

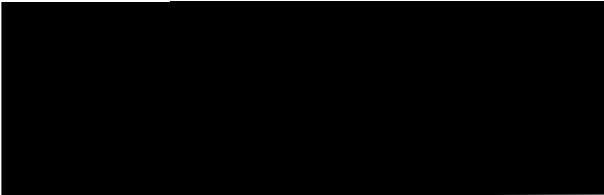
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U.S. Citizenship
and Immigration
Services

C1



FILE: [REDACTED]
WAC 06 203 51388

Office: CALIFORNIA SERVICE CENTER

Date: NOV 12 2008

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

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 purports to be a 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 children's minister. The director determined that the petitioner had not established that: (1) the beneficiary had the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition; (2) the beneficiary belonged to the petitioner's religious denomination during that same two-year period; (3) the petitioner had presented a valid job offer sufficient for the beneficiary's full material support; or (4) the petitioner is able to pay the beneficiary's salary.

On appeal, the petitioner submits a statement and documentation, some of which duplicates prior submissions.

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

An alien, or any person in behalf of the alien, may file an 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. Such a petition 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, 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. . . . 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 work. The director found that the petitioner had not satisfied the requirements relating to the beneficiary's prior work or the beneficiary's prior denominational membership.

PAST EXPERIENCE

The AAO will first consider the beneficiary's past experience. The petition was filed on September 4, 2007. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a minister throughout the two years immediately prior to that date.

[REDACTED], identified as a "Minister Ordained" with the petitioning entity, stated that the beneficiary "is a member of [the petitioning church] since January 01, 2007. . . . [The beneficiary] was ordained on January 10, 2007. At that time [the beneficiary] worked for [the petitioner] as a teacher [in the] Ministry for Children." The petitioner submitted copies of a "Certificate of Ordination" dated January 10, 2007 and a "Ministerial Credential."

A letter attributed to [REDACTED], identified as a "Minister Ordained" at Santa Teresa Ministry, Inc., North Hollywood, California, indicated that the beneficiary "was a member from June 10, 2004 to December 31, 2006 also she was children teacher [*sic*]." The signature on the letter appears to read "[REDACTED]". Copies of Internal Revenue Service (IRS) Form 1099-MISC Miscellaneous Income statements purport to indicate that Santa Teresa Ministry paid the beneficiary "other income" amounting to \$5,100 in 2005 and \$5,300 in 2006.

Copies of "Employee's compensations statements" purport to show weekly payments from the petitioner to the beneficiary from January through July of 2007. Each payment was said to be in the amount of exactly \$200, with no taxes withheld.

The petitioner submitted copies of monthly bank statements issued in April, May, June and July of 2007. The submitted pay statements purport to indicate that the beneficiary received 19 weekly payments of exactly \$200 each during those four months. The bank statements, however, show only seven checks in the amount of \$200, and the record does not identify the recipient(s) of those checks. Therefore, the bank records do not support the claim that the petitioner paid the beneficiary \$200 per week in 2007. The bank statements identify the petitioner as a "Customer since 2006."

An IRS determination letter dated March 14, 2007 indicated that the petitioner qualifies as a tax-exempt non-profit organization. The AAO notes that the IRS specified the “Effective Date of Exemption” as April 26, 2006. According to IRS Publication 557, “Tax Exempt Status for Your Organization,”¹ “[a] ruling or determination letter recognizing exemption is usually *effective as of the date of formation of an organization*” (emphasis in original). This indicates that the IRS considers the petitioner’s date of formation to be April 26, 2006.

On December 7, 2007, the director issued a request for evidence (RFE), instructing the petitioner to submit documentary evidence of the beneficiary’s work history during the 2005-2007 qualifying period, including evidence of payment for services and IRS transcripts of the beneficiary’s income tax returns for the relevant years. The director also requested a detailed description of the beneficiary’s daily work schedule.

In response, [REDACTED], identified as the petitioner’s “Director/Coordinator,” stated that the beneficiary worked forty hours per week both for Santa Teresa Ministry and for the petitioner. With respect to the petitioner’s hours of operation, however, [REDACTED] listed the following:

Monday	7:30 p.m. – 9:00 p.m.	Biblical Studies
Friday	7:30 p.m. – 9:00 p.m.	Youth Service
Saturday	7:30 p.m. – 9:00 p.m.	Ladies Night
Sunday	6:00 p.m. – 9:00 p.m.	General Service

The above schedule accounts for only seven and a half hours per week. Mr. [REDACTED] stated “see attached Flyer for current Hours and Days of Services,” but the AAO finds no “attached Flyer” in the record. Elsewhere in his letter, [REDACTED] referred to items of evidence as “Attachment A,” “Attachment B,” etc., but he did not associate the “Flyer” with any labeled exhibit. It appears that the petitioner submitted no such flyer.

Also, the petitioner did not claim exclusive use of the property where the beneficiary is said to have worked. [REDACTED] stated that the petitioner’s “[p]lace of worship is located at [REDACTED], Los Angeles, CA 90057. This is where the beneficiary performs her Religious duties.” The 8th Street address did not appear anywhere in the petitioner’s initial submission. Mr. [REDACTED] also stated that Santa Teresa Ministry was “temporarily in our church from 06/24/2007 to present while they find another church [to] rent.” While a list of purported church members consisted of Spanish-derived names, photographs said to show the property at [REDACTED] consistently show signs in the Korean language, indicating that the church shown in the photographs is primarily used by a Korean-speaking congregation. Supporting this conclusion, the door shows an inscription in Korean that appears to be a schedule, showing times such as “11:00” and “8:00.” The schedule shows seven items, compared to the four items claimed by the petitioner. Assuming that the petitioner uses the 8th Street property at all – which is not evident from the photographs – there is no indication that the petitioner operates as a full-time church, capable of employing anyone full-time at that church.

¹ IRS Publication 557 is available online at <http://www.irs.gov/publications/p557>.

Regarding the petitioner's claimed use of the 8th Street address, the petitioner submitted a City of Los Angeles Tax Registration Certificate, showing the petitioner's name, the 7th Street address shown on the Form I-360 petition, and the 8th Street address claimed later. The certificate was issued January 22, 2008, after the director issued the RFE, and therefore it is not evidence of the petitioner's prior use of the property or the address. The tax certificate lists a "Started" date of March 22, 2007, nearly three months after the beneficiary supposedly began working for the petitioner. Also, the certificate is marked: "This certificate must be posted at place of business." The certificate is clearly not posted at the petitioner's place of business, as the original certificate (not a copy) is in the record.

A photocopied lease shows a six-month occupancy period from June 2007 to December 2007, with no evidence to show where the petitioner operated before or after those dates. The "Landlord" is identified as Blessing Mission Church; the "Tenant" line is blank. [REDACTED] signed the lease. The record does not indicate where the petitioner supposedly conducted services before June 2007.

The petitioner submitted a second letter attributed to [REDACTED], indicating that, while working for Santa Teresa Ministry, the beneficiary "would work 40 hours a week and would earn \$150.00 every week. The ministry provided food, shelter, clothing and all other amenities." The \$150 per week figure correlates to \$7,800 per year, but the previously submitted IRS Forms 1099-MISC show substantially lower amounts in both 2005 (\$5,100) and 2006 (\$5,300). Therefore, the letter contradicts those documents. The AAO notes that the signatures on the two letters attributed to [REDACTED] do not resemble one another.

In response to the director's request for tax documentation from the IRS, the petitioner submitted IRS transcripts of the beneficiary's 2005 and 2006 income tax returns, along with unsigned, uncertified photocopies of the returns themselves. The beneficiary's 2005 return is dated February 6, 2007, and the IRS received it on February 24, 2007. The petitioner dated the 2006 return February 4, 2007, and the IRS received it on April 17, 2007. The amounts claimed on the returns match those shown on the transcripts, but the late filing of the 2005 return rules out that document as contemporaneous evidence of compensation. The beneficiary never reported any income from Santa Teresa Ministry until after she purportedly began working for the petitioner.

The director denied the petition on April 29, 2008, stating that the \$150-\$200 payments supposedly issued weekly to the beneficiary are too low to be consistent with full-time employment. The director noted the claim that Santa Teresa Ministry provided the beneficiary with additional benefits such as food and housing, but the director also observed the lack of evidence to support that claim. The director also found that the petitioner had failed to account for the beneficiary's claimed duties in a 40-hour work week.

On appeal, the petitioner submits a statement written in the first person from the beneficiary's perspective, but signed by [REDACTED]. The statement, for instance, includes this claim: "I have been in active ministerial duty since February 5th, 2005. I started in Santa Teresa Ministry . . . but in January 2007, I changed ministries to [the petitioning entity]." Mr. [REDACTED] states: "My weekly schedule along with my detailed job duties are attached for your view." The AAO, however, has been unable to find such a document in the petitioner's appellate submission. The petitioner did not explain what purpose the beneficiary's alleged 2007 ordination served, if the beneficiary was in "ministerial duty since February 5th, 2005." Prior

submissions from the petitioner indicated that the nature of the beneficiary's duties changed after her 2007 ordination, which is not consistent with the new claim that the beneficiary's duties have always been "ministerial."

To demonstrate that the beneficiary purportedly received compensation beyond her claimed cash salary, the petitioner submits copies of three "Requests for Housing." The most recent such request reads:

Request for Housing

Active Year: 2007

This is a formal request for a Housing Allowance in the Amount of \$9,600.00 for this year. This is made pursuant to the Internal Revenue Code Section 107, and I represent that I am qualified, [*sic*] Ordained Minister of the Gospel, pursuant to Internal Revenue Code 107 and the regulations set forth. I am granted this Housing Allowance based on the number of hours I work in the ministry and is gladly granted to me by Hechos 2:19.

Rent Payment (Monthly): \$450.00
Food and Clothing (Monthly): \$350
Monthly Salary: \$800
Total (Monthly): \$1,600
Totally (Annually): \$19,200

Signed: [the beneficiary's signature] Date: 12/31/2007

Requests dated 2005 and 2006 are mostly identical to the above document, even including the space between "qualified" and the comma, the only differences being the dates and the substitution of the name [REDACTED] for the name of the petitioning organization. There are numerous problems with these documents. The shared format and wording suggests common origin, despite supposedly originating from two different churches. Furthermore, each request is dated on the last day of the year for which the beneficiary supposedly requested housing; the request for 2006, for example, is dated 12/31/2006. An earlier submission indicated that the beneficiary left [REDACTED] on December 31, 2006, and began working for the petitioner on January 1, 2007. If the newly submitted document is to be believed, the beneficiary requested a year's worth of support from [REDACTED] on her very last day with that church, rather than from her new church and employer whom she was supposedly to join within a matter of hours.

Furthermore, the amounts of claimed compensation listed on the "Requests for Housing" are exactly the same for all three years, whereas the petitioner's earlier submissions indicated that the beneficiary's compensation varied. The petitioner had previously claimed that Santa Teresa Ministry paid the beneficiary \$150 per week, and the IRS Forms 1099-MISC indicated that Santa Teresa Ministry paid her \$5,100 in 2005 and \$5,300 in 2006 (which average out to \$100 per week). The petitioner had also claimed to have paid the beneficiary \$200 per week (or \$10,200 per year), which is more than \$800 per month (or \$9,600 per year).

Also, the amounts claimed on appeal are not consistent with the petitioner's previously submitted "Profit and Loss Statement" for 2007, which contained the following figures:

Deductions:

Bibles [sic]	465.00
Bibles of children	385.00
Minister Ordained Compensations	10,400.00
Minister Ordained Salaries	17,680.00
Supplies	2,750.00
Occupancy	9,150.00

The above figures contain no allowance for the petitioner's newly claimed "Food and Clothing" allowance of \$350 per month (\$4,200 per year). The newly claimed "Rent" allowance of \$450 per month (\$5,400 per year) would fit within the "Occupancy" expense amount, but the petitioner has also claimed to pay \$800 per month to rent the space at [REDACTED] – an expense that requires \$9,600 per year all by itself. The petitioner has never claimed that the beneficiary resides at the church site, and the Form I-360 petition shows a different address for the beneficiary. Therefore, the claimed cost of renting the church site does not cover the cost of rent for the beneficiary's residence.

The inconsistent and contradictory claims regarding the beneficiary's compensation, coupled with the lack of reliable contemporaneous documentation to support any of those claims, prevent the AAO from finding that any of those claims are credible. 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. Section 204(b) of the Act, 8 U.S.C. § 1154(b), provides for the approval of immigrant petitions only upon a determination that "the facts stated in the petition are true." False, contradictory, or unverifiable claims inherently prevent a finding that the petitioner's claims are true. See *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Systronics Corp. v. I.N.S.*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988).

The AAO affirms the director's finding that the petitioner has not credibly established that the beneficiary worked continuously as a minister during the two years immediately preceding the filing of the petition.

DENOMINATIONAL MEMBERSHIP

The second issue before the AAO concerns the beneficiary's membership in the petitioner's religious denomination during the two years preceding the petition's filing date, as required by the statutory and regulatory provisions cited earlier in this decision.

In their initial letters, neither [REDACTED] nor [REDACTED] identified the specific religious denominations of their respective churches. In the December 7, 2007 RFE, the director requested documentary evidence to establish the relationship, if any, between the various churches where the beneficiary is said to have worked during the 2005-2007 qualifying period.

In response, [REDACTED] stated that the beneficiary "is a Pentecostal Christian." In much the same way that Protestantism is not a denomination but rather a class of denominations, Pentecostalism is not a denomination as such, but rather a movement encompassing numerous distinct denominations including the Assemblies of God, the International Church of the Foursquare Gospel, and the Church of God (Cleveland, Tennessee).

Asked to explain the relationship between the petitioning entity and Santa Teresa Ministry, Mr. [REDACTED] offered no "Religious Connection" beyond the claim that both entities temporarily shared the same property. The materials attributed to Santa Teresa Ministries do not contain any information about that organization's denominational affiliation.

The petitioner submitted a copy of a certificate, purportedly signed by [REDACTED] and dated March 6, 2005, indicating that the beneficiary "[i]s a member of our Congregation, as of the 8th day of February, 2005." This appears to contradict the earlier claim that the beneficiary joined the Santa Teresa Ministry congregation on June 10, 2004.

In denying the petition, the director concluded: "The petitioner has failed to submit sufficient information to establish the beneficiary has been employed and remunerated in the petitioning church's religious denomination for the two year period preceding the filing of the petition." The petitioner, on appeal, does not address this finding. The AAO affirms the director's uncontested finding that the petitioner has not established the beneficiary's required two years of membership in the petitioner's (never identified) religious denomination.

JOB OFFER

The third issue in this decision concerns the terms of the job offer. 8 C.F.R. § 204.5(m)(4) requires the prospective 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). If the proffered compensation is not sufficient to provide fully for the beneficiary's material support, the assumption is that the beneficiary will need to pursue outside employment. *Cf. Matter of Bisulca*, 10 I&N Dec. 712, 713-14 (Reg. Commr. 1963) and *Matter of Sinha*, 10 I&N Dec. 758, 760 (Reg. Commr. 1964) (unpaid clergy are assumed to rely on outside employment).

The petitioner first addressed the claimed terms of employment in a letter from [REDACTED] who stated that the beneficiary's "compensations are \$200.00 per week." Ms. [REDACTED] mentioned no other compensation beyond this weekly salary. The weekly pay statements, already discussed above, match this stated amount.

In the RFE, the director instructed the petitioner to specify “how the beneficiary will be paid for services.” In response, [REDACTED] repeated the claim that the beneficiary’s “payment is \$200.00 per week.” This figure appears several times in the petitioner’s response to the RFE, and the petitioner did not indicate that the beneficiary had received or would receive any further compensation beyond that stated amount.

In denying the petition, the director questioned the sufficiency of the proffered compensation, stating that “\$10,400 per year is very low for a high cost of living area such as Los Angeles.” We note that the claimed rate of compensation (\$200 per 40-hour week) is also lower than the minimum legal wage in California at the time of filing.² On appeal, the petitioner claimed, for the first time, to have provided compensation to the beneficiary beyond the stated cash salary. The AAO has already explained why the 2007 “Request for Housing” cannot be considered a credible or reliable document by any reasonable standard.

Because the petitioner has gravely undermined its credibility by submitting inconsistent and contradictory claims, the AAO affirms the director’s finding that the petitioner has not extended a *bona fide*, viable job offer to the beneficiary.

ABILITY TO PAY

The fourth issue in this decision concerns the petitioner’s ability to meet the terms of the claimed job offer discussed above. The 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 petitioner’s initial submission included a “Profit and Loss Statement” for the first seven months of 2007, signed by [REDACTED], who identified herself as an accountant and claimed to have “audited the above Profit & Loss Statement.” The statement did not show the level of detail typically associated with an audited financial statement. The statement indicated that the petitioner had paid \$6,200 in “Minister Ordained Compensations” so far in 2007, which matched the amount claimed on the “compensations statements.”

Copies of bank statements showed that the petitioner carried a balance of \$4,716.92 as of March 17, 2007, which had been reduced to \$2,049.39 as of July 17, 2007. As noted elsewhere in this decision, the bank statements do not reflect the weekly \$200 payments that the petitioner had purportedly issued to the beneficiary on regular basis.

² According to <http://www.dir.ca.gov/Iwc/MinimumWageHistory.htm>, an official state government site, California’s minimum wage in 2007 was \$7.50 per hour, equivalent to \$300 per 40-hour week. (Site visited October 10, 2008.)

In the RFE, the director instructed the petitioner to submit financial documentation that conforms with the requirements set forth at 8 C.F.R. § 204.5(g)(2). In response, the petitioner submitted three new purportedly audited profit and loss statements for calendar years 2004, 2005 and 2007. All three statements were signed by [REDACTED], and the 2004 and 2005 statements were also signed by [REDACTED]. The statements are no more detailed or reliable than the previously submitted statement was. We repeat, here, the observation that the IRS considers the petitioning entity to have begun operation on April 26, 2006, after the calendar years 2004 and 2005 supposedly covered by the allegedly audited profit and loss statements.

In the denial notice, the director determined: “The petitioner has failed to submit sufficient evidence to establish their ability to pay the beneficiary.” While the petitioner’s appeal includes various exhibits relating to the beneficiary’s claimed compensation, already discussed above, the appeal contains no direct response to this finding. Where the appeal does address other issues relating to the beneficiary’s compensation, the new claims contradict the petitioner’s prior assertions (as we have already demonstrated). The AAO affirms the director’s finding that the petitioner has not satisfactorily established its ability to compensate the beneficiary.

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.