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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:



Office: VERMONT SERVICE CENTER

Date: MAY 02 2007

EAC 06 017 51118

IN RE:

Petitioner:

Beneficiary:



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:



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.

Maura Deadrick

Robert P. Wiemann, Chief
Administrative Appeals Office

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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 dismissed.

The petitioner is a church. 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. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary.

On appeal, the petitioner submits arguments from counsel and other materials.

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 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 17, 2005. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a minister throughout the two years immediately prior to that date.

In a letter accompanying the initial filing, [REDACTED], Pastor of the petitioning church, stated:

The beneficiary has the required two years of experience as a minister immediately preceding this petition. From August, 1996 to August, 2004, the beneficiary functioned as a minister for The Apostolic Ark Pentecostal Church of Jamaica based in Jamaica, West Indies. Thereafter, from August, 2004 to present, the beneficiary has been performing as a minister for the petitioner herein . . . based on an approved R-1 petition.

A copy of the approval notice for the R-1 nonimmigrant petition mentioned above indicates that the beneficiary's R-1 status is valid from August 20, 2004 to May 31, 2007. The beneficiary did not, however, first enter the United States on August 20, 2004. The beneficiary entered the United States several months earlier, on January 19, 2004, as a B-2 nonimmigrant visitor. The beneficiary was in the United States as a B-2 tourist for seven months before her status changed to that of an R-1 religious worker.

In a letter dated February 24, 2003, Rev. [REDACTED], Pastor of [REDACTED] Church in Grand Cayman, British West Indies, stated: "During the period of her membership, [the beneficiary] was actively engaged in ministry, serving as a Sunday School Teacher for the Junior High Class, and a member of the senior choir." Pastor [REDACTED] did not specify "the period of her membership," although some present-tense references to the beneficiary's membership suggest that the beneficiary was at All Nations United Pentecostal Church at the time Rev. [REDACTED] wrote the letter. The date of the letter predates the start of the two-year qualifying period by several months, and therefore the letter cannot establish qualifying experience during that period.

The petitioner has submitted a copy of a "Certificate of Licence" issued by the Apostolic Ark Pentecostal Church of Jamaica (AAPCJ) in 1996, identifying the beneficiary as "an ordained Minister in good standing." This 1996 certificate cannot and does not establish the nature or location of the beneficiary's activities during the 2003-2005 qualifying period.

The petitioner also submitted a letter from Hudson City Savings Bank, verifying that the petitioning church "maintains a savings account with us. The balance as of Today [July 22, 2005] is [\$]9,872.16."

On November 15, 2005, the director issued a request for evidence (RFE), instructing the petitioner to submit further evidence to establish that the beneficiary worked continuously as a minister during the October 2003-October 2005 qualifying period. The director also requested copies of tax documents to establish the beneficiary's prior employment, and further documentation to establish the extent of the beneficiary's religious training, and to show that the beneficiary is qualified to perform the functions of the clergy in her religious denomination. In the RFE, the director noted the beneficiary's January 2004 entry in B-2 status.

In response, Pastor [REDACTED] repeats the assertion that "[f]rom August, 1996 to August 19, 2004, the beneficiary functioned as minister for The Apostolic Ark Pentecostal Church of Jamaica." The petitioner submitted a letter from Bishop Owen South of the AAPCJ, who stated that the beneficiary "was a member of the Mile Gully church" for ten years, during which time the beneficiary "was a very active member as a Choir

Member, Sunday School Teacher, and Missionary.” Bishop [REDACTED]’s letter is dated May 22, 2003, and therefore the letter does not address the beneficiary’s activities during the October 2003-October 2005 qualifying period.

In a January 2006 letter, AAPCJ President Bishop [REDACTED] attested to the beneficiary’s character and states that “she merits the privilege to be ordained a Missionary.” Bishop [REDACTED] did not offer any specific information about the beneficiary’s past church work. The bishop attested to the beneficiary’s qualifications without actually stating that the beneficiary had ever worked for the AAPCJ.

An undated pamphlet issued by the petitioning church identifies the beneficiary as one of five missionaries and “Church Officers.” The pamphlet identifies two other people as “General Ministers.”

As evidence of the beneficiary’s compensation, the petitioner has submitted copies of checks, for \$150 each, payable to the beneficiary from [REDACTED]’s personal checking account at Independence Community Bank, issued in July and August 2005 and January 2006. Pastor [REDACTED] address printed on these checks matches the beneficiary’s address as stated on the Form I-360 petition. A handwritten Internal Revenue Service Form 1099-MISC Miscellaneous Income statement indicates that the petitioner paid the beneficiary \$3,900.00 in 2005. The beneficiary’s 2005 income tax return reflects no other income from any source.

The beneficiary’s 2004 income tax return shows \$1,275.00 in income. The tax returns do not specify the beneficiary’s occupation, but the beneficiary listed the petitioner’s telephone number under “Daytime phone number.” The 2004 income tax return is dated January 25, 2006, more than nine months after the usual April 2005 filing deadline. The timing suggests that the beneficiary filed the return in response to the director’s November 2005 request for tax documentation. The record contains no first-hand evidence from 2004 to confirm payments to the beneficiary from the petitioning church.

We note that, on both the 2004 and 2005 tax returns, the beneficiary identified herself as “single,” although the Form I-360 petition, executed in October 2005, indicated that the beneficiary was married, and identified her spouse.

The director denied the petition on March 23, 2006, stating that the petitioner did not submit sufficient documentation to show that the beneficiary has worked as a minister continuously throughout the two-year period ending October 17, 2005. The director noted that the materials submitted in response to the RFE do not identify the beneficiary as a minister. Regarding the beneficiary’s “Certificate of Licence” from 1996, the director cited *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978), in which the Board of Immigration Appeals stated: “We do not agree that the issuance of a piece of paper entitled ‘certification of ordination’ by a religious organization should be conclusive as to who qualifies as a minister for immigration purposes. Otherwise, Congressional policy in the field of immigration could be readily circumvented by accommodating religious organizations.” *Id.* at 610. The director concluded: “The record does not establish that the beneficiary has the required two years of experience in the religious occupation.”

On appeal, counsel states:

The beneficiary possesses the required two years of work experience as evidenced by letters submitted by The [REDACTED], where the beneficiary served as a minister from August, 1996 to August, 2004 and thereafter, the beneficiary has been serving as a minister for the petitioner from August, 2004 to present.

The petitioner presented letters from The [REDACTED] verifying this experience with further verification that the beneficiary's ordination as a minister is based on the beneficiary's performance and attendance in the required activities of the church along with strong belief and practice of holiness. See enclosed statement from Bishop [REDACTED]

Contrary to counsel's assertions, the letters from the AAPCJ – including the new statement from Bishop [REDACTED] – verify none of these claims. No AAPCJ official has ever stated that the beneficiary worked for the AAPCJ as a minister, and no AAPCJ official has ever stated that the beneficiary worked for the organization in any capacity during the 2003-2005 qualifying period. Some of the letters from the AAPCJ predate the qualifying period, and the later letters are very vague, mentioning no employment during the relevant period.

The “enclosed statement from Bishop [REDACTED] is a single, undated, photocopied page, entitled “Requirements for Obtaining Credential or License from the [REDACTED] of Jamaica Inc. Int.” The document concerns general requirements and does not mention the beneficiary.

We cannot ignore Pastor [REDACTED] repeated claims that the beneficiary worked for the AAPCJ until August 19, 2004. These claims are simply not credible in light of the beneficiary's presence in the United States under a tourist visa from January 2004 to August 2004. The petitioner has submitted nothing from the AAPCJ to show that the beneficiary actively carried on ministerial duties for the AAPCJ during the seven months between her arrival in the United States and her change to R-1 status.

Regarding the beneficiary's claimed work for the petitioning entity, Pastor [REDACTED] claims yet again that “[f]rom August, 1996 to August 19, 2004, the beneficiary functioned as minister for The [REDACTED] Pentecostal Church of Jamaica,” and once again he fails to explain how the beneficiary worked for a church in Jamaica while she was in the United States for almost all of 2004.

For the reasons discussed above, we concur with the director's finding that the petitioner has failed to establish that the beneficiary worked continuously as a minister throughout the two years immediately prior to the petition's filing date.

We turn now to the issue of the petitioner's job offer to the beneficiary. 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).

In his initial letter, submitted with the petition, Pastor [REDACTED] stated: “We intend to employ the beneficiary as a Minister on a full time permanent basis.” Pastor [REDACTED] did not, however, specify the terms of employment or establish that the beneficiary would solely be carrying on the vocation of a minister.

In the November 15, 2005 RFE, the director instructed the petitioner to clarify the terms of employment and submit additional evidence to show that the petitioner has been meeting those terms.

In response, as previously noted, the petitioner submitted copies of \$150 checks issued to the beneficiary in July and August 2005 and January 2006. Pastor [REDACTED] claimed that the petitioner also provides "free housing and food" in addition to this salary, but the petitioner submitted no evidence to support this claim.

The petitioner's audited financial statement for 2005 contains the following information:

Assets	
Cash and Cash Equivalents	\$3,247
Machinery & Equipment	2,294
Furniture & Fixtures	3,408
Leasehold Improvements	17,747
Total Current Assets	26,696
Total Assets	26,696
Total Support and Revenue	38,449
Expenses	
Salaries & Wages	12,150
Church Van	1,148
Supporting Services – Management and General	8,216
Total Expenses	21,514

In denying the petition, the director found that the petitioner had failed to establish that the beneficiary will not rely on outside employment or solicitation of funds for support. The director concluded that the petitioner had not established the validity of the job offer.

On appeal, Pastor T [REDACTED] states:

Our organization compensates [the beneficiary] an amount equivalent to \$150.00 per week plus free housing and food. [The beneficiary] lives with me and my wife . . . where she occupies one room and is being given free food. . . .

The following shows distribution of \$12,150.00 wages and salaries paid for the year 2005:

[The beneficiary]:	\$3,900.00
Minister [REDACTED]	\$7,800.00
Pastor [REDACTED]	\$450.00

It was only in July, 2005 that we started giving [the beneficiary] paychecks to keep records of her salary and this explains why [her tax return] is only showing \$3,900.00 for 2005 instead of \$7,800.00. From January, 2005 to June, 2005, [the beneficiary] was compensated in cash.

I basically do not collect salary as I have devoted my life toward service to the church voluntarily without compensation.

Pastor [REDACTED] statement indicates that the audited financial statement submitted previously is not accurate, as it fails to record the beneficiary's claimed salary during the first half of 2005. Pastor [REDACTED] claims that the beneficiary's 2005 income tax return shows only \$3,900 because the petitioner paid the beneficiary in cash for the first half of the year; the petitioner does not attempt to explain why these claimed cash transactions went entirely unreported, either on the beneficiary's tax return or on the petitioner's audited financial statements. Tax laws and accounting principles do not exclude cash transactions.

Furthermore, Pastor [REDACTED] has somewhat compromised his credibility through his repeated assertions that the beneficiary continued working for the church in Jamaica several months after the beneficiary had left Jamaica. 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). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 592.

We also note that although the petitioning church holds an account at Hudson City Savings Bank, the beneficiary's checks did not come from that bank or that account. Rather, the beneficiary received checks drawn on Pastor [REDACTED]'s personal account at Independence Community Bank. It is not clear whether the audited financial statement included an audit of either or both of these accounts. The record is devoid of evidence that the petitioning church, as a corporate entity (as opposed to Pastor [REDACTED] as a private individual) has ever provided any remuneration, in any form, to the beneficiary. The petitioner has not shown that the church itself, rather than Pastor [REDACTED] as an individual, has taken any responsibility for the beneficiary or made any commitment to support the beneficiary should Pastor [REDACTED] no longer be able to pay the beneficiary his own money or house her in his own dwelling.

For the above reasons, we are not persuaded of the existence of a *bona fide* job offer, and we affirm the director's finding to that effect. We further note that 8 C.F.R. § 204.5(g)(2) requires the petitioner to establish that the prospective employer itself (rather than an individual officer thereof) has the ability to pay the proffered wage from the date of filing until the beneficiary obtains lawful permanent residence. The record does not indicate that the petitioner has met this requirement.

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.