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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 06 027 51774

Office: VERMONT SERVICE CENTER

Date: **MAY 16 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.

Maura Deadrick
for 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 Christian 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 director of religious education. The director determined that tax documents in the record conflict with denominational standards for church staffing, and therefore the petitioner had not credibly demonstrated that the beneficiary has worked or will work in a religious occupation.

On appeal, the petitioner submits a letter from its pastor and documentation of worker compensation.

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 petitioner submitted documentation showing that the beneficiary held R-1 nonimmigrant religious worker status from October 1, 2003 through September 30, 2006. Internal Revenue Service (IRS) documents and canceled checks indicate that the petitioner has paid the beneficiary \$2,000 per month since October 2003. The petitioner submitted copies of IRS Form 941 quarterly tax returns along with New Jersey state returns, indicating that the beneficiary was the petitioner's only paid employee in 2004 and 2005, except for the fourth quarter of 2004, for which the petitioner reported wages for two employees, specifically the beneficiary and the church's pastor, [REDACTED]

On December 8, 2005, the director requested various documents to supplement the record. Among the materials submitted in response to this request was a letter dated February 10, 2006, jointly signed by two officials of the Assemblies of God Korean District Central Eastern Section ([REDACTED]) and Secretary [REDACTED]. The letter reads, in part: “local churches of our denomination are accustomed to staff Bible teacher and music director as well as pastor, evangelist, and religious educational director in order to fulfill various religious functions and ministries within the church.”

The director denied the petition on May 18, 2006. In the decision, the director acknowledged the petitioner’s IRS Form 941 returns, and did not directly challenge the authenticity of those documents. The director then stated:

The record indicates the church should have a Bible teacher, music director, pastor, evangelist and religious educational director working for the organization. However the record shows that the beneficiary was the only employee of the church except for one quarter ending December 31, 2004 when the pastor was identified as a second employee. The evidence submitted is not persuasive in showing that the beneficiary is employed by the petitioner.

The record does not establish that the beneficiary has been and will be employed in a religious occupation.

In isolation, the director’s assertion that “[t]he record does not establish that the beneficiary has been and will be employed in a religious occupation” could be interpreted to mean that the beneficiary’s position does not fit the regulatory definition of a religious occupation at 8 C.F.R. § 204.5(m)(2). The director, however, did not elaborate or discuss, in any way, the beneficiary’s duties as the petitioner had described them. In context, as shown above, it appears instead that the director simply did not believe that the petitioner had employed the beneficiary at all.

The director did not explain the logic underlying this decision. The director seemed to stipulate that the beneficiary’s own employment, however meticulously documented, is nevertheless in doubt because the petitioner does not have enough additional employees. The director’s apparent misgivings on this point do not appear to be sufficient to discredit substantial documentary evidence consistent with the beneficiary’s ongoing employment at the petitioning church.

On appeal, the petitioner maintains that the petitioner has employed and paid the beneficiary in the capacity of a director of religious education since October 1, 2003, in valid R-1 nonimmigrant status. The petitioner submits copies of checks and IRS Form 1099-MISC statements, showing that many of the workers paid by the church (including, for the most part, the pastor) were essentially compensated as contractors rather than as employees. The beneficiary herself received an IRS Form 1099-MISC rather than Form W-2 in 2003. For our purposes here, the distinction between an employee, whose wages appear on Form W-2, and a contractor, whose compensation appears on Form 1099-MISC, is a trivial one. If an alien performs work for a religious organization and receives some form of material support or compensation from the organization in exchange

from that work, then for immigration purposes such work constitutes employment. *See Matter of Hall*, 18 I&N Dec. 203, 205 (BIA 1982).

Even if the petitioner's appeal did not include evidence that it employed other individuals, we note that [REDACTED] and [REDACTED] did not state categorically that every Assembly of God church invariably employs individuals in every one of the named positions; they merely made the general assertion that churches in the denomination are "accustomed" to having such individuals on staff. The director does not explain why this general claim discredits years of tax documents that specifically identify the beneficiary as the petitioner's employee.

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. In the absence of specific derogatory evidence showing fraud or misrepresentation, or otherwise undermining the credibility of the documents in the record, the preponderance of available evidence does not support the director's conclusion. Because the director has articulated no coherent basis for denial of the petition, we must withdraw that decision.

ORDER: The appeal is sustained and the petition is approved.