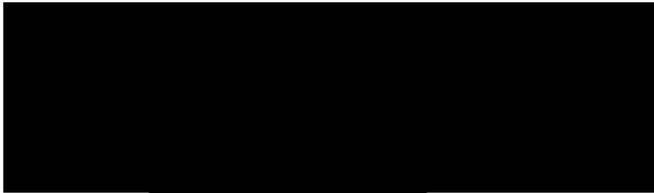




U.S. Citizenship
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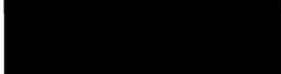
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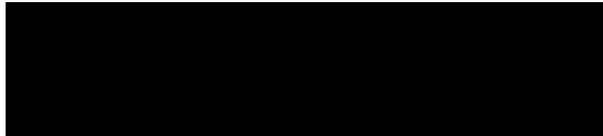
Date: **MAY 17 2007**

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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
for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska 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 Presbyterian 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 lay minister. The director determined that the petitioner had not established that the beneficiary's position qualifies as a religious occupation or vocation, or that the petitioner is able to pay the beneficiary's proffered salary.

On appeal, the petitioner submits arguments from counsel and additional exhibits.

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 is whether the petitioner seeks to employ the beneficiary in a qualifying vocation or occupation. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

Citizenship and Immigration Services interprets the term “traditional religious function” to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

The petitioner’s initial submission included a “Loral Minister’s Lirense” (*sic*), issued by the petitioning church, indicating that the beneficiary “has been duly licensed to preach, according to the Word of God and the manual of the [petitioning] church.” The document is dated “1999. 2. 1.”

The initial filing contained no description of the position offered to the beneficiary, but it did contain a letter from [REDACTED], Senior Pastor of [REDACTED] where the beneficiary had worked from 1991 to 1996. The English translation of this letter identified the beneficiary’s job title as “Minister,” but the Korean-language original letter shows the phrase “Lay Minister” in English. Pastor [REDACTED] stated that the beneficiary was involved in the “Pre School ministry,” sang with both “the main choir” and “the praise team,” and “was a dedicated member of [Du Los] voluntary mission team,” in which capacity the beneficiary had made two mission trips to Malaysia. We note that this church is a Methodist church, whereas the petitioner belongs to a Presbyterian denomination (of which there are several). Therefore, the letter from Pastor [REDACTED] offers no useful information about the beneficiary’s duties within the petitioner’s religious denomination.

On May 20, 2004, the director issued a request for evidence (RFE), instructing the petitioner to “submit a letter from an authorized official of the religious organization in the United States which establishes that the alien has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of the authorized duties.”

In response to the RFE, the petitioner submitted copies of the beneficiary’s income tax returns for 2002 and 2003, on which the beneficiary listed her occupation as “Minister.” The petitioner also submitted several letters from [REDACTED] Senior Pastor of the petitioning church. In one letter, Pastor [REDACTED] stated:

[The beneficiary] has **the authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of our denomination.**

The duties she has the authority to perform include:

Teaching the Bible (including teaching Sunday School and lead Bible study groups);

Facilitating worship services and assisting with direction of Praise Worship team;

Lead praise songs during worship;

Plan worship, as needed to assist Senior Pastor;

Preaching, as needed to assist Senior Pastor.

(Emphasis in original.) The above materials indicate that the petitioner and the beneficiary consider the beneficiary to be a minister. In another letter, however, Pastor [REDACTED] stated:

We are offering [the beneficiary] permanent, full-time employment at our church to work as a Lay Minister. In this position her duties include:

1. Teach Sunday School to youth and lead Bible study youth groups;
2. Assist in directing the Praise Worship team to lead praise songs during worship times;
3. Assist Senior Pastor in worship planning and planning of other church events as needed;
4. Organize, choose the music and direct the church choir during special holidays;
5. Choreograph the Teheljah Mission Team;
6. Coordinate the Mission Team outreach and help organizing religious revivals, camps and missionary trips. . . .

[The beneficiary] has over 7 years of experience working for [the petitioning] Church as a Lay Minister.

The director denied the petition on November 9, 2004. In the decision, the director reproduced the petitioner's list of the beneficiary's duties, and stated: "These are clearly duties normally undertaken by a dedicated member (or members) of the congregation, on a voluntary basis, as an expression of his or her religious dedication." The director concluded: "the evidence submitted shows that the beneficiary's position is that of a lay minister, rather than an ordained or appointed minister. As such, this position does not qualify as a religious professional . . . [or] that of a religious vocation or occupation."

On appeal, the petitioner submits a letter, signed by several Korean pastors in Colorado, asserting that many Korean churches appoint lay ministers because "[m]ost . . . Korean churches in America are fairly small which makes it quite difficult to hire associate pastors or other pastors due to financial hardship." The letter

indicates that lay ministers such as the beneficiary perform numerous important church functions beyond the duties of casual volunteers.

If the beneficiary performed only one or two of certain duties listed for her in prior correspondence (such as teaching Sunday school), then it might be argued that those duties, by themselves, could be ably handled by a knowledgeable volunteer from the congregation, especially if the congregation is of small size. (As noted above, the letter submitted on appeal cites a congregation's small size as being a reason for using the services of a lay minister.) Taken together, however, the duties form such a broad range of functions, requiring an equally broad range of expertise, that it is plausible for such duties to constitute a full-time job for one person. The tasks are not largely secular or administrative.

For the above reasons, we withdraw the director's finding that the beneficiary's position as a lay minister is not a religious occupation. There remains, however, another basis of ineligibility, which is by itself sufficient to warrant denial of the petition.

The remaining issue concerns the petitioner's ability to pay the beneficiary's salary. 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.

Pursuant to 8 C.F.R. § 204.5(d), the priority date of a special immigrant religious worker petition is the date that the petition is properly filed. Here, the petition's filing date (and, hence, its priority date) is February 3, 2004. The petitioner must establish its ability to pay the beneficiary's proffered compensation from that date forward.

In the original petition, the petitioner did not specify the amount that it intended to pay the beneficiary as a wage or salary. The only financial documentation included in the petitioner's initial submission consisted of copies of bank statements from mid-2002. These documents show that the petitioner began May 2002 with a bank balance of \$33,285.17, reduced to \$22,917.75 at the end of the month, \$18,117.74 a month later, and finally \$13,280.98 as of the end of July 2002, indicating a total decrease of more than \$20,000 in the space of three months. The director, in the May 2004 RFE, instructed the petitioner to "submit additional evidence to establish that the alien will not be dependent on supplemental sources of income for support, such as bank letters, recent audits, church membership figures, and the number of individuals currently receiving compensation."

In response to the RFE, the petitioner claimed to have paid the beneficiary \$1,000 per month from 1999 to 2004. The petitioner submitted "Payroll Lists" from 1999 and 2000, indicating that the beneficiary received \$1,000 each month beginning in February 1999. The petitioner also submitted copies of the beneficiary's income tax returns from 2002 and 2003, showing that the beneficiary reported gross income of \$11,940 in

2002 and \$8,970 in 2003. Certified Public Accountant [REDACTED] who prepared both returns, stated that the beneficiary's 2003 tax return "reflect[s] \$12,000 of gross income, including \$3030 of minister's housing allowance and \$8970 gross ministerial earnings."

[REDACTED] stated in a letter: "I have been supporting [the petitioning] Church for many years. [For the l]ast few years I have been contributing to church, the average of \$2,000.00 to \$4,000.00 per month." The bank statements in the record show monthly deposits in that general range, but the record contains no documentary evidence to confirm the source of those deposits. We note that [REDACTED] and [REDACTED] share the same address and telephone number.

[REDACTED] stated that his family gives the beneficiary "approximately \$1000.00 each month." This is irrelevant to the issue of whether or not the petitioning church, itself, has been able to support the beneficiary. The petitioner cannot establish its ability to pay by delegating that responsibility to a parishioner.

Regarding what the petitioner proposed to pay the beneficiary in the future, the petitioner submitted a new letter, dated June 2, 2004, in which Pastor [REDACTED] stated: "Her salary for her work as a Lay Minister will be \$1500 a month to be paid on the second week of each month."¹ Because this proffered salary is considerably higher than the claimed earlier rate of payment, evidence of past payments cannot show that the petitioner has ever been able to pay the beneficiary the higher proffered salary.

The petitioner submitted copies the first pages of more recent bank statements, issued between January 2003 and April 2004. The petitioner began January 2003 with a balance of \$7,641.36, and ended April 2004 with a balance of \$290.79 (less than one fifth of the proffered monthly salary). In each of the three most recent statements, the petitioner's withdrawals and debits exceeded the petitioner's deposits. We repeat that, prior to the filing date, the petitioner claims to have paid the beneficiary \$500 per month less than the petitioner proposes to pay her in the future. Thus, the bank statements need to reflect not only the beneficiary's \$1,000 monthly salary payments, but also the additional income or assets needed in order to cover the higher salary. The last time that the petitioner's deposits exceeded withdrawals and debits by \$500 or more in a given month was in June 2003.

The director, in denying the petition, noted the low balances on the petitioner's recent bank balances, and observed that the "closing monthly balances do not increase incrementally with the amount necessary to pay the offered wage." On appeal, counsel states that the director "erred in disregarding substantial evidence that the U.S. Petitioner has had the ability to pay the Beneficiary's salary since the I-360 was filed and up to the present, including letters showing substantial donations by Church members, Beneficiary's tax returns and a letter from her accountant confirming she received the proffered salary."

As we have already noted, the pastor of the petitioning church has stated that the beneficiary's proffered salary is \$1,500 per month, not \$1,000 per month. Therefore, even if the petitioner had definitively proven

¹ The record also contains a copy of a letter from Pastor [REDACTED] stating that the beneficiary "will continue to be paid \$1000.00 a month," but this is an older letter, originally written in support of a petition to extend the beneficiary's R-1 nonimmigrant status. The only dollar figure specifically attached to the immigrant petition (rather than a nonimmigrant petition) is \$1,500 per month.

that the beneficiary has received \$1,000 per month for five years, this does not compel the conclusion that the petitioner is, and will be, able to increase this amount by 50% in the future.

Even then, we note that the record does not consistently show that the petitioner had, in the past, paid the beneficiary \$1,000 per month. A number of bank statements do not show checks or withdrawals in the amount of \$1,000, and none show checks or withdrawals in the amount of \$747.50 per month (which annualizes to the beneficiary's claimed \$8,970 in "gross ministerial earnings" cited by CPA [REDACTED]). It is conceivable that the petitioner compensated the beneficiary from some other source, not reflected on the bank statements, but if that is the case then the bank statements have negligible evidentiary value with regard to the beneficiary's compensation.

We note also that [REDACTED] had claimed that part of the beneficiary's salary took the form of a housing allowance. The jointly signed letter submitted on appeal, however, states that the beneficiary "lives in the parsonage with the pastor's family." The tax returns show that the beneficiary has resided at the same address since 2003. The petitioner itself has never indicated that a housing allowance was or will be deducted from the beneficiary's base salary. There is no documentary evidence to show that the beneficiary's reported 2003 earnings fell below \$12,000 due to a housing allowance, rather than a shortfall in salary payments.

Bank statements cannot, by themselves, provide a comprehensive picture of the petitioner's financial status, sufficient to establish ability to pay under 8 C.F.R. § 204.5(g)(2). Furthermore, taken at face value, the statements in the record show a significant decline in the petitioner's finances during a time when the petitioner supposedly paid the beneficiary \$1,000 per month. The available evidence does not show the petitioner's ability to pay \$1,500 per month, and the general downward trend in the petitioner's bank balances does not suggest that the petitioner would long be able to continue paying the beneficiary \$1,000 per month.

Counsel observes that "the deposits show a total of \$123,330.17 was received by the petitioner" between January 2003 and April 2004. This figure proves nothing, because the petitioner must meet other expenses beside the beneficiary's salary. Furthermore, the petitioner began January 2003 with over \$7,600, and ended April 2004 with less than \$300. However much the church took in during that period, the church spent even more. If those funds have already been spent on other expenses, then they are no longer available to pay the beneficiary's salary. By citing only the petitioner's deposits, and not its debits, counsel conceals this obvious downward trend, but the trend does not disappear simply because counsel fails to acknowledge it.

For the reasons discussed above, we affirm the director's finding that the petitioner has failed to establish its ability to pay the beneficiary's proffered salary of \$1,500 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.