioner to submit further details and evidence about the petitioner's work, including payroll and tax documents, relating to the two years preceding the filing of the petition. In response, the petitioner has submitted various letters and other documents.

In a letter dated December 16, 2004, Rev. [REDACTED], Senior Pastor of [REDACTED] describes the petitioner's work at that church:

On April 01, 2002, [the petitioner] began work as our **Director of [REDACTED]** [REDACTED] . . . [The petitioner] is the chaplain of this center. . . Apoyo [agreed] to give [the petitioner] \$600.00 monthly plus housing, food, school, and transportation benefits. . . .

On February 1, 2003, [the petitioner] began work part time in a sister church [REDACTED] CRC, and continu[ed] working here part time. . . .

On September 01, 2003, The Church [began] to develop a Deploy Project, in response to [the] September 11th, 2001 Disaster. [The petitioner] takes more responsibility [as] Local Deploy Project Coordinator. . . .

Beginning on December 1, 2004, [the petitioner] became the "church Planter" in Paterson City, the salary and his benefits are [the] responsibility of the [REDACTED] Christian Reformed Church.

Regarding the petitioner's more recent work, Rev. [REDACTED] states:

[The petitioner] had been working at [REDACTED] Christian Reformed Church when we recruited him for some work here.

On February 1, 2003 [the petitioner] began work as our Interim Pastor for Spanish Language Ministry. . . .

For these responsibilities he was paid \$18,000 a year. . . . [The petitioner] continued in this position through March 2004. In March 2004 he was licensed to preach and became a licensed minister in the Christian Reformed Church. At this time we were praying about transitioning our Spanish Language ministry into a separate daughter church with [the petitioner] as the pastor.

On April 1, 2004 [the petitioner] began a ministry internship here to prepare him to be the lead pastor for this new church plant. . . .

During this time from April 1, 2004 – November 1, 2004, [the petitioner's] salary was increased to \$25,000 a year. . . .

Beginning on December 1, 2004, [the petitioner] became the "Church Planter" of the new daughter church of [REDACTED] Christian Reformed Church. He remains an employee of [REDACTED] as this new church takes shape. . . .

[The petitioner] is currently licensed as a Minister in the Christian Reformed Church, will be ordained as an elder on December 19 and is in the process of ordination as an Evangelist.

The above narrative indicates that the petitioner's duties have evolved significantly both before and after the filing of the petition in October 2003. Significantly, the petitioner was not "licensed to preach" or a "licensed minister" until March 2004, meaning he lacked such a license during the 2001-2003 qualifying period.

[REDACTED] *Strategic Memory Plan 2004* includes a section entitled "Staff Job Descriptions," in which the petitioner is identified as the "Interim Pastor for Spanish Language Ministry." Following the job description is the notation: "This is a ½ time position." The petitioner is also identified as the coordinator for [REDACTED] English as a Second Language program.

The petitioner's tax documents show that [REDACTED] paid the petitioner \$9,000 in 2002, and [REDACTED] Ave. paid him \$14,138.00 in 2003. There is no evidence that Good Shepherd paid the beneficiary in 2003; the amount that [REDACTED] reported on Form W-2 that year accounts for all of the petitioner's claimed income for the year.

The petitioner submits a considerable quantity of documents relating to his work in the United States, but little to establish the extent of his work in Chile. Certificates establish the petitioner's titles and training, but they do not demonstrate continuous experience in the type of position in which he seeks classification.

The director denied the petition, stating that the petitioner had failed to establish continuous employment throughout the two years immediately prior to the petition's filing date. The director found that the evidence from U.S. employers established "about 19 months, at the most."

On appeal, the petitioner asserts that the Treasurer of Apoyo Community Center has resigned, making it difficult to obtain certain financial documents from [REDACTED]. The petitioner states that he "began helping [at [REDACTED]] 10 hours a week . . . [in] a Non Formal Internship. When my Internship finishe[d], I was invited to dedicate [more] time [to] that church and to reduce my time [at] the first church." The petitioner states that he now devotes most of his time to [REDACTED], but continues to work "part time" at [REDACTED].

Rev. [REDACTED], in a letter dated March 23, 2005, states that the petitioner "has served full time working 40 hours a week in the work of the church," receiving "a salary of \$600.00 monthly and . . . other benefits . . . the first year of his work in [the] USA, the second year his salary was \$1,117.00." The petitioner submits copies of canceled checks from [REDACTED] Community Center. These checks appear to be consistent with the above claims. Apart from one-time reimbursements, the checks show payments of \$600, rising to \$1,117 and later declining to \$400.

Regarding his work in 2001 and early 2002, before he entered the United States, the petitioner submits copies of pay receipts from the Evangelical Institute of Chile, showing monthly payments of 880,000 Chilean pesos through February 2002. There is no indication that the petitioner's duties as an official and professor at the Evangelical Institute of Chile are substantially the same as those that he has undertaken for churches in the United States. Documents from the Institute indicate that the petitioner's duties there largely deal with the administration of an educational facility.

The regulations at 8 C.F.R. § 204.5(m)(1) and (3)(ii)(A) require that the beneficiary must have carried on *the* vocation or occupation, rather than *a* vocation or occupation, indicating that the work performed during the qualifying period should be substantially similar to the intended future religious work. The underlying statute, at section 101(a)(27)(C)(iii), requires that the alien "has been carrying on such . . . work" throughout the qualifying period. An alien who changes position types has not carried on "such work" for the past two years. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. See *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d. 1289, 1295 (5th Cir. 1987). See also *Walters v. Metro. Educ. Enters.*, 519 U.S. 202, 209 (1997); *Bailey v. U.S.*, 516 U.S. 137, 145 (1995).

While the petitioner has shown that he has, for some time, been actively working for various churches or religious institutions, the nature of such work has changed significantly during the qualifying period. Indeed, it has continued to change after the filing date, such that the petitioner's current work does not closely

resemble his work at the time of filing. For instance, the petitioner became a “licensed minister” as recently as 2004. The AAO therefore affirms the director’s stated basis for denial.

Review of the record reveals another issue beyond, but related to, the basis for denial articulated in the director’s decision. 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 statutory and regulatory provisions cited earlier in this decision do not merely require two years of continuous experience immediately prior to the filing date. They also require continuous membership in the prospective employer’s religious denomination during that same period. *Religious denomination* means a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, religious congregations, or comparable indicia of a bona fide religious denomination. 8 C.F.R. § 204.5(m)(2).

The record shows that both [REDACTED] and [REDACTED] belong to the [REDACTED] in North America, which refers to itself as a denomination. Prior to his 2002 entry, however, the beneficiary was an official of the [REDACTED] Church in Chile. There is no evidence of any formal denominational affiliation between the National Presbyterian Church and the [REDACTED] in North America. Rev. [REDACTED]’s reference to the [REDACTED] Church as a “sister church” in an exchange program is not evidence of denominational affiliation. When considering the denominational relationship between the Chilean and American groups, we note that, although the petitioner was ordained in Chile in 1986, 18 years later he became a “licensed minister” of the [REDACTED] Church in North America. This suggests that the beneficiary’s 1986 credential was not sufficient to qualify him as a “licensed minister” within the [REDACTED] Church in North America.

There is no indication that the [REDACTED] Church and the [REDACTED] of Chile are simply two branches of one true denomination, rather than two separate denominations within the broader Calvinist Protestant tradition (which includes numerous “Reformed” and “Presbyterian” denominations). Shared membership in a multi-denominational umbrella organization such as the World Association of Reformed Churches does not erase the denominational boundaries between its constituent members.

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.