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U.S. Citizenship  
and Immigration  
Services

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**C1**



FILE: WAC 06 203 51388 Office: CALIFORNIA SERVICE CENTER Date: **OCT 01 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:

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 black ink, appearing to read "Maiperson".

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

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 minister. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition, or that the petitioner is able to pay the beneficiary's salary.

On appeal, the petitioner submits additional 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 . . . ; 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).

## PAST EXPERIENCE

The first issue concerns the beneficiary's claimed work experience. 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 June 19, 2006. 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.

The Board of Immigration Appeals has held that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399, 402 (BIA 1980). In line with case law 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. We note that the Ninth Circuit Court of Appeals, within whose jurisdiction this proceeding arose,

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).

On the Form I-360 petition, asked whether the beneficiary had "ever worked in the U.S. without permission," the petitioner answered "no." The petitioner also indicated that the beneficiary has been in the United States since 2003, and therefore was in the United States throughout the entire two-year qualifying period. Asked to specify the beneficiary's current nonimmigrant status, the petitioner wrote "Applicant I-360." This is not a nonimmigrant status; rather, it indicates only that the beneficiary *seeks* a particular status.

[REDACTED] identified as Secretary of the petitioning organization, stated that the beneficiary "was ordained on January 29 2004 . . . after he completed his Biblical studies at Nuevo Amanecer Hispanic Biblical [I]nstitute."

The petitioner submitted copies of Internal Revenue Service (IRS) Form 1099-MISC Miscellaneous Income statements, purporting to indicate that the petitioner paid the beneficiary \$7,820 in 2004 and \$7,204 in 2005. Both of these Forms 1099-MISC show the beneficiary's nine-digit "identification number" ending in 2633.

Accompanying documents, each labeled "Record of Compensations," purport to indicate that the petitioner paid the beneficiary twice a week (Saturdays and Sundays), with most payments between \$40 and \$100 each, between January 2004 and December 2005. Each page of the "Record of Compensations" follows the format below:

WEEK	TOTAL							SIGNATURE
	S	M	T	W	T	F	S	
1 <sup>st</sup>								
2 <sup>nd</sup>								
3 <sup>rd</sup>								
4 <sup>th</sup>								

The above format appears to be based on the false assumptions that each month begins on Sunday and is exactly four weeks long. The format allows only 48 weeks per year, whereas each year is actually 52 weeks plus one day (two days on leap years). Also, the format of the "Record of Compensations" leads to inconsistent conclusions about the timing of their preparation. The beneficiary signed each page several times, once for each day he purportedly received payment, which implies that the beneficiary signed the document at the time of each payment. But because the amounts paid (which vary unpredictably from day to day) were printed as part of the document, rather than added later, each page could not have been printed until after the end of the month in question.

The records said to relate to July 2004 and July 2005 both contain arithmetical errors. The July 2005 statement reads as follows:

WEEK	S	M	T	W	T	F	S	TOTAL	SIGNATURE
1 <sup>st</sup>	41						89	130.00	[signature]
2 <sup>nd</sup>	74						78	152.00	[signature]
3 <sup>rd</sup>	85						89	174.00	[signature]
4 <sup>th</sup>	37						44	456.00	[signature]
								912.00	[signature]

The total for week four should be \$81.00, and the monthly total \$537.00. Instead, the petitioner added the totals for weeks one through three, placed that total on the line for week four, and then added those four numbers together for the monthly total. By a similar error, the July 2004 total is shown as \$800.00, when it should read \$491.00. The IRS Forms 1099-MISC correspond to the erroneous, inflated totals rather than the weekly amounts added correctly.<sup>1</sup>

The record contains no contemporaneous financial documents (such as copies of processed checks) showing the actual transfer of funds from the petitioner to the beneficiary. Also, the annual totals quoted above are too low to be consistent with full-time employment, even at the legal minimum wage.

On December 13, 2006, the director issued a request for evidence (RFE), instructing the petitioner to submit additional evidence regarding the beneficiary’s work history and compensation. Noting the petitioner’s purported issuance of IRS Forms 1099-MISC to the beneficiary, the director instructed the petitioner to submit IRS transcripts of the beneficiary’s income tax returns for the corresponding years (2004 and 2005), as well as financial documents establishing the beneficiary’s receipt of the claimed payments.

In response to the RFE, the petitioner submitted a letter from [REDACTED] who stated that the beneficiary “was ordained on January 29, 2004 [and] since that time, he has worked for [the petitioner] as a Pastor . . . [and] has also worked as a teacher for this board of members for about 2 years.” [REDACTED] then acknowledged that the beneficiary lacks “legal status,” thus contradicting the prior claim that the beneficiary has never worked in the United States without authorization.

[REDACTED] provided the following claimed work schedule for the beneficiary:

<u>Monday</u>	<u>Friday</u>	<u>Saturday</u>	<u>Sunday</u>
House by house Preaching	House by house Preaching	House by house Preaching	House by house Preaching
Biblical studies	Youth Service	Ladies night	General services

<sup>1</sup> Neither the correct total nor the inflated total for 2005 documents exactly matches the \$7,204 shown on the 2005 Form 1099-MISC, but the inflated total of \$7,209 is much closer, differing by only five dollars.

The petitioner submitted documentation showing that the beneficiary filed amended income tax returns for 2004 and 2005. The beneficiary dated each amended return December 18, 2006, five days after the date of the RFE, and the IRS received the returns on December 24, 2006. The timing of these filings, just after the petitioner received the RFE, does not appear to be a coincidence. The beneficiary's filing of amended returns days after the issuance of the RFE raises serious questions regarding the truth of the facts asserted therein. *Cf. Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991) (discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings).

Each amended return includes Schedule C, Profit or Loss From Business. The 2004 forms indicate that the beneficiary reported earning \$7,820 as a "Minister Ordained" and \$2,770 in "Maint[en]ance" in 2004. The 2005 forms show that the beneficiary reported earning \$7,204 as a "Minister Ordained" and \$11,975 as a "Janitor." The beneficiary also reported spending \$3,155 on "Vehicles, machinery, and equipment"; \$721 on "Protection Clothing"; and \$835 on "Tools."

Another contradiction can be found in a table bearing the heading "Means Support" (*sic*). According to this document, the beneficiary received the same support every month, itemized as follows:

Clothes	\$70.75
Food	150.00
Laundry	25.00
Rent	476.00
Telephone	50.00
Transport	52.00
<u>Water and Electricity</u>	<u>35.00</u>
<u>Monthly Total</u>	<u>858.75</u>
Year Total	10,305.00

The table, which shows the beneficiary receiving material support in fixed monthly amounts, is entirely inconsistent with the "Record of Compensations," which showed the beneficiary receiving payments on Saturdays and Sundays that varied significantly from month to month. Rather than clarifying matters, this submission, like many others in the record, only undermines the petitioner's credibility. 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.

The director denied the petition on May 8, 2007, in part because the beneficiary's claimed payments "are low and are not indicative of full-time work." The director also found that the petitioner had not adequately documented even those low claimed payments. The director noted that the beneficiary had originally listed janitorial and maintenance work on his 2004 and 2005 income tax returns. The director concluded: "the evidence is insufficient to establish that the beneficiary has been performing full-time work as Minister Ordained for the two-year period immediately preceding the filing of the petition."

On appeal, [REDACTED] states: "Beneficiary has been working thirty-five to forty hours per week." She also claims that the individual who prepared the beneficiary's tax returns mistakenly listed the beneficiary's occupation as "janitor" instead of "minister," and that the beneficiary amended his tax returns in order to correct this error. This explanation is not credible, as the materials plainly show that the beneficiary reported earning income as a minister and, separately, additional income as a janitor or maintenance worker. The Schedules C list different business addresses for the beneficiary's claimed ministerial work and his janitorial work, and the form for 2005 lists itemized expenses, such as "Protection Clothing," that relate much more plausibly to maintenance work than to ministerial work. If the beneficiary worked as a janitor or maintenance worker in late 2004 or 2005, then he cannot have worked solely as a minister during that time. As already set forth earlier in this decision, secular employment is inherently disqualifying for a special immigrant minister. (This observation should not be construed as a stipulation that the beneficiary performed any ministerial work at all during that period.)

The appeal includes a letter from the IRS, indicating that the IRS had assigned the beneficiary an Individual Taxpayer Identification Number (ITIN), a nine-digit number ending in 2633. This is the number shown on the beneficiary's IRS Forms 1099-MISC. The IRS letter is dated June 15, 2005, two months after the April 15 filing deadline for 2004 income tax returns. This proves that the petitioner did not timely issue the 2004 Form 1099-MISC; a timely document could not have included the beneficiary's not-yet-issued ITIN. The presence of the beneficiary's ITIN on the document proves that the Form 1099-MISC, like so many other documents in the record, was created after the fact.

More often than not, the petitioner has contradicted its own prior claims and submissions, and as such the petitioner's credibility is negligible in this matter. The AAO affirms the director's finding that the petitioner has not established that the beneficiary possesses the required two years of continuous experience.

#### ABILITY TO PAY

The second issue is the petitioner's ability to compensate the beneficiary. 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 did not address the petitioner's ability to compensate the beneficiary, except for the monthly "Summary of Compensations" statements already described above. Also, the petitioner did not specify the proffered wage or salary in the initial submission. The director, in the RFE,

instructed the petitioner to submit “copies of annual reports, signed copies of federal tax returns, or audited financial statements,” in keeping with 8 C.F.R. § 204.5(g)(2).

The petitioner’s response did not include any of the requested documentation. The petitioner submitted a copy of an IRS Form 990-EZ return for 2005, analogous to an income tax return, but the copy was unsigned and there is no evidence that the petitioner actually filed the return. The Form 990-EZ indicated that the petitioner took in \$72,980 in gross receipts in 2005, \$22,324 of which went to “Salaries, other compensation, and employee benefits.” On a copy of IRS Form 1023 Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code (more about which later), the petitioner indicated that the beneficiary earned \$7,204 per year, [REDACTED] earned \$4,720 per year, and [REDACTED] and [REDACTED] each earned \$5,200 per year. A fifth named official, [REDACTED] was said to be uncompensated. The amounts claimed for the four paid officers total \$22,324. The Form 1023 lists an additional \$11,526 in “Other salaries and wages” beyond the aforementioned officer compensation. The Form 990-EZ entirely omits these “Other salaries and wages.” As a result, while the Form 1023 indicates that the petitioner’s total expenses in 2005 amounted to \$42,330, the Form 990-EZ reflected only \$30,804 in total expenses for 2005.

In denying the petition, the director noted various discrepancies in the petitioner’s various documents and observed that, while the “Means Support” document purports to indicate that the petitioner pays the beneficiary \$858.75 per month, or \$10,350 per year, the IRS Forms 1099-MISC in the record showed considerably lower compensation.

On appeal, the petitioner submits quarterly wage and withholding reports from 2007, showing that the petitioner paid the beneficiary \$2,210.00 per quarter (\$170.00 per week, or about \$736.67 per month). The petitioner’s accountant, [REDACTED] affirmed that the petitioner began paying the beneficiary \$170 per week in January 2006. This amount falls short of the previously proffered salary by over \$100 per month. The record contains no processed checks or comparable first-hand financial documentation to show that the purported salary ever changed hands.

[REDACTED] claims on appeal that “starting Jan. 2007 [the beneficiary] has a salary of \$220.00 a week,” but the purported 2007 pay statements submitted on appeal indicate payments of \$170.00 per week, the same claimed rate as in 2006. Thus, the petitioner’s documentation submitted on appeal contradicts claims also made on appeal.

Because the petitioner has compromised its own credibility through an uninterrupted string of inconsistent or contradictory claims, the AAO can have little confidence in the alleged documentary evidence submitted on appeal.

Attempts to verify the petitioner’s claims, and review of other petitions, have raised additional issues of concern. On its IRS Form 1023, under “Date incorporated,” the petitioner wrote “01/17/2004.” The beneficiary was identified as the petitioning organization’s vice president. The petitioner, however, did not file its articles of incorporation until April 26, 2006, less than two months before the petition’s filing date and less than two weeks before the petitioner executed the IRS Form 1023 on May 8, 2006. The petitioner’s bylaws are dated May 10,

2006. These dates show that a number of the petitioner's foundational documents came into existence just before the filing of the petition, consistent with the AAO's position that the petitioner created those documents specifically for the purpose of supporting immigration petitions.

On August 4, 2008, the AAO issued a notice of intent to dismiss the appeal with a finding of willful misrepresentation of a material fact. In its notice, the AAO discussed the date of incorporation and also advised the petitioner that another church, Ministerios Unidos Galatas 5:16, claimed to have performed services at [REDACTED] the same address as the petitioning church. The bylaws of the two claimed churches are virtually identical, even including the same typographical errors (such as "Dismiss ion of Inactive member" and "Vacancies occurring during the year may be fillet until the next election by Board appointment"). These similarities, beyond the realm of reasonable coincidence, indicate a common creation of documents for a number of purported churches.

In response to the AAO's notice, [REDACTED], identified as the petitioner's Senior Pastor, states that the petitioner misinterpreted "date incorporated" to mean "the day we first gathered as a board" rather than the date the petitioner filed articles of incorporation. [REDACTED]'s assertion that the petitioner was merely mistaken about the meaning of "date incorporated" would have been more plausible if it were not for the persistent pattern of inconsistent and contradictory claims throughout this proceeding. Even then, this latest explanation is, once again, contradicted by the record. The "Record of Compensations" alleged that the beneficiary received a \$48 payment on the first Sunday in January (January 4<sup>th</sup>), 2004. By January 17, supposedly the petitioner's founding date, the petitioner had allegedly paid the beneficiary at least three times, a total of \$129 or more.

Regarding the bylaws, [REDACTED] states that the petitioner had bylaws prior to May 10, 2006, but those bylaws "lack much crucial and important information. Some of our church members had social contacts with members of Ministerios Galatas 5:16. . . . A copy of their bylaws was obtained and discussed; they were definitely superior to ours and more proper." The unspoken implication is that the petitioner copied the bylaws of Ministerios Unidos Galatas 5:16. This explanation, however, fails to account for the respective dates on the bylaws. The bylaws of Ministerios Unidos Galatas 5:16 are dated May 30, 2006, almost three weeks after the May 10, 2006 date of the petitioner's bylaws. Given these dates, the petitioner could not have copied the other church's bylaws.

With respect to the photographs taken at [REDACTED]'s address, [REDACTED] states: "These pictures were sent because we had held one event there and believed the requested pictures were for an event location."

The director had instructed the petitioner to "[s]ubmit photographs of the church where the religious services take place." This instruction seems relatively clear and unambiguous. Depicted in one of the photographs is a hand-lettered sign showing the petitioner's name in large letters, followed by the purported weekly schedule and a telephone number. Nothing on the sign indicates an alternative address for the petitioner, or gives any indication that the petitioner normally holds services at any other location. The posting of such a sign does not suggest that the petitioner used the site for only "one event." The impression, instead, is that the site shown was the regular site of the petitioner's services. Also, if the petitioner used [REDACTED]'s site for "one event," the question remains as to where the petitioner supposedly holds its regular services and functions. The petitioner has not provided any credible evidence that it conducts regular services at [REDACTED] or anywhere else. The posting

of a free-standing sign outside the church door cannot suffice in this regard. The record contains no evidence that the petitioner was ever at [REDACTED]—except to take photographs. The petitioner’s claims throughout this proceeding are inconsistent, lack credibility, and do not conform to reality.

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Under Board of Immigration Appeals (BIA) precedent, a material misrepresentation is one which “tends to shut off a line of inquiry which is relevant to the alien’s eligibility and which might well have resulted in a proper determination that he be excluded.” *Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1961).

For the reasons discussed above, the AAO finds that the petitioner has sought to procure on behalf of the beneficiary a benefit provided under the Act through fraud and willful misrepresentation of a material fact in an effort to mislead Citizenship and Immigration Services (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. By signing the alleged pay receipts and other documents in furtherance of the instant petition and submitting the evidence described above, the beneficiary has actively participated in this fraud and willful misrepresentation of a material fact. This finding of fraud shall be considered in any future proceeding where admissibility is an issue.

If CIS is not persuaded that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *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. I.N.S.*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). Moreover, the petitioner’s submission of a fraudulent document brings into question the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *See Matter of Ho* at 591.

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.

**FURTHER ORDER:** The AAO finds that the petitioner knowingly submitted documents containing false statements 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.