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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

PUBLIC COPY

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[REDACTED]

FILE:

[REDACTED]
SRC 06 167 52463

Office: CALIFORNIA SERVICE CENTER

Date: JUN 24 2008

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.

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 self-described interdenominational 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 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, or membership in the petitioner's religious denomination, immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that the beneficiary's position qualifies as a religious occupation.

On appeal, the petitioner submits a brief from counsel and letters from witnesses.

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).

One of the director's cited grounds for denial rests on language found in the regulatory definition of a "religious occupation" at 8 C.F.R. § 204.5(m)(2). That regulation distinguishes "ministers" from workers in religious occupations, and therefore the regulations pertaining to religious occupations do not apply to ministers. The petitioner has documented the beneficiary's ordination, and the beneficiary's claimed past and intended future duties include the usual functions of clergy. The AAO therefore finds that the director should have considered the petition in light of the requirements for ministers, rather than those for religious occupations. The AAO withdraws the portion of the director's decision relating to this issue.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part:

[A]n I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker . . . may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination . . . [and] must have been performing the vocation . . . 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 establish that, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience.

The petitioner filed the petition on May 9, 2006. Therefore, the petitioner must establish that the beneficiary has continuously worked, throughout the two years immediately preceding May 9, 2006, solely in the vocation of a minister for the same religious denomination that now seeks to employ him. We will first examine the beneficiary's employment during the two-year qualifying period, and then turn to the issue of the denomination in which the beneficiary performed his work.

EMPLOYMENT EXPERIENCE

In a letter accompanying the initial filing of the petition, [REDACTED], Senior Pastor and founder of the petitioning church, stated that the petitioner seeks to employ the beneficiary "in the full-time position of Pastor, and he will be paid a salary of \$1,000.00 per week." The petitioner's Constitution and By-Laws states, at Article II, Section B: "The purpose for which the corporation is organized is to enlist, train and send out missionaries to establish churches in hard to reach or remote areas of the world and to preach and teach the Bible in such remote areas." An undated "Biography" of the petitioning church lists nine "associate churches," including the petitioning church. Six of the "associate churches" are in Texas, with the remainder located in Tamaulipas, Mexico. The document names the pastors of all these churches; the beneficiary's name does not appear on that list, or on a more detailed organizational chart.

The petitioner's initial submission included copies of the beneficiary's ministerial credentials, but these documents all date from before the qualifying period. The issuance of a certificate in 2003 does not and cannot prove that the beneficiary worked full-time as a pastor (*i.e.*, a minister) during 2004 to 2006. Similarly, the beneficiary's 2003 admission into the United States as an R-1 nonimmigrant religious worker, demonstrates that the beneficiary was authorized to work during the ensuing years, but evidence of authorization is not evidence that the employment actually took place. The beneficiary's R-1 visa identifies the beneficiary's employer as [REDACTED], in McAllen, Texas.

On December 11, 2006, the director issued a request for evidence (RFE), instructing the petitioner to provide documentation of the beneficiary's work history and compensation during the two-year qualifying period. In response, the petitioner submitted a list of "Iglesia del Pueblo & Radio Imagen Employees." According to the list, Pastor [REDACTED] is President of the Boards of Directors of the petitioning church and of Radio Imagen. The list indicates that the beneficiary provides "Pastoral Care of Radio Imagen" and serves as "General Manager of Radio Imagen" and as the petitioner's "Director of Communications." The list shows two salaries for the beneficiary - \$10,400 and \$26,000. It is not clear why two salaries are shown – whether, for instance, the beneficiary started at the earlier salary and was promoted, or whether he receives one salary for part of his job, and the other salary for other duties. The document indicates that the beneficiary's employment with the petitioner (or Radio Imagen) began on October 25, 2004, several months after the beginning of the qualifying period.

A copy of an Internal Revenue Service (IRS) Form W-2 Wage and Tax Statement indicates that [REDACTED] paid the beneficiary \$2,030 in 2004. The petitioner submitted no Forms W-2 showing its own compensation of the beneficiary. Copies of the beneficiary's IRS Form 1040 tax returns indicate that the beneficiary reported \$2,030 in salaries (matching the Form W-2) and \$21,026 in gross business income in 2004, and \$19,000 in wages and \$15,000 in gross business income in 2005. On his 2004 return, the beneficiary identified his occupation as "minister"; in 2005, he listed his occupation as "radio manager" and his principal business as "religious radio manager/media director." The beneficiary left the space marked "business address" blank on both returns.

The petitioner requested a 30-day extension in order to obtain further evidence of the beneficiary's employment history. The regulation at 8 C.F.R. § 103.2(b)(8) in effect at the time specifically provided that additional time to respond to an RFE may not be granted.

On April 19, 2007, the director issued a second RFE, again instructing the petitioner to submit detailed information regarding the beneficiary's employment history and documentary evidence of compensation. The director indicated that any letters verifying periods of employment must be from the employers themselves, at the actual locations where the claimed employment took place.

In response, the petitioner submitted copies of previously submitted materials as well as new exhibits. The petitioner submitted a copy of the beneficiary's résumé. Most of the experience listed in the document is in broadcasting, both religious and secular, and all of it appears to have taken place in Argentina. The most recent date found in this document is 2003; it contains no mention of the petitioner, [REDACTED] or any claimed employment during the 2004-2006 qualifying period.

[REDACTED], stated:

[The beneficiary] was directly employed with [REDACTED] from June 22, 2003. He held the position of "Minister." . . .

[The beneficiary] worked approximately forty hours per week between Monday and Friday. He was compensated \$21,000.00 per year in the form of weekly paychecks. . . .

In January 2004, [the beneficiary] was relocated to Los Angeles, California, where he was working with Pastor [REDACTED] in La Voz del Pueblo church. He performed ministerial duties at La Voz between January 31 2004 and October 31 2004. La Voz del Pueblo is a sister church of [REDACTED] c. . . .

While stationed at La Voz, [the beneficiary] served as Acting Minister. He performed similar duties as those he performed with [REDACTED]. Specifically, he was responsible for producing and editing the television program “La Voz del Pueblo” that is emitted daily by channel 38 and 62 in the Los Angeles area.

He was compensated \$17,000 for her services.

[Sic]. An accompanying “Daily and Weekly Work Schedule” reads as follows:

Monday thru Friday

10:00 A.M. – 12:00 P.M. Produce and record television program
12:00 P.M. – 1:00 P.M. Lunch
01:00 P.M. – 04:00 P.M. Edit television program

Monday

07:00 P.M. – 10:00 P.M.: Service in Oceanside CA,

Wednesday

07:00 P.M. – 10:00 P.M.: Service in Los Angeles East CA,

Thursday

07:00 P.M. – 10:00 P.M.: Service in Fontana CA,

Sunday

07:00 A.M. – 12:00 P.M.: Service in Los Angeles East CA,
02:00 P.M. – 05:00 P.M.: Service in Santa Ana CA
07:00 P.M. – 09:30 P.M.: Service in Fontana, CA

This schedule is on the letterhead of [REDACTED] in Texas, not La Voz del Pueblo in California, and therefore it is not first-hand verification from the place of employment at La Voz del Pueblo as specified by the director. The petitioner’s response to the RFE did not include any documentation from La Voz del Pueblo or any statements from its officials.

The petitioner submitted a DVD showing what the beneficiary identified as “a service preached in California Los Angeles in June of 2004.” The footage, in Spanish, offers no clear indication of where or when it was recorded, and even if this were not the case, footage of a single church service is not persuasive evidence of continuous, compensated employment.

An advertisement from the September 2006 issue of the newspaper *El Orador* shows the beneficiary's name and photograph under the phrase "La Voz del Pueblo" in large type. This article and several other exhibits are in Spanish with no translations provided. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. Furthermore, the newspaper, like many other exhibits, dates from after the petition's filing date.

Pastor De La Garza of the petitioning church stated that the beneficiary "has been employed as Media Director and Pastor" of the petitioning church since November 2004, and "has been the General Manager for our Radio Station Radio Imagen-KIRT 1580 AM" since October 20, 2005. In a separate letter, Pastor [REDACTED] stated:

[The beneficiary] functions in the job titles listed below:

- General Manager for KIRT 1580 A.M (radio station)
- Media director of [the petitioning church]

. [The beneficiary] is paid a weekly salary of \$700.00.

The beneficiary's work schedule at the radio station was said to occupy more than 51½ hours per week, including 9½ hours each weekday.

Materials in the record indicate that the beneficiary produced a December 2005 production of a musical called *Wish List*, starring students from a local public school and a local Catholic school. Radio Imagen, identifying the beneficiary as its manager, bought an advertisement in the *Wish List* "Production Journal."

The petitioner submitted copies of tax documents showing that [REDACTED] paid the beneficiary \$11,160 in 2003, and that the beneficiary claimed no other income for that year; but 2003 fell entirely outside the two-year qualifying period. The previously submitted 2004 tax documents do not include any documents showing that any part of the beneficiary's reported income that year came from La Voz del Pueblo.

The petitioner submitted a copy of a Form 1099-MISC Miscellaneous Income statement that the petitioner issued to the beneficiary for 2004, showing \$4,000 in "Nonemployee compensation," matching the "Gross receipts" claimed on the 2004 tax return. The petitioner had previously submitted a Form W-2, showing \$2,030 from [REDACTED]. The record does not account for the remaining \$17,026 in gross business income that the beneficiary claimed on that year's return.

Copies of IRS Forms W-2 and 1099-MISC show that the petitioner paid the beneficiary \$19,000 in salary and \$14,500 in "Nonemployee compensation" in 2005. These amounts match those claimed, respectively, as salary and "Gross receipts" (as opposed to gross income) on the 2005 tax return submitted previously.

For the 2006 tax year, IRS Form W-2 indicated that the petitioner paid the beneficiary \$3,147.95 in wages or salary, plus \$19,330.80 in "Housing Allowance." (The beneficiary's pay stubs from mid-2007 indicate that \$500 of each recent \$700 paycheck was designated as "Housing Allowance.") The 2006 Form 1099-MISC reported \$10,533.75 in "Nonemployee compensation" to the beneficiary. The nature and purpose of this "Nonemployee compensation" is not clear, as the beneficiary was purportedly the petitioner's employee throughout all of 2006. On his IRS Form 1040 income tax return for 2006, the beneficiary claimed \$3,148 in salary and gross income of \$10,534, consistent with the amounts on the Forms W-2 and 1099-MISC (rounded to the nearest dollar). The beneficiary once again referred to his principal business as "religious radio manager/media director," although by omitting his housing allowance from his taxable income, the beneficiary claimed a tax benefit that is available only to ministers.¹

The director denied the petition on August 15, 2007, stating that the petitioner had failed to establish the beneficiary's continuous, qualifying employment throughout the two years immediately preceding the petition's filing date. The AAO will affirm this basic finding, but notes some inaccuracies within the director's decision. For instance, the director found that the beneficiary's work schedule at La Voz del Pueblo "only shows a total of twenty-four and a half hours of employment a week." The director appears to have misread the portion of the schedule reproduced above, reading the "Monday thru Friday" section as showing five hours of work per week, whereas it indicated five hours per day, five days per week. Reading the schedule in that manner would yield a 24½ hour work week, as cited in the decision.

Similarly, the director, in finding that the beneficiary's 2004 tax return indicates "that the beneficiary had a total income of only \$2,389 in 2004," considered only the net totals shown on the first page of the return and disregarded the higher gross amounts shown elsewhere in the document.

Notwithstanding the above specific errors of fact, however, the AAO concurs with the director's overall finding that "[t]he evidence is insufficient to establish that the beneficiary has been performing full-time work in the proffered position for the two-year period immediately preceding the filing of the petition."

The director had specified: "Each experience letter must be written by an authorized official from the specific location at which the experience was gained." The petitioner failed to do so, relying on a letter from [REDACTED], in Texas to attest to the beneficiary's claimed work in California. The schedule that [REDACTED] provided referred to services in various California cities, but with no indication of exactly where in those cities the services took place. Simply to identify the cities is unacceptable, because claims so vague cannot be verified.

Furthermore, the petitioner submitted tax documents from the petitioning entity and from [REDACTED] but for reasons unexplained the petitioner submitted no tax documents from La Voz del Pueblo, thereby foreclosing another potential avenue of verification.

¹ The IRS' web site contains numerous references to this policy, e.g., <http://www.irs.gov/taxtopics/tc417.html> (visited June 12, 2008).

Having failed to submit the requested letter in response to the RFE, the petitioner submits a letter on appeal **purportedly** from Pastor [REDACTED] of La Voz del Pueblo. Because the petitioner did not submit this letter when specifically requested by the director in two RFEs, the AAO will not consider its untimely submission on appeal. 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).

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, 766 (BIA 1988); *see also Matter of Obaighena*, 19 I&N Dec. 533, 537 (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.* Under the circumstances, the AAO need not and does not consider the sufficiency of this evidence submitted on appeal.

The beneficiary asserts that La Voz del Pueblo paid him \$17,026 as a "Love Offering," which represents the \$17,026 otherwise unaccounted for on his 2004 income tax return. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)). The director had twice instructed the petitioner to submit evidence of the beneficiary's compensation during the qualifying period. Having forfeited both opportunities to do so, the beneficiary's statement on appeal cannot rectify the situation. The beneficiary's statement is not evidence, but an unsupported claim.

Counsel's brief on appeal consists largely of repeated prior claims and quoted regulations. Counsel does not directly address the issue of the continuity of the beneficiary's work.

The AAO affirms the director's finding that the petitioner failed to submit sufficient evidence to establish that the beneficiary continuously engaged in qualifying religious work throughout the two years immediately preceding the filing of the petition.

TWO YEARS IN THE DENOMINATION

In his initial letter, Pastor [REDACTED] stated that the petitioner "is an interdenominational church." The "Biography" of the petitioner's church indicates that the petitioner's "spiritual covering" is "Eagle's Nest in San Antonio, Texas, under the ministry of Pastor [REDACTED]." The initial submission contains no other information about Eagle's Nest, or about [REDACTED], named on the beneficiary's R-1 visa. El Camino Christian Ministries issued "Ministerial Credentials" in English and Spanish to the beneficiary in 1997

In the December 2006 RFE, the director instructed the petitioner to submit "documentary evidence to establish whether a connection exists between the PETITIONER and any other church the beneficiary has

worked for [during] the prior two years” (director’s emphasis). In response, the petitioner submitted additional copies of the beneficiary’s “Ministerial Credentials” from El Camino Christian Ministries, but no new documentation about that entity or its relation to the petitioner. The petitioner requested additional time to obtain evidence of the religious connection between the petitioner and the beneficiary’s former employers, but, as already explained, the regulations specifically precluded the director from granting such a request.

In the second RFE, issued in April 2007, the director requested “evidence that the beneficiary has the two-year membership in the religious denomination” that the statute and regulations require. The director also reiterated the call for “documentary evidence to establish whether a connection exists between the petitioner and any other church the beneficiary has worked at between 5-9-2004 and 5-9-2006.”

In response, Pastor [REDACTED] stated that the petitioning church “has no association with [REDACTED] [REDACTED]” He also asserted, however, that the beneficiary “has been an active member” of the petitioning church since February 2004. In a separate letter, [REDACTED], another pastor at the petitioning church, stated that the beneficiary and his family “have attended [the petitioning church] since February, 2004.” These statements appear to contradict [REDACTED]’s assertion that the beneficiary “relocated to Los Angeles, California, where he . . . performed ministerial duties at La Voz between January 31 2004 and October 31 2004.” If the beneficiary was in Los Angeles for most of 2004, it is not clear how he could have been “an active member” of a church in Texas at the same time. If, on the other hand, the beneficiary was not in Los Angeles in 2004 (and the petitioner’s RFE response contained no persuasive evidence that he was), then Paulino Bernal’s statement contains false information.

In denying the petition, the director noted the petitioner’s statement that there is no connection between the petitioner and the beneficiary’s earlier claimed employers, and concluded that the petitioner had not shown that the beneficiary belonged to the petitioner’s religious denomination throughout the two-year qualifying period.

On appeal, counsel states: “Beneficiary has been employed as a pastor with a focus on church communications within a non-denominational church.” The petitioner’s status as a self-described nondenominational church does not relieve it of its statutory obligation to establish that, for the preceding two years, the beneficiary was a member of that same denomination. The beneficiary’s membership in the petitioning church throughout that period would meet this requirement, if such membership were persuasively established. The petitioner, however, claims that the beneficiary joined the petitioning church, in Texas, in February 2004, when the beneficiary was supposedly in California, working for another church that the petitioner admits has no connection or affiliation with the petitioner.

Counsel states: “Although La Voz Del Pueblo and [the petitioner] are not in partnership with one another, they are of the same religious denomination.” Counsel offers no evidence to support this claim. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel states that the two churches “are further united under the Alianza Ministerial Evangelica Del Valle Del Rio Grande” (Alianza), an organization heretofore never mentioned in this proceeding. The petitioner submits a translated letter from Reverend [REDACTED], President of the Alianza. Rev. [REDACTED] states:

This organization, as it is stated in our constitution, united different Christian churches with the objective of promoting fraternity and unity between the ministries and churches, organize evangelical activities, theology and Christian education.

All this allows the interrelation between ministers of distinct Evangelical Christian denominations to be constant (Baptists, Pentecostal or non-denominational).

I hereby verify that the different Evangelical Christian organizations have an autonomous administration but with . . . unity in our spiritual faith.

Rev. [REDACTED] letter indicates that the Alianza encompasses “distinct Evangelical Christian denominations,” thereby stipulating that two churches can belong to the Alianza without belonging to the same religious denomination. Furthermore, Rev. [REDACTED] does not identify any of the Alianza’s member churches, meaning that the letter does little except to establish the Alianza’s existence. Furthermore, the petitioner had not previously claimed to belong to the Alianza, despite the director’s repeated requests for information regarding the petitioner’s denominational ties.

Also, Rev. [REDACTED] letter shows a map of four Texas counties, strongly implying that the counties represent the geographical extent of the Alianza. There is no indication that the Alianza has any member churches in California, where the beneficiary is said to have worked for most of 2004. There is, in short, nothing of substance to support counsel’s claim that the churches “are further united under the Alianza.”

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.