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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: NOV 21 2007
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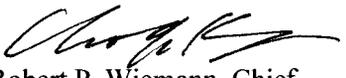
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:
[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.

for 
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 identified as a congregation of the United Pentecostal Church International (UPCI). 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 pastor of Tabernaculo de Vida, identified as the petitioner's "daughter church." The director determined that the petitioner had not established: (1) the petitioner's status as a qualifying tax-exempt religious organization; (2) that the beneficiary had the requisite two years of continuous work experience as a pastor immediately preceding the filing date of the petition; or (3) that the beneficiary's duties qualify as ministerial.

On appeal, the petitioner submits additional materials and a brief from counsel.

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).

8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization seeking to employ the beneficiary qualifies as a non-profit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

The petitioner's initial submission includes a Certificate of Exemption from the Tennessee Department of Revenue, stating that the petitioner is exempt from the Tennessee Sales Tax. This document does not establish or imply exemption from federal income tax.

The petitioner also submitted a copy of a letter from the Internal Revenue Service (IRS), assigning the petitioner an Employer Identification Number. This letter stated, in part: "the assignment of this number does not grant tax-exempt status to nonprofit organizations." The letter also offered information as to how the petitioner could "establish its exemption with the Internal Revenue Service and receive a ruling or determination letter."

On December 11, 2006, the director issued a request for evidence (RFE), instructing the petitioner to submit documentary evidence to satisfy the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A) or (B). The RFE requested various other types of evidence as well. The petitioner responded to the RFE, but the response did not address the issue of the petitioner's claimed tax-exempt status.

On March 13, 2007, the director issued a second RFE, again instructing the petitioner to submit documentary evidence to meet the regulatory requirements. The director stated that the petitioner's initial submission "shows that the petitioner . . . is exempt [from] State income tax," and that the petitioner "must provide evidence that shows the petitioner . . . is exempt [from] Federal income tax."

In response, the petitioner indicated that the petitioning church does not have its own tax-exempt certification from the IRS, but "is considered a United Pentecostal Church." The petitioner also stated: "[t]he UPCI does have a Group Exemption Number issued by the IRS, thus giving the UPCI Tax Exempt Certification." The petitioner also indicated that "the UPCI is a fellowship of ministers not churches."

The petitioner submitted a copy of UPCI's 2007 directory, listing the petitioning entity, but the petitioner did not submit any evidence of UPCI's group exemption. The petitioner submitted a copy of a February 21, 2007 letter from the IRS to the petitioning church, which reads in part: "[w]e have no record of your organization being recognized as exempt from federal income tax under section 501(c)(3) of the [Internal Revenue] Code." The letter contains general comments about group exemption, but neither states nor implies that UPCI possesses such a group exemption or that such an exemption covers the petitioning entity.

The director denied the petition on June 19, 2007, in part because "the petitioner has not established it is exempt from taxation in accordance with section 501(c) of the Internal Revenue Code of 1986 or is eligible for that exemption." On appeal, counsel states that the petitioner "is now submitting proof that they are covered under a group exemption letter issued to United Pentecostal Church International, Inc." The petitioner submits a copy of a letter from the IRS to UPCI, dated May 4, 1994, confirming that the IRS issued a group exemption letter to UPCI in 1958. Neither the petitioner nor counsel explains why the petitioner did not submit a copy of this letter in response to either of the two RFEs that the director had previously issued.

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). 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). The petitioner did not submit this evidence when the director specifically requested it, and therefore the AAO will not consider it on appeal.

The AAO finds that the director arrived at the correct decision in light of the evidence that the petitioner chose to make available to the director prior to the decision. The AAO therefore affirms the director's finding.

Next, we 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 November 14, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a pastor throughout the two years immediately prior to that date.

In a letter submitted with the initial filing, [REDACTED] the petitioner's Senior Pastor, stated that the beneficiary "was first licensed May 11, 2000 in [REDACTED] "with the United Pentecostal Church of Uruguay." The beneficiary entered the United States as an R-1 nonimmigrant religious worker on July 3, 2004; an annotation on the R-1 visa identifies the petitioner as the beneficiary's intended employer.

In the December 2006 RFE, the director requested "evidence of the beneficiary's work history for the years 2004, 2005 and 2006," showing "specific job duties, number of hours worked per week, form and amount of compensation," and other details. In response, the petitioner submitted an unattributed statement in Spanish, the English translation of which reads, in part:

On February 2, 2006 we began a new Hispanic project in Antioch, located at 5209 Limbar Drive, Nashville, TN. . . .

[W]e succeeded at acquiring [a] 25-member Hispanic congregation in the church. . . .

Our services are as follows:

Fridays 7:30 pm
Sundays 6:00 pm

ITINERARY OF WEEKLY ACTIVITIES FOR 2005 & 2006

By [the beneficiary]

Mondays:	Biblical Studies in the home (Antioch)	7:00 pm
Tuesdays:	Music Rehearsals and Home Prayer Visitation	7:00 pm
Wednesdays:	Services in Murfreesboro	7:30 pm
Thursdays:	Bible Studies and Home Visits in Woodbury	
Fridays:	Services in Antioch	7:30 pm
Saturdays:	Youth, Church, & Christian Events	
Sundays:	Christian Services in Murfreesboro	10:00 am
	Christian Services in Murfreesboro	6:00 pm

The petitioner also submitted a Spanish statement (with translation), unsigned but attributed to the beneficiary. That statement described various projects at different churches in Tennessee:

In July 2004, We began Hispanic services in the [redacted] . . . under the direction of the [the petitioning] church. . . .

To accomplish this [we] organized different events, such as [redacted], Youth Events, and other recreational activities.

Our Service schedule is:

Wednesday 7:30 pm
Sunday 10:00 am

In September 2004, we began a new project in Woodbury, TN . . . under the direction of the American church named The Pentecostals of Woodbury and the [redacted] . . .

Today, in Woodbury, we offer home Bible study to a group of persons there. The bible studies are Thursdays at 7:30 pm

On July 2, 2005, we began a new project in . . . [redacted] TN, under the direction of the American church named The Pentecostals of [redacted] . . .

At that time our services were held on Saturdays at 7:30 pm. Later we turned over this project to another Hispanic pastor.

In the second RFE, issued March 2007, the director again requested evidence regarding the beneficiary's work history. The director noted that the schedules reproduced above appear to indicate that the beneficiary works a part-time schedule, mostly on evenings. In response, the petitioner submitted an unsigned letter attributed to [redacted] who asserted that the beneficiary "is a fulltime employee of" the petitioning entity. The petitioner also submitted a breakdown (discussed in further detail elsewhere in this decision) indicating that the beneficiary works 52 hours a week, but those hours were not correlated to any schedule showing when the beneficiary performs the listed tasks.

In denying the petition, the director stated that “the discrepancy between the petitioner’s and the beneficiary’s statements” precluded a finding that “the beneficiary has been working in the same capacity as a pastor for the last two years.” Specifically, “the discrepancy” consists of the petitioner’s assertion that the beneficiary has worked for the petitioning church since his 2004 arrival in the United States, against the beneficiary’s assertion that the beneficiary began working for the petitioner in July 2004; for the church in [REDACTED] in September 2004; and the church in Smyrna in July 2005.

On appeal, counsel asserts that the beneficiary “is required to work with Spanish-speaking parishioners throughout the community, including in [REDACTED]

Closer inspection of the record reveals no discrepancy. The beneficiary’s statement does not indicate that the beneficiary left the petitioning church to work first in [REDACTED] and then in [REDACTED]. Rather, his work in Woodbury is limited to a Thursday evening Bible study class, and the beneficiary specifically stated that, while he began the project in Smyrna, he later “turned over this project to another Hispanic pastor.” The projects described (Bible study and church services) are consistent with the expected duties of a pastor, and therefore the beneficiary’s travels in Tennessee do not demonstrate that the beneficiary ceased to work as a pastor during the two-year qualifying period. Because the director’s finding is based solely on a perceived discrepancy which disappears upon closer scrutiny, the AAO withdraws that finding.

The final issue is whether the petitioner seeks to employ the beneficiary in a qualifying capacity. The regulation at 8 C.F.R. § 204.5(m)(2) defines “minister” as “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.”

[REDACTED] in his initial letter, stated that the [REDACTED] “employment and duty involves all facets of church work and ministry. It is his sole responsibility to Pastor and care for the needs of the congregation of [REDACTED]. He preaches gospel messages, teaches Bible studies, conducts visitation in homes and hospitals, prays with people and gives spiritual counsel on a weekly basis.”

In the December 2006 RFE, the director instructed the petitioner to submit further details about the beneficiary’s duties and the religious significance of those duties. In response, the petitioner submitted unsigned statements, attributed to the beneficiary, listing the beneficiary’s past duties (discussed earlier in this decision) and the “future plans and ideas of our Hispanic church.” The future plans include opening additional churches, creating “a UPC Bible College” and “a family counseling center,” and “[o]rganizing recreational activities” and “Evangelistic Conferences and Revivals.” There was little discussion, however, as to the specific duties undertaken personally by the beneficiary.

In the March 2007 RFE, the director instructed the petitioner to clarify “whether the beneficiary will be working in a vocational capacity or a ministerial capacity,” and to provide further information about the nature of the petitioner’s work. In response, the petitioner submitted a breakdown of the beneficiary’s duties. The document lists 52 hours of duties in a typical week, arranged here in descending order of frequency:

9 hours	Prayer/devotion or Prayer/study
9 hours	Pastoral counseling
8 hours	Church services
6 hours	Bible study in church members' homes
6 hours	Fundraising events
4 hours	[Transporting church members to and from services]
4 hours	Church Administration
3 hours	Outreach and evangelism
2 hours	Children's activities
1 hour	Facilitate guitar lessons to students

In the denial notice, the director found that the majority of the hours tabulated in the above schedule relate to "unequivocally administrative functions," and that only 22 hours relate to pastoral duties. The director concluded that "the petitioner has not sufficiently established that the claimed duties are those of a pastor, having religious significance and embody[ing] the tenets of the petitioner's particular religious denomination."

On appeal, counsel states that the director "agreed that many of the [beneficiary's] duties were those performed by a minister, however they mischaracterized others as administrative functions." Counsel observes that the director counted "length of church service time" among the hours devoted to the beneficiary's "administrative functions." We agree with counsel that the time the beneficiary spends in worship services constitutes qualifying ministerial work. Indeed, as counsel argues, time spent conducting such services is obviously integral to the usual duties of a minister.

A more balanced reading of the schedule indicates that only a fairly small minority of the beneficiary's work hours are devoted to tasks that are administrative or otherwise non-ministerial in nature. Some degree of administrative work, however, is to be expected from anyone in a leadership position, including a pastor.

The director has not contested the validity of the beneficiary's ordination as a minister or the accuracy of the petitioner's description of the beneficiary's duties. The director's finding that the beneficiary's duties are not ministerial rests on a flawed reading of that description. The AAO therefore withdraws that finding.

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 overcome some, but not all, of the stated grounds for denial. The director repeatedly instructed the petitioner to submit evidence of qualifying federal tax-exempt status. The petitioner's response to the first notice contained nothing relevant to that request, and the second response did not meet the regulatory requirements. The petitioner's submission of the required evidence on appeal, after repeated failures to submit this evidence on request, cannot overcome a finding that was correct based on the evidence available at the time of the director's decision. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.