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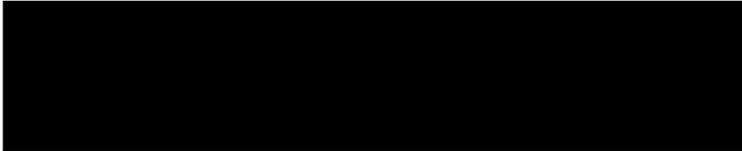
U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAY 09 2007
WAC 06 009 53018

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
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California 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 Christian church of the American Baptist Churches USA 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 an associate pastor. The director determined that the petitioner had not established its ability to pay the beneficiary's proffered wage, or that the beneficiary had the requisite two years of continuous work experience as an associate pastor immediately preceding the filing date of the petition.

On appeal, the petitioner submits a letter from a church official and copies of financial documents.

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 first issue concerns the beneficiary's past employment. 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 13, 2005. Therefore, the petitioner must establish that the beneficiary was continuously engaged as an associate pastor throughout the two years immediately prior to that date.

In an August 10, 2005 letter accompanying the initial filing of the petition, [REDACTED] Chairman of the petitioner's Deacon Board, stated that the beneficiary "has been working full time as our Associate Pastor since September 2001. She is being paid \$1,200.00 per month for her works rendered to her church." A bank statement showing the petitioner's financial activity for December 2004 does not show a check or checks in an amount or amounts consistent with the claimed rate of pay, nor any cash withdrawals at all. We note some gaps in the numerical sequence of the checks, but the burden is on the petitioner to show that it has paid the beneficiary as claimed. We are under no obligation to assume that any of the missing checks were issued to the beneficiary.

The petitioner submits copies of programs from worship services on February 6, 2005 and July 10, 2005. The February program identifies the beneficiary as the "[p]ianist" for the worship service, and states that she conducts "Adult Fellowship" on "[t]he third Sunday of each month." The July program does not appear to mention the beneficiary at all.

On March 14, 2006, the director issued a request for evidence (RFE) instructing the petitioner to submit "evidence of the beneficiary's work history beginning October 13, 2003 and ending October 13, 2005," including documentation "that shows monetary payment, such as . . . pay stubs. . . . If any work was on a volunteer basis, provide evidence to show how the beneficiary supported him or herself" during the two-year qualifying period.

In response, the petitioner submitted copies of monthly \$1,200.00 paychecks issued to the beneficiary from November 2005 and February 2006. The petitioner also submitted copies of nine bank statements, dated December 2003, December 2004, and in a consecutive sequence from October 2005 through April 2006. The last five statements (from December 2005 onward) each show the monthly issuance of \$1,200.00 checks. None of the four earlier statements show any checks in that amount. Therefore, the petitioner did not document that it made any payments to the beneficiary during the qualifying period. We note that, as early as August 10, 2005, the petitioner had claimed that the beneficiary "is being paid \$1,200.00 per month." The petitioner did not explain or even acknowledge its failure to submit evidence of these payments.

The director denied the petition on June 15, 2006, in part because the petitioner had failed to establish that the beneficiary worked continuously during the two-year qualifying period. On appeal, [REDACTED] Secretary of the petitioning church, states:

As our Associate Pastor, [the beneficiary] was paid \$800.00 per month from October, 2003 till October, 2005. We raised her monthly salary to \$1,200.00 from November, 2005. In addition to her monthly salary, [the beneficiary] also receives monetary donation[s] from our church congregation to support her living and housing expenses. [The beneficiary] also receives supplemental income by giving private piano lessons to members of our congregation during her spare time.

The petitioner submits copies of \$800.00 checks dating back to October 2003. The director had previously requested evidence of the beneficiary's October 2003-October 2005 compensation, including "pay stubs," but

the petitioner did not submit any such evidence at that time. While the petitioner did submit some pay stubs, they were for a later period. The earliest pay stub submitted in response to the RFE was dated November 2005 – which was the first month in which the petitioner paid the beneficiary \$1,200.00 rather than \$800.00. It appears that the petitioner deliberately withheld information about the beneficiary's lower compensation when the petitioner responded to the RFE.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Here, the petitioner's failure to submit the beneficiary's pay stubs in response to the RFE precluded a material line of inquiry regarding the beneficiary's experience and compensation.

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Because the petitioner withheld the 2003-2005 pay stubs when the director requested them, we cannot fault the director for failing to take these documents into account when rendering the decision.

In addition, the petitioner now claims that the beneficiary "was paid \$800.00 per month from October, 2003 till October, 2005. We raised her monthly salary to \$1,200.00 from November, 2005." This new claim contradicts the petitioner's earlier assertion that the beneficiary was already "being paid \$1,200.00 per month" as early as August 10, 2005. 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.

Because the petitioner has offered conflicting claims about the beneficiary's past compensation, we cannot accept the petitioner's unsubstantiated claims regarding the extent or nature of the beneficiary's past work or, for that matter, the nature and extent of the beneficiary's proposed future work for the petitioner.

The petitioner also submits copies of checks that the beneficiary received for giving piano lessons. The checks show that the beneficiary received several hundred dollars a month for these lessons during and after the 2003-2005 qualifying period. This evidence demonstrates that the beneficiary was not engaged solely as a minister during the two-year qualifying period, and therefore the beneficiary is not eligible for the benefit sought in this petition. See *Matter of Faith Assembly Church*, 19 I&N Dec. 391, 393 (BIA 1986).

Maeta Parinayakosol states, on appeal, that the beneficiary provided piano lessons to other members of the petitioner's congregation, and therefore "all of [the beneficiary's income was] actually derived from our

congregation.” It is irrelevant that the beneficiary’s clients were members of the petitioning congregation, because piano lessons are not religious work, and even [REDACTED] has emphasized that the beneficiary teaches those lessons “during her spare time . . . when she is not on duty at our church.”

While the beneficiary was involved with the petitioning church in some way during the qualifying period, her low wages for much of that period are not consistent with continuous, full-time employment. The beneficiary’s secular piano teaching work compels the conclusion that she was not solely engaged in the vocation of a minister throughout the two-year qualifying period. We therefore affirm the director’s finding that the beneficiary was not continuously engaged in qualifying religious work during the required period.

In light of the above, we note that, for alien ministers, 8 C.F.R. § 204.5(m)(4) requires the petitioner to establish that the beneficiary “how the alien will be solely carrying on the vocation of a minister.” Hoa Phuong, in the initial letter, did not state that the beneficiary would be solely carrying on such work, stating instead that the beneficiary “will not be *significantly* dependent for support on the personal solicitation of donations or on supplemental employment” (emphasis added).

The remaining issue concerns the petitioner’s ability to pay the beneficiary’s salary of \$20,160 per year (equivalent to \$1,680 per month). 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.

At the time of filing, [REDACTED] stated: “Presently, we have 2 paid employees. All the directors and officers are volunteers. Our gross annual income is about \$95,000.” As we have previously noted, the same witness indicated in a separate letter that the beneficiary “is being paid \$1,200.00 per month.”

The petitioner’s initial submission included an apparently unaudited “2004 Income and Expense Report.” The petitioner also submitted a copy of a bank statement, showing that the petitioning church had two money market accounts, one checking account and a certificate of deposit, holding a cumulative total of \$118,597.78 as of December 31, 2004. The statement shows that the petitioner wrote 15 checks in December 2004, none of which was in an amount close to the beneficiary’s proffered compensation.

In the March 14, 2006 RFE, the director advised the petitioner of the regulatory requirement that evidence of ability to pay “shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.” In response, as noted above, the petitioner submitted evidence showing that the petitioner paid the beneficiary \$1,200.00 per month beginning in November 2005. This amount falls short of the proffered wage by \$480.00 per month, or \$5,760 per year.

The petitioner submitted "Income and Expense Reports" for 2003 through 2005 and the first five months of 2006. The reports show no indication of having been audited. The reports show shortfalls of \$5,921.33 in 2003 and \$4,007.68 in 2004, and surpluses of \$2,455.33 in 2005 and \$1,240.38 for January-May 2006. Assuming for the sake of argument that the petitioner has paid the beneficiary \$1,200.00 per month since 2003, as claimed, and that these unaudited reports contain accurate information, the reports do not show that the petitioner has ever been able to pay the beneficiary the full wage. In the years when the petitioner reported income in excess of expenses, that excess has never been enough to cover the gap between the beneficiary's proffered wage and her actual wage.

In denying the petition, the director found that the petitioner had failed to submit the required financial documents. In addition, the director stated that the \$1,200.00 paychecks raise "the question of whether the petitioner actually intends to pay the wage promised in the job offer."

On appeal, [REDACTED] claims "our church is in process of giving [the beneficiary] another raise . . . [which] will bring [the beneficiary's] salary level to what is being promised in the job offer." The petitioner's previously submitted documents, apart from failing to conform to regulatory requirements, did not indicate that the petitioner had sufficient income or funds on hand to pay the beneficiary's full proffered wage from the filing date onward. Bank statements do not reflect liabilities and therefore fail to provide an adequate picture of the petitioner's finances. Furthermore, in light of the petitioner's conflicting statements regarding what the beneficiary was earning as of August 2005, the petitioner's claim that it is in the process of raising the beneficiary's salary has minimal credibility.

The petitioner submits copies of Internal Revenue Service Form 990 returns, which contain much the same information as income tax returns but are specifically for non-profit organizations. The returns are for the years 2003 through 2005. The petitioner did not file these returns annually. Rather, they are all dated August 11, 2006, nearly two months after the denial of the petition. Given the timing, it appears that the petitioner prepared these forms for the specific purpose of submitting them on appeal. These documents cannot carry the same evidentiary weight as contemporaneous documents that were not custom-made to support the appeal. It remains that the petitioner's RFE response did not include any of the evidence required by 8 C.F.R. § 204.5(g)(2). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

We affirm the director's finding that the petitioner has not adequately established its ability, or its intent, to pay the beneficiary \$1,680.00 per month.

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

ORDER: The appeal is dismissed.