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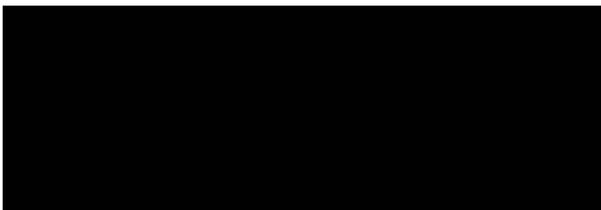
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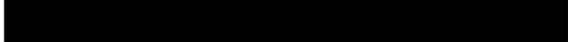
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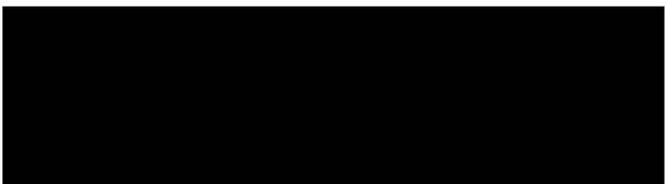


FILE: WAC 07 134 52204 Office: CALIFORNIA SERVICE CENTER Date: **MAY 06 2008**

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.

2 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 described as “an independent, interdenominational fellowship of believers.” 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 an associate pastor. The director determined that the petitioner had not established that: (1) the beneficiary had the requisite two years of continuous work experience as an associate pastor immediately preceding the filing date of the petition; (2) the beneficiary was a member of the petitioner’s religious denomination throughout that same two-year period; (3) the petitioner had made a qualifying job offer to the beneficiary; (4) that the petitioner is able to pay the beneficiary’s proffered salary; or (5) the petitioner qualifies as a tax-exempt non-profit religious organization.

On appeal, the petitioner submits a brief from counsel and several new exhibits, including both statements and documents.

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).

## **JOB OFFER**

We will first address the issue of the petitioner’s job offer to the beneficiary. 8 C.F.R. § 204.5(m)(4) requires the intending employer to state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration).

In an introductory letter dated March 13, 2007, Rev. Rick Minett, Senior Pastor of the petitioning entity, described the duties of the position and terms of employment:

[The petitioner] requires an Associate Pastor to conduct religious worship and to perform all other duties usually performed by authorized . . . ministers of the Church. This is a full-time position of at least 40 hours per week. The duties of the position are as follow:

- Pastoral duties to the members of [the petitioning entity], including counseling, performing marriages and funeral services, visiting the sick, and administering the sacraments of baptism and the Lord's Supper.
- Preaching and teaching.
- Performing other ministries and duties as requested by the Senior Pastor.
- Carrying out the duties of Family Fullness Ministries, which requires teaching family and marriage enrichment seminars around the United States and abroad.

The Associate Pastor ministers under the direction of Pastor [REDACTED], Senior Pastor

. . . The Associate Pastor will be paid an annual salary of \$40,000 for his services and will work out of [the petitioning church].

The record contains examples of business cards and other materials from Family Fullness Ministries, identifying the beneficiary and his spouse as "International itinerant Ministers." A pamphlet indicates that the beneficiary and his spouse "serve as nonresident elders of a church in California, and on the Advisory Board of a church in South Carolina," while being "based out of" the petitioning church. The record does not identify the churches in California and South Carolina mentioned in the pamphlet.

The petitioner's Treasurer and Business Administrator, [REDACTED] indicated that the petitioner paid the beneficiary the following amounts during the years listed:

2002	\$6,150
2003	12,210
2004	9,450
2005	7,975
2006	11,390

Copies of eight processed checks account for the \$11,390 paid to the beneficiary in 2006, as follows:

February 5	\$1,000	
March 29	1,000	
May 23	4,000	(for "Missions Support")
May 23	1,000	(for "Housing")
September 11	150	

September 19	4,000	(for "Remainder of 2006 Support & Special Offering")
November 9	140	
December 26	100	

On August 15, 2007, the director issued a request for evidence (RFE), instructing the petitioner to submit further information and documentation regarding "the terms of payment for services or other remuneration." The director, in that RFE, stated: "The beneficiary appears to be primarily employed in the family fullness ministries and tours several churches throughout the year. Is the beneficiary going to quit the family fullness ministries and work full-time for the petitioning organization?"

In response, counsel stated: "Family Fullness Ministries is [the beneficiary's] vehicle for reaching out to the community by ministering to couples, families and parents," and that the beneficiary "will continue his Family Fullness Ministries both at [the petitioning church] and at other Evangelical Christian churches in the United States. . . . Please note that even while [the beneficiary] travels to other churches, he does so under the auspices of [the petitioning] church." The record corroborates the assertion that the beneficiary's work with Family Fullness Ministries is a component of his work with the petitioner, rather than a competing, separate commitment.

Regarding the beneficiary's means of support, counsel stated: "When [the beneficiary] travels to churches across the United States under the auspices of [the petitioning entity], he receives remuneration both from his ministry services and from product sales, such as CDs and books." Copies of processed checks from these churches, and from individuals who purchased books and compact discs, corroborate this assertion. The AAO will discuss these checks in greater depth later in this decision.

The director denied the petition on December 5, 2007. In the decision, the director questioned the petitioner's job offer to the beneficiary, noting that the petitioner's past payments to the beneficiary fell "significantly below the federal poverty guidelines for a family of three," and that "the beneficiary runs his own Family Fullness Ministries, tours several churches, and sells books and CDs."

On appeal, counsel observes that the petitioner and his spouse are a household of two, not three. The director apparently derived the "family of three" finding from information on the Form I-360 petition. Upon close examination of that information, it appears that the beneficiary's spouse has a daughter from a previous marriage. That daughter, born in 1968, apparently maintains her own household separate from the petitioner and his spouse. Therefore, the director's reference to a "family of three" failed to take into account the specifics of the petition. It remains, nevertheless, that the petitioner appears never to have compensated the beneficiary at anything like the proffered rate. The record does not establish who pays for the beneficiary's frequent travel from Texas to California, South Carolina, and the United Kingdom.

The petitioner, on appeal, submits new information relating to the 2005-2007 earnings of Family Fullness Ministries, indicating that the beneficiary and his spouse each received "partnership" income. This information indicates that the beneficiary was not the sole provider in his household, but it does not change the information regarding the level of support that the petitioner has provided to the beneficiary, nor does it credibly establish the petitioner's intent to pay the beneficiary, alone, more in the future than both the

beneficiary and his spouse have jointly earned in the past. Furthermore, we cannot fault the director for failing to take this evidence into consideration, because the petitioner did not provide it prior to the denial of the petition.

The materials submitted on appeal, showing that Family Fullness Ministries is an entity separate from the petitioner and his spouse, raises further questions about the true nature of the relationship between that entity and the beneficiary, and between the entity and the petitioner.

The petitioner submits an "Employment Agreement" dated January 5, 2008, between the petitioner and the beneficiary. This document, executed after the denial of the petition, carries minimal evidentiary weight, despite the clause stating that "this agreement has been in effect since May 28, 2003." One of the terms of the agreement is that the petitioner "shall pay the Employee an annual remuneration of \$40,000." There is nothing in the record to suggest that the petitioner has paid the beneficiary \$40,000 per year since 2003, and counsel has more than once stipulated that the beneficiary has consistently received smaller sums.

The complete salary clause bears scrutiny here:

The Church & its affiliates shall pay the Employee an annual remuneration of \$40,000, for the services of the Employee, payable at regular periods. This remuneration will consist of funds provided by [the petitioner] and other funds received through Family Fullness Ministries, speaking engagements, seminars, etc., **on behalf of [the petitioner]**.

(Emphasis in original.) The record does not identify the petitioner's "affiliates," and there is no explanation as to how an agreement between the petitioner and the beneficiary could possibly be binding on third parties that hire Family Fullness Ministries for various functions. At best, this agreement could be construed as the petitioner's promise to pay the difference between \$40,000 and whatever Family Fullness Ministries manages to take in during a given year – and even then, there is no evidence that the petitioner has met even this reduced obligation.

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, 591 (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, 591-92.

Pursuant to the above, the AAO affirms the director's finding that the petitioner has failed to meet its burden of proof with regard to the job offer. The record is inconsistent as to the intended source of the beneficiary's claimed salary, and although the terms of the job offer have purportedly been in effect since 2003, there is no indication that the petitioner has adhered to those terms so far, and no clear reason to conclude that the petitioner will begin to meet those terms in the future.

## ABILITY TO PAY

The petitioner must not only establish the existence of a valid job offer, but must also show that it can meet the terms of that job offer. Rev. ██████ stated, in his initial letter: “The Church has an annual budget of approximately \$500,000 with a gross annual income of approximately \$630,000. We have provided our 2003-2006 Financial Reports as evidence of our ability to pay and guarantee [the beneficiary’s] salary.” There is no indication that these “Financial Reports” were prepared as the result of an audit of the petitioner’s finances.

In the August 2007 RFE, the director instructed the petitioner to submit evidence of ability to pay, “in the form of **audited** financial statements or **IRS-certified** federal tax returns. Alternatively, the petitioner may submit **well-documented** evidence that it provided all of the beneficiary’s living expenses during 2005, 2006, and 2007.”

In response, counsel claimed that the ability to pay provisions at 8 C.F.R. § 204.5(g)(2) do not apply to religious organizations. Counsel repeats this claim on appeal and we shall address it in that context.

Counsel stated that, from the filing date onward, the petitioner “has been solvent and able to meet its obligations to pay the proffered annual wage of \$40,000.” The petitioner submitted copies of previously submitted materials, as well as copies of processed checks as follows (all from 2007):

March 15	\$500.00
April 15	500.00
April 17	250.00
May 13	1,960.89 (for “Missions [tickets, bus, boat]”)
May 15	82.20
May 15	500.00
May 28	150.00
June 5	500.00
June 12	1,000.00
June 15	500.00
June 21	1,000.00
June 24	199.10 (for “Reimburse Expense”)
July 15	500.00
August 15	500.00
September 10	118.00 (for “Reimburse Expense”)
September 11	150.00
September 15	500.00

The only discernible pattern in the above-listed checks is the issuance of a \$500 check on the 15<sup>th</sup> of every month. Monthly \$500 payments are consistent with a salary of \$6,000 per year, not \$40,000. Apart from the regular \$500 checks, many other checks are in odd amounts, specifically designated as reimbursement for expenses. Reimbursement is not a salary or other remuneration; rather, it replaces the beneficiary’s own

funds expended on the petitioner's behalf. The remaining checks are unexplained. Giving the petitioner the benefit of the doubt by excluding only those checks specifically marked as reimbursement, the remaining checks add up to \$6,632.20 over the course of six months – an amount that extrapolates to \$13,264.40 per year, less than a third of the proffered \$40,000 salary. Neither the petitioner nor counsel explains why these checks should be considered as evidence of the petitioner's ability or intent to pay the beneficiary \$40,000 per year.

Other processed checks show that the beneficiary received payment from other churches in 2006 and 2007 for his work with Family Fullness Ministries. There are 24 such checks in the record, from nine different churches in three states (Texas, California and South Carolina). The church that issued the most such checks is Trinity Church, San Antonio, Texas, which issued seven checks in the amount of \$60 or \$65 each over several months. Peninsula Christian Center in Redwood City, California, issued the beneficiary five checks for \$50 each, and one check for \$2,000. The largest single check is for \$5,000, issued by Riverside Community Church, Spring Branch, Texas. The 24 checks total \$17,140 for the two-year period of 2006 and 2007.

The petitioner also submitted copies of checks from individuals in the same three states. Ten of the checks are in amounts ranging from \$8 to \$24, and (according to annotations on many of the checks) were issued in payment for compact discs and/or books purchased from the beneficiary. Six other checks are in larger amounts ranging from \$100 to \$2,000. The checks from individuals, dated between August 2006 and June 2007, total \$3,205.

The checks from the individuals and the other churches are irrelevant to the petitioner's ability to pay the beneficiary \$40,000 per year, because there is no evidence that the various individuals or churches obtained those funds from the petitioner, and even if they did, the checks do not amount to \$40,000 per year.

In the denial notice, the director observed that the petitioner paid the beneficiary well below the proffered wage of \$40,000 per year, both before and after the petition's filing date. The director also quoted, for a second time, the documentary requirements of 8 C.F.R. § 204.5(g)(2).

On appeal, counsel argues that 8 C.F.R. § 204.5(g)(2), which requires employers to demonstrate ability to pay the proffered wage, does not apply to religious worker petitions because the types of documents required by 8 C.F.R. § 204.5(g)(2) "are not required and/or normally obtained by *non-profit religious* organizations" (counsel's emphasis). We disagree with this reasoning. The basic regulations governing petitions for both immigrant workers and special immigrant religious workers are both found within 8 C.F.R. § 204.5, "Petitions for employment-based immigrants." The regulations within 8 C.F.R. § 204.5 therefore apply to *both* types of petition, except for those sections that are expressly limited to specific classifications within that spectrum. The regulation at 8 C.F.R. § 204.5(g)(2), by its plain wording, applies to "any petition filed by or for an employment-based immigrant which requires an offer of employment." Because the special immigrant religious worker classification requires an offer of employment, it falls within the compass of that regulation. Furthermore, pursuant to 8 C.F.R. § 204.5(c), for most employment-based immigrant classifications that require an offer of employment, only the employer may file the petition. An alien cannot, for example, self-petition as an outstanding professor or researcher. The only employment-based immigrant classification that

requires a job offer, and for which current regulations permit an alien to self-petition, is the special immigrant religious worker classification. Thus, the reference at 8 C.F.R. § 204.5(g)(2) to “any petition filed by . . . an employment-based immigrant which requires an offer of employment” can only refer to special immigrant religious worker petitions.

Pursuant to the above regulation, the petitioner cannot simply declare that the standard regulatory requirements do not apply and then submit whatever substitute evidence it chooses. There are specific procedures and requirements, as spelled out in the regulation at 8 C.F.R. § 103.2(b)(2)(i):

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 has not satisfied the above conditions. While churches do not file income tax returns or produce annual reports, nothing precludes an audit of a church’s finances. Simply arguing that the petitioner has chosen not to conduct an audit does not relieve the petitioner of its burden of proof.

The petitioner cites a memorandum from William R. Yates, Associate Director for Examinations, *Determination of Ability to Pay under 8 CFR 204.5(g)(2)* (May 4, 2004), indicating that the petitioner can demonstrate ability to pay by showing that its net income exceeds the proffered wage. That same memorandum states that the petitioner must submit “one of the three required documents (annual report, tax return, or audited financial statement)” and that acceptance of alternative evidence “is **discretionary**” (emphasis in original).

Counsel argues that the petitioner took in more than enough money to pay the beneficiary’s proffered wage in 2006, which begs the question of why the petitioner actually paid the beneficiary substantially less than that amount. Rather than explain this, counsel simply states that the petitioner need only establish ability to pay, not actual payment, prior to the approval of the petition.<sup>1</sup> Nevertheless, the petitioner’s actual established pattern of payments is one valid consideration out of many when judging the petitioner’s unsubstantiated claim of intent to pay a significantly higher amount. We are left with a petitioner that could have obtained an audited financial statement but chose not to do so for reasons unexplained, and that claims to be able to pay the beneficiary \$40,000 per year but chose not to do so for reasons unexplained. This reasoning does not

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<sup>1</sup> Counsel has repeatedly made this argument, notwithstanding the petitioner’s submission on appeal of an “Employment Agreement,” referenced above, stating that the beneficiary’s terms of payment have “been in effect since May 28, 2003.”

allow the petitioner to discard the regulatory standard of evidence and impose its own arbitrary standards in its place.

The petitioner had not provided any of the evidence required by the regulation at 8 C.F.R. § 204.5(g)(2) to establish ability to pay. Accordingly, the AAO affirms the director's finding that the petitioner has not satisfactorily established its ability to pay the beneficiary's proffered salary.

The next two issues pertain to the statutory qualifying period. 8 C.F.R. § 204.5(m)(1) permits the filing of a special immigrant religious worker petition:

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, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation, or working in a religious vocation or occupation for the organization or 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. All three types of 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 membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on March 28, 2007. The qualifying period therefore spanned the two years leading up to that date.

## **TWO YEARS OF EXPERIENCE**

Rev. [REDACTED] stated, in his March 13, 2007 letter, described the beneficiary's work experience:

[The beneficiary] is an Evangelical Christian. He has been a member of New Life Church in Woking, England, since 1988. . . . In 1994, he was commissioned into full-time ministry by the New Life Church in Woking, England, when he commenced his work with Family Fullness Ministries. . . .

In 2003, [the beneficiary] began his work with Family Fullness Ministries in the United States under the auspices of [the petitioner] in Houston, Texas. He joined the Church as a member in 2003. He has been working on a *temporary and intermittent basis* in the United

States as an international minister in R-1 status to carry out the ministry of Family Fullness Ministries, as well as serve as an Associate Pastor at [the petitioning entity].

Senior Pastor of the New Life Church in Woking, stated in a June 15, 2006 letter:

In 1994 [the beneficiary and his spouse] were commissioned by this church into full-time itinerant ministry.

Since then [the beneficiary and his spouse] have served us and other churches in the UK and abroad in a teaching and pastoral capacity.

(Emphasis in original.) An unsigned statement submitted with the initial filing listed the following totals for the beneficiary's "combined US and UK income":

2006	\$24,660.58
2005	\$19,847.93
2004	\$19,057.77

The figures are derived from [REDACTED]'s statement (discussed earlier) and an unsigned statement on New Life Church letterhead indicating that the beneficiary received, from that church, £4,900.00 (\$9,607.77) in 2004, £6,055.38 (\$11,872.93) in 2005 and £6,768.21 (\$13,270.58) in 2006.<sup>2</sup> None of these sums approaches the \$40,000 per year that the petitioner has specified will be the beneficiary's future salary.

The director, in the RFE, requested detailed evidence and information relating to the beneficiary's work history during the two-year qualifying period. The director also requested copies of the beneficiary's federal income tax returns "for the 2005 and 2006 tax year(s), along with all of the Schedules and Attachments for each year" and the corresponding IRS Form W-2 Wage and Tax Statements for those years.

In response, Pastor [REDACTED] listed numerous pastoral duties that the beneficiary has performed at the petitioning church, such as "Preaching," "Leading Worship Services" and "Performing marriages and funeral services." Pastor [REDACTED] stated that the growth of the petitioning congregation from 30 to 300 members necessitated the hiring of the beneficiary as associate pastor. Beyond the beneficiary's duties at the petitioning church, Pastor [REDACTED] stated that the beneficiary's "Family Fullness Ministries enables us to . . . serve the wider church within our Evangelical community."

The petitioner submitted an itinerary listing churches in Texas, South Carolina and California that the beneficiary is said to have visited between January 2004 and November 2006, along with the dates of those visits. Programs from some of these churches mention the beneficiary's involvement in worship services there. The petitioner also listed the dates of the beneficiary's presence in the United States from 2004 to 2007, indicating that the beneficiary was in the United States for 200 days in 2004, 113 days in 2005 and 195 days in 2006. When we compare these two documents, the beneficiary's travels to other churches occupied a

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<sup>2</sup> The petitioner cited the March 20, 2007 conversion rate of £1 = \$1.96, cited at <http://www.xe.com/ucc/convert.cgi>.

substantial portion of his time in the United States. For instance, the beneficiary's first sojourn in the United States during the qualifying period was from May 18 to June 30, 2005, a period of 44 days. The beneficiary spent most of that time visiting three churches in California between May 20 and June 13, 2005. The petitioner has claimed that it offered the beneficiary the newly-created position of associate pastor because the church's growth requires the presence of additional staff, but the beneficiary's schedule to date rarely places him at the petitioning church for more than a few weeks at a time.

The petitioner's RFE response did not include copies of the beneficiary's United States income tax returns or accompanying documents. Counsel stated that the beneficiary filed no United States tax returns in 2005 or 2006 because he continued working for the New Life Church in England, and "was advised by his accountant that filing tax returns in the United Kingdom would suffice." The petitioner, at that time, cited no legal authority to support that statement, or to explain why the beneficiary's filing of United Kingdom tax return would relieve the petitioner of its legal obligation to issue a Form W-2 to the beneficiary at the end of each year.

Tina Costelloe, identified as the beneficiary's accountant, stated "all income earned by my clients in both the UK and USA have been declared for Income Tax purposes." The petitioner had initially claimed that the beneficiary earned nearly \$19,848 in 2005, but an itemized list included in the beneficiary's 2005 United Kingdom tax return shows "total income received" as £4,630 (about \$9,075 at the stated exchange rate). All of this income was classified as "Profit from partnerships"; the beneficiary entered "£0.00" as the amount under "Pay from all employments" and again under "Other income."

The beneficiary's 2006 United Kingdom tax return shows "total income," from all sources including interest, of £8,417 (about \$16,497). This is significantly lower than the \$24,661 initially claimed as the beneficiary's "combined US and UK income" for 2006. The beneficiary identified his primary income source as "partnership," and claimed no income from employment.

We note that, while the British tax year ends on April 5 rather than December 31, the beneficiary indicated on both tax returns that his "Basis period" began January 1 and ended December 31, meaning that he reported his income on a calendar year basis. It is, therefore, entirely appropriate to compare the calendar year amounts that the petitioner claimed initially with the amounts shown on the beneficiary's tax returns which purport to account for all of the beneficiary's income.

The above information suggests three possible conclusions: (1) the beneficiary grossly underreported his earnings on his United Kingdom tax returns; (2) the petitioner has significantly exaggerated the beneficiary's total compensation; and/or (3) the United Kingdom tax returns do not, in fact, account for the beneficiary's earnings in that country. These three conclusions are not mutually exclusive, so more than one may apply.

The director denied the petition in part because "[t]he beneficiary's evidence of remuneration for 2005 and 2006 does not reflect full-time employment in the proffered position. The beneficiary's remuneration for the past two years has been significantly below the wage for full-time employment in the proffered position." The director noted the petitioner's failure to submit the beneficiary's United States tax documents as requested, and observed the low amounts reported on the beneficiary's United Kingdom tax returns.

On appeal, counsel does not contest the finding that the beneficiary received less than the proffered compensation, but argues that the petitioner “is only required to show that it has the *ability* to pay, not that it is currently paying the wage for the proffered position.” This argument sidesteps a key issue: if the beneficiary receives less than the proffered salary for full-time, continuous employment, then one possible explanation is that the beneficiary did not work on a full-time, continuous basis. It is also possible that the beneficiary was paid less than the proffered rate, but if that be the case, then the appeal contains a false claim that the beneficiary’s \$40,000 annual salary has been in effect “since March 28, 2003.”

Also with respect to the newly-submitted “Employment Agreement,” there was no prior indication in the record that the \$40,000 figure was an aggregate total, taking into account both payments from the petitioner and from other unnamed “affiliates” over the course of the beneficiary’s travels. This eleventh-hour revision of the terms of payment cannot serve in place of evidence that the petitioner itself is and has been able to pay the full \$40,000 per year. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to statutory and regulatory requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Commr. 1998); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971), which require that a petition must be amenable to approval under conditions as they exist at the time of filing.

The petitioner submits a copy of the beneficiary’s 2007 United States income tax return, along with a letter from certified public accountant [REDACTED], who states: “2007 was the first year for which [the beneficiary] was required to file Taxes in the U.S. Previously tax was filed in the U.K. under the provision of the Tax Convention Treaty between the United Kingdom and the United States.” [REDACTED] cites no specific passage from the treaty, and the record does not include a copy of that document. Assuming that this explanation accounts for the beneficiary’s non-filing of United States tax returns prior to 2007, it still does not account for the broad discrepancy between the beneficiary’s alleged earnings in 2005 and 2006, and the earnings claimed on his United Kingdom tax returns in those years. It also does not appear to account for the petitioner’s failure to produce some form of record of payments to the beneficiary, either an IRS Form W-2 or an IRS Form 1099.

The 2007 tax return, which identifies the beneficiary’s occupation as “minister” and his spouse’s occupation as “homemaker,” indicates “gross receipts” of \$35,135, reduced to “net profit” of \$22,445 after expenses. The beneficiary claimed no wages or salary from the petitioner; rather, he reported his earnings as “business income” on Schedule C, Profit or Loss from Business (Sole Proprietorship). The tax return does not include documentary evidence to identify the source(s) of this income.

The appeal includes a letter from [REDACTED] stating that the beneficiary “has been engaged in full time ministry for the past twelve years.” [REDACTED], in England, was not in a position to witness the beneficiary’s activity in different areas of the United States, nor does he submit documentary evidence to support such a conclusion.

The record indicates that the beneficiary has been active in his ministry, visiting various parts of Texas, South Carolina and California between his return visits to the United Kingdom, but this evidence is fragmentary and does not show an unbroken two years of work immediately prior to the filing date. Contradictory assertions

regarding the beneficiary's compensation shed no further light on the question. The AAO affirms the director's finding that the petitioner has not met its burden of proof with respect to establishing the beneficiary's continuous work during the two-year qualifying period.

## **DENOMINATION**

As shown in the regulations cited earlier in this decision, the petitioner must establish that, for the two years immediately preceding the filing of the petition, the beneficiary has not only worked continuously as a minister, but has been a member of the religious denomination seeking to engage the beneficiary's services.

8 C.F.R. § 204.5(m)(2) contains this definition:

*Religious denomination* means a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, religious congregations, or comparable indicia of a bona fide religious denomination. For the purposes of this definition, an inter-denominational religious organization which is exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 will be treated as a religious denomination.

In his initial letter of March 13, 2007, Rev. ██████ described the petitioner as "interdenominational" and stated: "Since 2003, [the petitioner] has partnered with New Life Church in Woking, England, to house and support Family Fullness Ministries in the United States. . . . Both [the petitioner] and New Life Church belong within the Evangelical Christian framework."

In his June 15, 2006 letter, ██████ stated: "The New Life Church Woking is a Baptist Church affiliated to the Baptist Union of Great Britain and to the Evangelical Alliance."

The director, in the RFE, requested "documentary evidence to establish whether a connection exists between the petitioner and any other church the beneficiary has worked at between 03-28-05 and 03-28-07."

In response, counsel stated that the petitioner, the New Life Church, and Family Fullness Ministries are all "within the Evangelical Christian framework." Evangelical Christianity is not a religious denomination, but rather a general, descriptive term that encompasses a variety of Christian (mostly Protestant) denominations; counsel acknowledged as much by stating that the petitioner "is a 'stand-alone' interdenominational church within the worldwide Evangelical Christian movement."

In denying the petition, the director noted that the beneficiary spent much of the qualifying period working for a Baptist church, and therefore "has not been employed by the petitioner's religious denomination throughout the required two year qualifying period."

On appeal, the petitioner offers substantial evidence and arguments from counsel regarding the "Evangelical Christian community," none of which establishes that Evangelical Christianity qualifies as a "religious

denomination” as 8 C.F.R. § 204.5(m)(2) defines that term. The adjective “Evangelical” is, at best, a blanket term that covers a multitude of distinct denominations with some shared *aspects* of doctrine. This does not make them a single denomination.

Even counsel seems to recognize this, stating that the evidence “shows how members of specific denominations consider themselves part of the larger Evangelical Church movement.” By law, the controlling factor is the denomination, rather than any “larger . . . movement” that may encompass that denomination.

The plainly-worded statute and regulations are binding on Citizenship and Immigration Services, including the AAO, and we simply lack the authority arbitrarily to substitute “movement” for “denomination” when the regulations are clear.

For the above reasons, the AAO affirms the director’s finding that the petitioner has not established the beneficiary’s continuous membership in the petitioner’s religious denomination throughout the two-year qualifying period.

**TAX-EXEMPT STATUS**

The final issue under consideration relates to the petitioner’s claimed tax-exempt status. 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.

Rev. [REDACTED], in his March 13, 2007 letter, stated that the petitioner “is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code.” His description of the petitioner as “independent [and] interdenominational,” if accurate, rules out coverage under an IRS group determination issued to the headquarters of a denomination or multi-church organization.

In a separate letter bearing the same date, Rev. [REDACTED] stated:

Our understanding from Internal Revenue Service (IRS) information is that churches that meet the requirements of IRS section 501(c)(3) are automatically considered tax exempt and are not required to apply for and obtain recognition of tax-exempt status from the IRS. Since

we believe we meet the requirements of IRS section 501(c)(3), we have not obtained official written recognition from the IRS on this matter.

While the petitioner is correct insofar as the IRS does not require churches to apply for recognition exemption, the regulation at 8 C.F.R. § 204.5(m)(3)(i) does not require proof that the petitioner has applied for such recognition. Rather, for churches that have no IRS letter to satisfy 8 C.F.R. § 204.5(m)(3)(i)(A), 8 C.F.R. § 204.5(m)(3)(i)(B) requires the submission of the documentation that the IRS would have required had the church chosen to apply. The purpose of this regulation is to permit an evidence-based distinction between churches (which lack IRS letters because the letters are not required) and non-churches (which lack IRS letters because they cannot legitimately obtain them). Nothing in the regulations states or implies that the petitioner can meet its burden of proof in this regard simply by identifying itself as a church and asserting that churches need not obtain IRS letters.

In the August 2007 RFE, the director stated: “The IRS letter submitted is not sufficient evidence of the petitioner’s non-profit status.” This reference is unclear because the petitioner’s initial submission did not include an “IRS letter.”<sup>3</sup> The director also quoted 8 C.F.R. § 204.5(m)(3)(i) and its subsections in full, but did not specify what “documentation . . . is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code.”

The necessary documentation is described in a memorandum from William R. Yates, Associate Director of Operations, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003):

- (1) A properly completed IRS Form 1023;
- (2) A properly completed Schedule A supplement, if applicable;
- (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization;
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

In response, the petitioner submitted documentation regarding “churches’ automatic ‘blanket’ exemption,” which is not dispositive because the existence of that “‘blanket’ exemption” is not at issue. The petitioner also submitted evidence of exemption from certain state taxes in Texas (which is not evidence of federal tax exemption). More germane are the petitioner’s articles of incorporation, stating the corporation’s religious purpose and containing a qualifying dissolution clause, and Schedule A of IRS Form 1023. Form 1023 itself is the application for recognition of tax-exempt status under section 501(c)(3) of the Internal Revenue Code; Schedule A is a supplement that pertains only to churches.

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<sup>3</sup> The petitioner has subsequently, on appeal, submitted an IRS letter dated January 11, 2008. This letter, however, only contains a general statement of IRS policy, rather than any specific affirmation of the petitioner’s tax-exempt status.

The director, in denying the petition, found that “[t]he petitioner has not submitted sufficient evidence to demonstrate that the petitioning organization is federal tax exempt. The petitioner has not submitted the requested documents to establish [its] federal tax exempt status.”

On appeal, counsel alleges that the director erred by stating “that no evidence was submitted to establish the Petitioner’s federal tax exempt status.” The director, however, did not state that “no evidence was submitted” in this regard. The director found “[t]he petitioner has not submitted *sufficient* evidence” (emphasis added). As enumerated above, the petitioner has submitted some of the materials that the IRS would require in support of an application for recognition of tax-exempt status (such as its organizing document and Form 1023, Schedule A), but not all of the required documentation.

The petitioner submits the instructions for IRS Form 1023, highlighting the passage that shows that churches “may be considered tax exempt under section 501(c)(3) even if they do not file Form 1023.” The same instructions, however, also indicate that if an organization seeks IRS recognition as tax-exempt, the organization must file Form 1023. The Form 1023 application, therefore, is among the documentation required by the IRS to establish eligibility for exemption, and as such falls within the scope of 8 C.F.R. § 204.5(m)(3)(i)(B).

We stress that there has been no affirmative finding that the petitioner is not a tax-exempt church. The director’s decision is, rather, a finding that the petitioner has failed to meet its burden of proof by submitting required documentation for the purposes of this petition and the visa classification sought. The issue is not whether the petitioner is a church, but whether the petitioner established that the petitioner is a church for the purposes of 8 C.F.R. § 204.5(m)(3)(i)(B). Given the absence of required documents from the record, the AAO must affirm the director’s finding in this regard.

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.