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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

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[REDACTED]

FILE:

[REDACTED]

EAC 06 019 52906

Office: VERMONT SERVICE CENTER

Date: MAY 02 2007

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.

*Naura Deadrick*

fr 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 petitioner is a Pentecostal church of the Assemblies of God denomination. 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 minister of music and Christian education. The director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary, that the position offered qualifies as a religious occupation, or that the beneficiary had the requisite two years of continuous work experience in the occupation immediately preceding the filing date of 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,

(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).

We shall first address the issue of the job offer. 8 C.F.R. § 204.5(m)(4) requires the prospective employer to establish how the alien will be paid or remunerated. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support.

In a letter accompanying the initial filing of the petition, Rev. St. [REDACTED], Pastor of the petitioning church, stated: "We are . . . seeking to employ [the beneficiary] on a **permanent** and **full-time** basis as Minister of Music and Christian Education. He will continue to work on a 40 hour work week at a salary of

\$425.00 per week, 2 weeks vacation leave with pay each year in addition to housing accommodation valued at \$850.00 per month. He will also enjoy medical coverage for himself and his family.”

The petitioner’s initial submission included an income statement, listing the petitioner’s itemized expenses for 2003 and 2004, and its anticipated expenses in its 2005 budget. The report did not indicate that the petitioner had paid the beneficiary any compensation in 2003 or 2004, or budgeted such pay for 2005. The only salaries listed on the statement are those of the pastor and the church secretary. The statement does not list any expenses that readily appear to relate to the rental or maintenance of the beneficiary’s residence.

The initial filing also included copies of checks that the petitioner issued to the beneficiary roughly once a week during September 2005. Three of the checks were each in the amount of \$346.10, but the earliest check is for \$400.00 and the latest is for \$262.27.

On November 18, 2005, the director issued a request for evidence (RFE), in which the director instructed the petitioner to “[s]ubmit a list of the religious organization’s salaried non-religious employees” and “a list of the religious organization’s salaried religious employees, including their occupations and salary paid,” along with supporting evidence such as quarterly tax returns.

In response, the petitioner submitted an unsigned document on the petitioner’s letterhead, showing a list of the petitioner’s paid employees. The list includes two different headings, “Salaried Religious Employees” and “Salaried Non-Religious Employees,” with one name under each heading. The document named Rev. [REDACTED] as the petitioner’s only salaried religious employee, earning \$49,416 per year. The sole salaried non-religious employee is Enid Barnaby, an administrative assistant earning \$22,230 per year. These figures match those previously stated for the salaries of the pastor and secretary in the 2003-2004 financial statement.

The petitioner submitted copies of Internal Revenue Service Form 941 Employer’s Quarterly Federal Tax Returns for the quarters from the fourth quarter of 2003 to the third quarter of 2005. The most recent return identifies the beneficiary as one of two paid employees (the other being [REDACTED]). That return indicates that the petitioner paid the beneficiary \$2,550 during July, August and September of 2005. The earlier returns consistently show only one paid employee, specifically [REDACTED].

The director denied the petition on May 11, 2006, stating: “[t]he record does not establish that the beneficiary has been and will be employed in a religious occupation.” The director also made the related finding that the petitioner had failed to establish the existence of a valid job offer. The director based these conclusions on the omission of the beneficiary’s name from the list of salaried employees, and from all but one of the petitioner’s quarterly tax returns.

The reasoning behind the director’s finding regarding whether or not the beneficiary’s position constitutes a religious occupation has little to do with the regulatory definition of “religious occupation” at 8 C.F.R. § 204.5(m)(2). The finding seems, instead, to be based on an apparent lack of remuneration. Such a finding has more to do with the job offer, rather than the nature of the occupation itself. We therefore withdraw the director’s finding that the petitioner has not shown the beneficiary’s position to be a religious occupation.

With regard to the remaining finding regarding the job offer, we shall discuss the petitioner's appeal later in this decision. We turn, now, to the issue of the beneficiary's past experience.

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 24, 2005.

The beneficiary has apparently been in the United States throughout the qualifying period, having arrived from his native Jamaica as a B-2 nonimmigrant visitor on June 2, 2001.

Rev. [REDACTED], in his introductory letter on the beneficiary's behalf, stated that the beneficiary "accepted our job offer to work on a temporary basis which led us to apply for an R-1 [nonimmigrant religious worker] visa which was approved on July 7, 2005. Since then, [the beneficiary] has been working with this church." Rev. [REDACTED] in this initial letter, did not refer to any religious work by the beneficiary prior to July 2005, either at the petitioning church or anywhere else.

The petitioner's initial submission included a copy of the beneficiary's "Certificate as a Certified Minister of Music/Minister of Christian Education," issued to the beneficiary on December 19, 2004. Earlier certificates show that the beneficiary completed two courses ("How to Study the Bible" and "Pauline Epistles") at Berean School of the Bible on May 29, 2003. These documents establish training, but not employment.

Tax documents indicate that the beneficiary reported adjusted gross income of \$16,900 in 2003, and \$19,959 in 2004. On the 2004 tax return, the beneficiary identified himself as a "Musician"; his spouse is listed as a "Homemaker." There are no Form W-2 Wage and Tax Statements to identify the source(s) of the beneficiary's reported income in those two years. The only evidence in the initial submission that the petitioner has ever paid the beneficiary are five checks, totaling \$1,700.57, all issued to the beneficiary in September 2005.

In the November 18, 2005 RFE, the director instructed the petitioner to submit "evidence that establishes that the beneficiary has the continuous two years full-time experience in the . . . religious work for the period immediately prior to October 24, 2005," and "evidence that explains how the beneficiary supported himself" during that period.

In response, the petitioner submitted a letter from [REDACTED], Secretary of Lighthouse Worship Center, Hillburn, New York. Ms. [REDACTED] stated that the beneficiary "maintained membership with this local fellowship . . . from October 2001 to August 2005. Between January 2002 and August 2005, he worked as a lay minister, after which he accepted a position with [the petitioning] church." Ms. [REDACTED] did not discuss the issue of compensation.

As noted previously, the petitioner's quarterly tax returns show that the petitioner paid the beneficiary \$2,550 during the third quarter of 2005. The beneficiary received most of that amount in September 2005, judging from the checks submitted previously.

The director found that the record does not establish the required two years of continuous religious work immediately prior to the filing date. In reaching this conclusion, the director observed that the beneficiary's ministerial certificate was issued in December 2004, less than a year before the filing date. The director determined that the beneficiary did not yet possess the necessary qualifications as of October 2003, when the qualifying period began.

On appeal, the petitioner submits copies of paychecks that Lighthouse Worship Center had issued to the beneficiary in 2005, before the beneficiary began working for the petitioning church. Other documentation shows that the beneficiary held a valid R-1 visa to work for Lighthouse Worship Center from January 2002 through the time the beneficiary began working for the petitioning church in August 2005. This evidence is highly relevant, as the beneficiary's documented employment at another Assembly of God church is sufficient to explain why the beneficiary did not work at the petitioning church until late in the qualifying period.

Regarding the beneficiary's omission from the list of paid employees, counsel states that the petitioner mistakenly believed that the director had requested a list of paid employees other than the beneficiary. This is a plausible assertion, as the petitioner had already submitted evidence that it had paid the beneficiary. The petitioner had, thus, gone on record identifying the beneficiary as a paid employee, and nothing in the record casts doubt on the evidence of the beneficiary's past employment.

The beneficiary's receipt of a certificate in December 2004 is not facially disqualifying, because the record does not indicate that the Assemblies of God denomination requires such certification for all its ministers of music and/or ministers of Christian education. The certificate appears to denote additional training, rather than essential, entry-level qualification.

The available materials establish, by preponderance of evidence, the beneficiary's continuous activity in the occupation sought during the two years immediately preceding the filing of the petition. The beneficiary has received remuneration for this work, both from the petitioning entity and from another church (in the same denomination) before that. We find, therefore, that the beneficiary possesses the required experience and that the petitioner has put forth a valid job offer. We hereby withdraw the director's findings to the contrary.

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.