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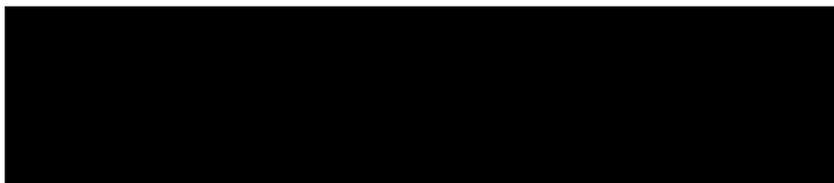
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
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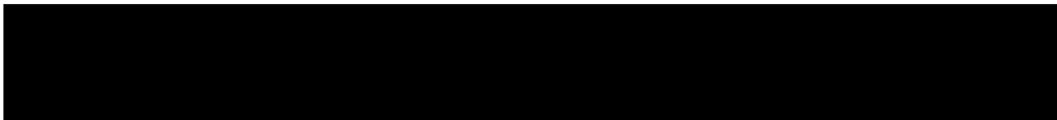
Date: **SEP 06 2007**

IN RE: Petitioner:
Beneficiary:



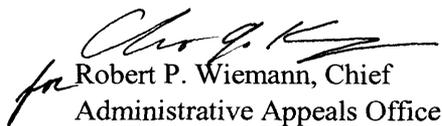
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

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.


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 dismissed.

The petitioner is a church associated with the Independent Assemblies of God International. 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 pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a pastor immediately preceding the filing date of the petition.

On appeal, the petitioner submits a brief from counsel and copies of newly-executed tax returns.

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 . . . ; 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 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 September 1, 2004. 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.

According to information the petitioner provided on the Form I-360 petition, the beneficiary arrived in the United States on May 3, 2000 under a B-1 visitor’s visa that expired on August 2, 2000. The petitioner did not indicate that the beneficiary held any valid nonimmigrant status after 2000. The petitioner answered “no” when asked whether the beneficiary had ever worked in the United States without permission. Because the beneficiary has apparently never had authorization to work in the United States, the petitioner’s answer implies that the beneficiary has never worked in the United States.

In an August 31, 2003 letter accompanying the initial filing, [REDACTED] Presiding Bishop of the petitioning church, stated:

[The beneficiary] has been in our Church actively serving for more than two (2) years. His specific functions within the Church include scheduled teaching, visitation of members, counseling and weekly preparation and preaching the word of God to our congregation. He serves generally as the leader of men mentoring them in the things of God. In addition, he works in our outreach department for drug prevention as the deputy coordinator. His responsibility in this department requires him to work for at least 30 hours a week.

[REDACTED] also stated: "The annual salary offered to [the beneficiary] . . . is \$18,000.00 per annum excluding accommodations," but he did not specify whether the church had already begun paying this salary.

On June 14, 2005, the director issued a request for evidence (RFE), instructing the petitioner to provide more specific information about the beneficiary's past work, including dates. The director also requested "evidence that explains how the beneficiary supported herself/himself" during the two-year qualifying period.

In response, [REDACTED] stated that the beneficiary (now called an "Associate Pastor," a title which never appeared in the petitioner's initial submission) "became a part of our ministerial staff on **November 21, 2001**" (emphasis in original). In a separate letter, [REDACTED] stated that the beneficiary "was ordained as a full time Minister." Yet another letter reads, in part: "The work assignment and compensation of \$25,000.00 with residence allowance require that he would work full time. The norm of pastoral schedule in our Church ranges from 50 hours work week to being on call 24 hours." [REDACTED] did not specify that the beneficiary had already begun working full time on a compensated basis. The petitioner produced no evidence that the beneficiary has received any payment for his church work, and no evidence of any kind to show how the beneficiary supported himself during the two-year qualifying period.

A job description for the position of "Associate Pastor" contains this passage: "Daily schedule – regular office hours must be kept. Maintain a 50 hour workweek, which includes 20 hours for office/administrative work and 30+ hours of ministry time." The job description lists many of the elements previously found in Bishop [REDACTED] much more concise description, such as visitation and counseling, but it does not mention that the duties include acting as "deputy coordinator" for the "outreach department for drug prevention"; indeed, the description does not mention that department at all.

While the petitioner's response to the RFE contains numerous letters from Bishop [REDACTED] in none of these letters did the Bishop explain why the beneficiary, originally described as a "pastor," is now an "associate pastor," nor did the Bishop explain or acknowledge the apparent disappearance of the "outreach department for drug prevention."

The director denied the petition on June 5, 2006, stating: "A letter dated August 31, 2003 indicates that the beneficiary worked 30 hours a week," and that the petitioner's later submission "does not establish that the previous two years employment was full-time." The director also observed that the petitioner did not respond to the request for "evidence that explains how the beneficiary supported herself/himself." 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 (referring to the petitioner in the first person) states: “Our pastors do not work 30 hours per week, and we do not have any record of a letter dated August 31, 2003 stating that any of our Pastors work 30 hours.” The confusion, here, seems to arise from the director’s faulty reading of the letter in question. That letter contained this passage: “In addition, he works in our outreach department for drug prevention as the deputy coordinator. His responsibility in this department requires him to work for at least 30 hours a week.” The director seems to have interpreted this passage to mean that the beneficiary’s total work schedule is “at least 30 hours a week.” In context, however, a more plausible reading is that the beneficiary devotes “at least 30 hours a week” to “responsibility *in this department*,” *i.e.*, his work “as the deputy coordinator” of the “outreach *department* for drug prevention” (emphasis added).

Because the director’s reference to a 30-hour work week was based on a misreading of the materials in the record, this particular finding cannot stand and is hereby withdrawn. This does not mean, however, that the issues involving the August 31, 2003 letter are unequivocally resolved in the petitioner’s favor. The petitioner has not explained how the beneficiary went from being a “pastor” who devotes “at least 30 hours a week” to the “outreach department for drug prevention” to being an “associate pastor” whose two-page job description does not mention that department at all. The job description includes a “listing of ministries currently under [the associate pastor’s] care.” This listing identifies ten ministries, such as “Flowers – Accent Ministry” and “Sewing Circle Ministry,” but there is no mention of drug prevention. Because the petitioner has not provided any actual contemporaneous evidence of the beneficiary’s past work – only after-the-fact letters and descriptions – this very substantial revision raises questions about the overall reliability and credibility of those after-the-fact statements.

There remains the issue of compensation and support. On appeal, counsel states that the director did not specifically request evidence of the beneficiary’s past compensation, and that “we are attaching to this appeal the beneficiary’s tax return[s] from 2002 through 2004.” All three tax returns are dated September 15, 2005, three months after the director issued the RFE, and therefore these tax returns are poor evidence of compensation. The beneficiary did not file these returns when they were originally due, and the timing of their preparation suggests that they were prepared in furtherance of the petition. As such, these tax returns cannot and do not carry any weight as *contemporaneous* documentary evidence of compensation. Contemporaneous evidence cannot be created retroactively.

The regulation at 8 C.F.R. § 103.2(b)(2)(i) states:

The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not

parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

The petitioner cannot overcome the absence of documentary evidence simply by creating such evidence several years after the events that the evidence purports to corroborate.

Even given our serious reservations about these untimely tax returns, the information in those forms is not consistent with full-time employment. The beneficiary reported his earnings as “business income,” detailed on Schedule C of his Form 1040 tax returns. The beneficiary claimed “gross receipts” of \$8,000 in 2002, \$12,000 in 2003 and \$15,000 in 2004. Thus, even if we were to assume, in the absence of any evidence, that the tax returns are accurate, they do not reflect compensation at the rate originally described. The petitioner has claimed to have employed the beneficiary since late 2001, which would mean that the beneficiary worked for the petitioner throughout 2002, but the \$8,000 claimed as compensation for that year is not indicative of full-time employment.

If the petitioner did, in fact, compensate the beneficiary as the tax returns indicate, then the petitioner either kept no records of any kind at the time the payments were made,¹ lost or destroyed the original evidence *from 2002-2004* of those payments, or has simply chosen not to submit that evidence, even after it became apparent that the absence of such evidence could result in the denial of the petition. Nothing offered on appeal tells us which of these alternatives is closest to the truth.

The record does not contain any evidence that dates from the actual qualifying period to establish that the beneficiary was the petitioner’s paid, full-time employee during that time. Inconsistencies in the petitioner’s account, such as the assertion that the beneficiary devoted 30 hours a week to a “department” never even mentioned in a later communication, coupled with this total absence of contemporaneous evidence, undermine any confidence we could have had in the petitioner’s after-the-fact claims (all of which contradict the petitioner’s declaration, under penalty of perjury, that the beneficiary never worked in the United States without authorization). Section 204(b) of the Act, 8 U.S.C. § 1154(b), provides for the approval of immigrant petitions only upon a determination that “the facts stated in the petition are true.” False, contradictory, or unverifiable claims inherently prevent a finding that the petitioner’s claims are true. See *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Systronics Corp. v. I.N.S.*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988).

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.

¹ The petitioner submitted an audited financial report for 2002, which includes a “Schedule of Expenses” listing \$96,807 for “salaries” of the church. The report does not identify the church staff members and the individual amounts of their compensation. The existence of this audited report implies the existence of records to audit.