



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date: **MAY 06 2008**

EAC 05 050 52198

IN RE:

Petitioner:

[Redacted]

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:

[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*  
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 (AAO) on appeal. The appeal will be dismissed and the AAO will enter a finding of willful misrepresentation of a material fact.

The petitioner is a branch of a Pentecostal Christian organization. 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 minister and national Sunday school superintendent. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience in the position sought immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established its ability to pay the beneficiary's proffered wage.

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 we shall address concerns the petitioner's ability to pay the beneficiary's salary of \$26,000 per year. The Citizenship and Immigration Services (CIS) 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. Evidence of this ability

shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petition was filed on December 10, 2004; therefore, the petitioner must establish its ability to pay from this date. 8 C.F.R. § 204.5(d). In a letter accompanying the initial filing, Pastor [REDACTED], District Superintendent for the petitioning entity, stated: "The National Organization of the Church and the New York City Assemblies will be responsible for [the beneficiary's] compensation." The petitioner submitted copies of bank statements from 2004, showing balances between \$4,000 and \$103,000 in various accounts.

Bank statements do not provide a full accounting of the petitioner's financial status and obligations. Therefore, in a request for evidence (RFE), issued May 11, 2005, the director instructed the petitioner to "[s]ubmit additional evidence to establish the ability of the religious organization to pay the offered wage," including "copies of Quarterly Withholding Statements for at least eight quarters prior to filing." The director also requested "[a] photocopy of the most current fiscal year Form 990 or 990 EZ (Return of Organization Exempt From Income Tax)" or "[a] photocopy of a current financial statement that either has been reviewed or audited by a Certified Public Accountant."

The petitioner submitted copies of its quarterly tax returns, but no Form 990 return or reviewed or audited financial statement. Because churches are not required to file Form 990 returns, this omission is not a matter of significant concern. The quarterly returns show that the petitioner paid wages and withheld taxes during 2003 and 2004. The return for the first quarter of 2004 indicates that the petitioner had three employees. The other returns do not indicate the number of employees; that line has been left blank.

The petitioner's response includes a "Balance Sheet" dated December 31, 2004. There is no evidence that the figures on this document resulted from an audit. The sheet shows that the petitioner's current liabilities exceed its current assets by over \$70,000. The sheet does not show, much less itemize, the petitioner's income and expenses for 2004.

In a letter dated June 1, 2005, Pastor [REDACTED] stated that he and the beneficiary are the only "salaried religious employees of the local Church in Queens, New York," and that the beneficiary "was paid \$250 per week in cash . . . but because we have not obtained the authorization of the U.S. Citizenship & Immigration Service to formally engage her and since the amount paid barely covers her out of pocket expenses for the sake of the Church, no taxes were filed regarding her weekly \$250 income." Pastor [REDACTED] stated: "A payroll account will be set up for the beneficiary using the present salary of \$26,000.00 once she is formally authorized to work for the Church by the immigration service." We note that the petitioner's initial submission included a copy of the beneficiary's Employment Authorization Card, valid from August 1, 2003 to February 6, 2005. As a dependent of a G-4 principal alien, the beneficiary qualified for, and obviously received, employment authorization pursuant to 8 C.F.R. §§ 214.2(g) and 274a.12(c)(4). Accordingly, she has been authorized to work for the petitioner since August 1, 2003.

The petitioner's response to the RFE also includes a copy of the petitioner's constitution and by-laws. Article 7.4(i)(H) requires the petitioner's General Secretary to "compile annually the Annual Report of the Corporation." Article 7.4(i)(G) indicates that "the books of account . . . are required to be kept in the National

Treasurer's custody." If the petitioner has followed its own governing documents, detailed financial records and annual reports ought to exist. The record does not contain such evidence.

In denying the petition on March 15, 2006, the director noted that the beneficiary's unaudited financial statement showed negative net current assets exceeding \$70,000. The director added: "records indicate that your religious organization has filed two other petitions on behalf of foreign religious workers," indicating that the petitioner must show its ability to meet not one but three salaries. The director stated that bank statements are not adequate evidence of the petitioner's financial status. The director also noted the absence of evidence to show that the petitioner has ever paid the beneficiary.

On appeal, counsel states that the director "erroneously concluded that the petitioner has no ability to support the beneficiary when the church is a hierarchical organization with 25 churches in the U.S. which supports one another through a central management body." Counsel offers no further elaboration; counsel simply claims, as though it were a matter of self-evident fact, that because the petitioner is an organization of several churches, it must therefore be able to pay the beneficiary. Counsel does not explain how the church's "hierarchical organization" overcomes the petitioner's failure to establish that its income or assets are sufficient to cover the beneficiary's salary (and those of other beneficiaries). The petitioner submits additional copies of bank statements, but does not address, much less rebut, the director's finding that bank statements cannot suffice to establish the petitioner's financial standing. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *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).

The petitioner, by its own admission, has not paid the beneficiary the full proffered wage. The petitioner has claimed that the beneficiary received a reduced salary because she lacked employment authorization, but we reject this claim outright because the record contains proof of the beneficiary's employment authorization. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 592.

We shall return, later in this decision, to the issue of the beneficiary's past compensation and support.

**The remaining ground for denial concerns the beneficiary's past work.** 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 December 10, 2004. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a minister and national Sunday school superintendent throughout the two years immediately prior to that date.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of “a number of safeguards . . . to prevent abuse.” See H.R. Rep. No. 101-723, at 75 (Sept. 19, 1990). See also *Lorillard v. Pons*, 434 U.S. 575, 580 (1978) (Congress is presumed to be aware of existing administrative and judicial interpretations).

In line with these past decisions and the intent of Congress, it is clear, therefore that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and salaried. To hold otherwise would be contrary to the intent of Congress.

An alien seeking classification as a special immigrant minister must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought, and must intend to be engaged solely in the work of a minister of religion in the United States. See *Matter of Faith Assembly Church*, 19 I&N 391, 393 (Commr. 1986). We note that the Ninth Circuit Court of Appeals has upheld the AAO’s interpretation of the two-year experience requirement. See *Hawaii Saeronam Presbyterian Church v. Ziglar*, 2007 WL 1747133 (9<sup>th</sup> Cir., June 14, 2007).

In his initial letter, Pastor [REDACTED] stated:

[The beneficiary] was ordained on May 21, 2000. . . . She has been a Sunday [School] Teacher, research fellow and a Minister in the Church for many years. She is [the] brain behind the Church’s yearly Sunday School publication titled “The Way.”

As a result of her excellent performance for many years, she was made the National Sunday School Superintendent of the organization [which] covers 25 Churches in the United States, all Churches in Canada and all Churches in Europe.

The Church will be employ[ing the beneficiary] as a Minister/National Sunday School Superintendent. . . . [The beneficiary] has served the Church for seven years in the same capacity.

(Evidentiary citations omitted.) Pastor [REDACTED] letter is dated November 17, 2004. Therefore, Pastor Obadare has claimed that the beneficiary has worked “in the same capacity” since *circa* late 1997. In a December 2, 1997 letter reproduced in the record, Pastor Obadare offered the beneficiary a two-year position as “one of the members of the church Sunday School Teaching Team.” The 1997 letter offers no indication that the beneficiary had been appointed to any leadership position, let alone that of national superintendent. Other letters indicate that the beneficiary was appointed “leader of the Sunday School Team” in May 1999,

and “leader of the Sunday School Teachers in our New York City Area churches” in May 2001 (re-appointed in May 2003). A list of the petitioner’s “Church Officers for 2003-2005” names the beneficiary as a “Sunday School Teacher” and member of the “Deacons & Deaconess’ Board.”

The earliest dated reference to the beneficiary as national superintendent is a newsletter, dated September 2003, that announced “the appointment of [the beneficiary] as the National Sunday School Superintendent,” and indicated that she “is also the head of the Sunday school Department in the New York” (*sic*). The September 2003 date is suspect, however, because the same newsletter contains several references to “the just concluded 2004 National convention.” It therefore appears that the “September 2003” newsletter was actually issued closer to September 2004. Further supporting this conclusion is a letter dated August 14, 2004, which informed the beneficiary of her appointment “to the position of the National Sunday School Superintendent.” The same letter referred to the appointment as “a promotion,” indicating that the beneficiary did not hold this position prior to the August 2004 appointment.

None of the letters or other documents contains any mention of compensation or indicates that the beneficiary has ever been a paid church employee, as opposed to a high-ranking but unpaid appointee to various church boards. The only references to any payments received by the beneficiary are copies of letters that the beneficiary wrote to various congregations and gatherings, thanking them for cash gifts and, often, pledging to return the funds to the church. Pastor [REDACTED] would later indicate, in his June 1, 2005 letter, that the beneficiary “returned the monies given to her by our other branches.”

Although the petitioner has repeatedly referred to the beneficiary as a minister, the beneficiary’s May 21, 2000 ordination certificate shows that she was ordained as a deaconess, not as a minister.

In the May 11, 2005 RFE, the director instructed the petitioner:

Submit evidence that establishes that the beneficiary has the continuous two years full-time experience in the . . . religious work for the period immediately prior to December 10, 2004. Such evidence may be statements which include all of the following information: detailed listing of the beneficiary’s duties, the commencement and termination dates of employment, and the time spent per week by the beneficiary performing those duties. . . .

If the past experience was gained on a volunteer basis, submit evidence that explains how the beneficiary supported herself. . . .

Submit a list of the religious organization’s salaried religious employees, including their occupations and salary paid. . . .

Submit copies of Form W-2, Wage and Tax Statement issued to the beneficiary for 2002, 2003 and 2004, if applicable.

In response to the RFE, Pastor [REDACTED] asserted that the beneficiary works 40 hours per week “in addition to other traditional religious/Spiritual duties.” As noted previously, Pastor [REDACTED] has claimed that the

beneficiary “was paid \$250 per week in cash . . . because we have not obtained the authorization of the U.S. Citizenship & Immigration Service,” although the petitioner had already submitted a copy of the beneficiary’s Employment Authorization Card, valid at the time the petition was filed. In the face of this evidence submitted by the petitioner, Pastor Obadare’s explanation raises more questions than it answers.

Other than the claimed weekly payments of \$250, Pastor [REDACTED] identified only one other source of financial support for the beneficiary: “She was ably supported by her husband who . . . works with the United Nations and makes over \$150,000 per annum.” Pastor Obadare did not indicate that the beneficiary has ever had any other source of earned income.

The petitioner submitted a copy of *The Way: Sunday School Series & Daily Devotional*, a 2005 book that listed the beneficiary as one of eight editors. This credit is not proof of employment, as the number of editors considerably exceeds the petitioner’s stated number of salaried religious employees. Like much of the other evidence in the record, the book establishes that the beneficiary has been active with her church, but not that she has been, or will be, a paid, full-time employee thereof.

The petitioner submitted copies of checks issued to various contractors, in relation to renovations performed on the church building. This evidence demonstrates that the petitioner retains canceled checks and other financial records. Nevertheless, the petitioner has not submitted copies of checks issued to the beneficiary, or any comparable documentation to show the claimed regular \$250 payments to the beneficiary.

In denying the petition, the director stated: “Although requested, the petitioner did not submit objective documentary evidence, such as payroll records, tax return forms, contracts, etc. to confirm the claimed employment dates and compensation for services performed.” The director concluded “no independent corroborative evidence was submitted to indicate that the beneficiary has worked for the petitioning entity in a qualifying religious occupation or position for two years immediately prior to the filing of the instant petition.”

On appeal, counsel states that the director “did not consider month by month evidence of beneficiary’s services with the petitioner for over two years prior to the filing of the petition.” Evidence of involvement with the petitioning church is not evidence of employment. When the director specifically requested documentary evidence that the petitioner compensated the beneficiary for her work, the petitioner failed to provide such evidence.

Counsel states that the beneficiary “was formally employed in year 2000 after ordination as a deaconess. She was promoted to the post of Minister/National Sunday School Superintendent in 2004.” The appeal includes ample evidence that the beneficiary has been an active member of her church, but no evidence that the petitioner ever compensated the beneficiary for her activities. The evidence does not establish, as counsel claims, that the beneficiary steadily worked forty hours per week for the petitioner. Rather, much of the evidence concerns specific events such as church gatherings at which the beneficiary spoke. The only indication that the beneficiary was ever paid for any of her church work comes in the form of the petitioner’s after-the-fact claim that the beneficiary received compensation.

The petitioner's submission on appeal fails to overcome the director's conclusion regarding the beneficiary's past employment. Specifically, the petitioner has not credibly demonstrated that it has ever compensated the beneficiary, either during the two-year qualifying period or at any other time.

Other materials in the beneficiary's alien file shed light on the beneficiary's stated title of "Doctor." These materials also bear directly on the issue of the beneficiary's means of financial support – an issue that the director had raised in the RFE.

In November 2002, the beneficiary filed an application on her own behalf, seeking an immigration benefit unrelated to the special immigrant religious worker classification. Documents submitted with that application, including forms that the beneficiary had signed under penalty of perjury, consistently identified the beneficiary as a medical doctor and did not identify any other occupation, even on forms that required her to list all of her employers over the previous five years. Tax documents and other materials indicated that the beneficiary worked as a physician at St. John Episcopal Hospital in Far Rockaway, New York in 1999, 2000, 2001 and 2002. The beneficiary received her board certification in internal medicine in 2002, two years after she purportedly began working for the petitioning church as a full-time minister and Sunday school leader.

The above documents show that the beneficiary, as early as 1999, reported her earnings on annual income tax returns. On these tax returns, the beneficiary's occupation is listed as "Medical Doctor."

Publicly available records show that the beneficiary's medical work continued past 2002. The New York State Education Department indicates that the beneficiary was licensed as a physician in July 2002, and her registration is current through July 2009.<sup>1</sup> The October 2006 *Provider Directory* of Affinity Health Plan<sup>2</sup> and the February 2007 *New York Provider Directory* of CarePlus Health Plan<sup>3</sup> both identify the beneficiary as a physician actively practicing internal medicine.

Pursuant to 8 C.F.R. § 103.2(b)(16)(i), the AAO notified the petitioner of the above information on March 14, 2007. In its notice, the AAO stated:

There is no credible evidence that your organization has ever paid the beneficiary for her church work, or that her work has been a full-time occupation rather than a volunteer activity carried out in her spare time. When the director asked your organization about the beneficiary's means of support, your organization did not mention that the beneficiary had been earning income as a physician for several years. The 2006 and 2007 directories mentioned above indicate that the beneficiary is, even now, a practicing physician, a profession that your organization has never acknowledged.

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<sup>1</sup> <http://www.nysed.gov/coms/op001/opscr2?profcd=61&plicno=001671>, accessed February 27, 2007. A subsequent update to the same site, accessed May 5, 2008, indicates that the registration has been renewed through July 2009.

<sup>2</sup> [www.affinityplan.org/images/2006MEDAFFINITY\\_DIR02.pdf](http://www.affinityplan.org/images/2006MEDAFFINITY_DIR02.pdf), accessed February 27, 2007. Affinity Plan's site continues to list the beneficiary at <https://www.affinityplan.org/providerdetail.asp?Sect=prov&provId=5346&action=> as of May 5, 2008.

<sup>3</sup> [www.careplus.net/forms/NYCArea.pdf](http://www.careplus.net/forms/NYCArea.pdf), accessed February 27, 2007.

It appears, from the available evidence, that the beneficiary earns her living as a physician, and works for your church as an unpaid, part-time volunteer. It further appears that your organization has attempted to represent her as a full-time paid employee in order to help her obtain immigration benefits.

In response to this notice, counsel correctly observes that proof of “the work authorization of the beneficiary was **voluntarily submitted by my office with the petition**” (counsel’s emphasis). Counsel states that the petitioner never intended to conceal the beneficiary’s employment authorization. Nevertheless, in a subsequent submission, Pastor Obadare cited the lack of such authorization as an excuse for the petitioner’s failure to produce tax records of claimed payments to the beneficiary.

With regard to Pastor [REDACTED] letter, counsel states:

I submit that the petitioner was quoted out of context. . . . The statement “Pastor [REDACTED] has claimed that the beneficiary ‘was paid \$250 per week in cash . . . because we have not obtained the authorization of the U.S. Citizenship & Immigration Service’” was not an accurate representation of the record. The complete quote of the portion where \$250 was mentioned is as follows.

Pastor [REDACTED] stated:

*“The beneficiary has been performing the above duties for over two (2) years prior to December 10, 2004 in our Church in New York and also visited other branches in North America to perform similar duties. She started as an employee of the church after her ordination on May 21, 2000. She was paid \$250 per week in cash weekly for her services. She became the Church employee at the time the Church was undergoing over half a million dollar renovation. She refused full compensation and even returned the monies given to her by our other branches in the U.S. and Africa as pulpit exchange gifts. She is the wife of a well paid diplomat. She was ably supported by her husband who is also a member of the Church. Her husband works with the United Nations and makes over \$150,000.00 per annum. She helped the Church by her sacrifices during the renovation period which was completed early 2005.”*

There was no continuation of the paragraph that mentioned “because we have not obtained the authorization of the U.S. Citizenship & Immigration Services.”

(Counsel’s italics.) Pastor [REDACTED] original letter of June 1, 2005 remains in the record, and that letter proves beyond dispute that counsel, above, did not provide “the complete quote.” Rather, counsel omitted the passage under discussion, and then denied the very existence of that same passage. What follows is the complete, unedited paragraph from the third page of Pastor [REDACTED]’s June 1, 2005 letter, including bold-type citations of record exhibits. The key passage that counsel omitted from the third sentence is in *italic* type.

The beneficiary has been performing the above duties for over two (2) years prior to December 10, 2004 in our Church in New York and also visited other branches in North America to perform similar duties. **(See: Attachment to the petition)**. She started as an employee of the church after her ordination on May 21, 2000. She was paid \$250 per week in cash weekly, *barely enough to cover some of her out of pocket expenses, but because we have not obtained the authorization of the U.S. Citizenship & Immigration Service to formally engage her and since the amount paid barely covers her out of pocket expenses for the sake of the Church, no taxes were filed regarding her weekly \$250 income*. She became the Church employee at the time the Church was undergoing over half a million dollar renovation. She refused full compensation and even returned the monies given to her by our other branches in the U.S. and Africa as pulpit exchange funds. **(See: Attachments to Petition)**. She is the wife of a well paid diplomat. She was ably supported by her husband who is also a member of the Church. Her husband works with the United Nations and makes over \$150,000.00 per annum. She helped the Church by her sacrifices during the renovation period which was completed early 2005. **See: Evidence of her husband income, financial statement of the Church and evidence of renovation.**

Counsel's misleading omission of the critical passage, easily and immediately exposed by reference to the record, serves only to cast still more doubt on the credibility of counsel's claims. Given counsel's demonstrated misrepresentation of the record, we cannot entertain any factual claim that counsel makes without concrete supporting evidence.

Section 2 of counsel's response to the AAO's notice bears the heading "Whether or not the beneficiary was paid." Counsel's arguments within that section, however, do not show that the beneficiary was, in fact, paid. Counsel states: "The record is very clear that the beneficiary was returning some of the monies given to her by the Church." This is shown by letters from the beneficiary, expressing her intention to return those funds. The director did not dispute the beneficiary's return of gifts from various field churches. At issue is the claim that the petitioning entity itself paid the beneficiary a regular salary of \$250 per week. Pastor [REDACTED] had never claimed that the beneficiary returned her claimed base salary. The petitioner has still produced no evidence at all that the petitioner actually did pay the beneficiary \$250 per week as claimed. The available evidence conflicts with Pastor [REDACTED] excuses for the absence of such evidence.

Counsel then asserts that the beneficiary, in her position as "National Sunday School Superintendent for the organization," must travel frequently. The record does document some travel by the beneficiary, but the question is not whether or not the beneficiary traveled for the church, but whether she was a paid employee of the church. Counsel offers only discussions of side issues that do not address our concerns.

Regarding the beneficiary's medical practice, counsel states:

In this case, when the beneficiary was asked about how she supports herself, it was with pride . . . that Pastor [REDACTED] represented that the family was well to do. In fact he mentioned the fact that the husband of the beneficiary works for the United Nations. Pastor [REDACTED] proudly stated that "She was ably supported . . ." Meaning that the family had enough

resources to live on. The question was not as to whether she works in another place as a medical doctor. . . .

I submit that the beneficiary supports herself from her family purse. Her husband and herself are regarded as one.

The above explanation is unsatisfactory. The director did not ask about the beneficiary's spouse's occupation, nor did the director ask how the beneficiary's spouse supported the beneficiary. The director instructed the petitioner to "submit evidence that explains how the beneficiary supported herself." The beneficiary's career as a medical doctor is obviously and directly germane to the director's request. It is true that "Pastor [REDACTED] . . . mentioned the fact that the husband of the beneficiary works for the United Nations," but it is equally true that the same witness neglected to mention the beneficiary's own professional career, which is at least as relevant as that of her spouse. We are not persuaded that the omission was accidental, inadvertent, or trivial, or that the wording of the director's request was so oblique or confusing that the petitioner never thought to raise the issue. When asked directly about the beneficiary's means of support, Pastor [REDACTED] listed several claimed sources and said not a word about outside employment by the beneficiary.

Counsel states: "In her previous application which was filed with the USCIS by my office, all of her employers as a medical doctor were disclosed. There was no intention to conceal anything." At the time of the previous application, the beneficiary was not seeking immigration benefits that require religious work. It remains an issue of grave concern that, in her earlier application, the beneficiary never claimed to be anything but a doctor, and in the later petition, the petitioner never claimed that the beneficiary was anything other than a church worker.

Counsel continues: "The fact that she was working for the Church was not mentioned in her previous filing because no taxes were being paid, since she was returning the monies to the Church." This claim is not only wholly unsubstantiated, it contradicts other statements from Pastor [REDACTED] and even counsel's own assertion, three paragraphs earlier, that "the beneficiary was returning *some* of the monies given to her by the Church" (emphasis added). In his letter of June 1, 2005, Pastor [REDACTED] categorically did not claim that "no taxes were being paid, since she was returning the monies to the Church." Rather, as shown in the quotation above, Pastor [REDACTED] claimed that the beneficiary's \$250 salary was not reported to the Internal Revenue Service in part because the salary was low, and in part because the beneficiary was supposedly not authorized to accept employment. Regarding return of payments, Pastor [REDACTED] claimed *only* that the beneficiary returned gifts from field churches – not her alleged weekly \$250 payments. Pastor [REDACTED] also stated that the beneficiary "refused *full* compensation" (emphasis added); she supposedly did not refuse it outright. Indeed, he stated that the alleged weekly salary of \$250 "barely covers her out of pocket expenses." The salary would not have covered any expenses at all if the beneficiary had returned it to the church.

Counsel asserts that, if the beneficiary worked full-time for the church throughout the two-year qualifying period, then the petition "should be approved," regardless of whether or not the beneficiary also engaged in secular employment during the same period. We note that the petitioner has claimed that the beneficiary will serve as a "minister," in which case the plain language of section 101(a)(27)(C)(ii)(I) of the Act and 8 C.F.R.

§ 204.5(m)(i) requires that the beneficiary seek to enter the United States *solely* to work as a minister, and *Matter of Faith Assembly Church* requires that the beneficiary's qualifying prior experience must also have been *solely* as a minister.

Even leaving aside the beneficiary's claimed status as a minister (which is problematic for its own reasons, already discussed), we need not entertain counsel's proposition unless and until the petitioner demonstrates that the beneficiary did, in fact, work full-time for the church during the relevant period. Pursuant to section 291 of the Act, the burden of proof is on the petitioner to establish eligibility. The petitioner has not done so.

Counsel states: "I represent as an attorney and a member of the same organization that the beneficiary contributes over 40 hours weekly to the service of the Church." Even if counsel were able to act as a witness and an attorney in the same proceeding, we have shown ample grounds for questioning the credibility and reliability of counsel's assertions, even regarding issues as basic as the actual wording of letters in the record.

As we have noted, the record contains ample evidence that the beneficiary has been active within the petitioning church. The available evidence, however, does not establish regular or continuous full-time compensated employment within the church. The available documentary evidence shows only that the beneficiary is a medical doctor who has been very active within her church, and was compensated minimally, if at all, for that work.

In 2002, when the beneficiary first sought immigration benefits, she identified herself as a medical doctor and produced ample evidence of her paid work in that occupation. Only in 2004 was it claimed that the beneficiary was a full-time church worker. Earlier documents mention her appointment to various church positions; none of these letters states or implies that the positions are paid.

The petitioner's latest submission does not dissuade the AAO from its position that the beneficiary is and has been a medical doctor, whose volunteer church work has been mischaracterized as full-time, paid employment in an attempt to secure immigration benefits for her. The new submission resolves none of the credibility issues raised by the AAO, and indeed raises new ones, already described above.

The AAO finds that the petitioner willfully misrepresented the nature of the beneficiary's work and her source of support, in an effort to mislead CIS and the AAO on an element material to the beneficiary's eligibility for a benefit sought under the immigration laws of the United States. See 18 U.S.C. §§ 1001, 1546. The AAO will enter a finding of willful misrepresentation.

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 also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

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.

**FURTHER ORDER:** The AAO finds that the petitioner willfully misrepresented elements material to the beneficiary's eligibility for a benefit sought under the immigration laws of the United States.