

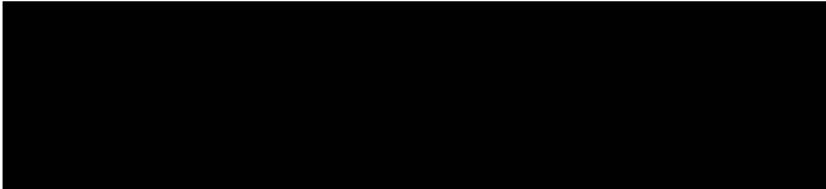
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FILE:



Office: CALIFORNIA SERVICE CENTER

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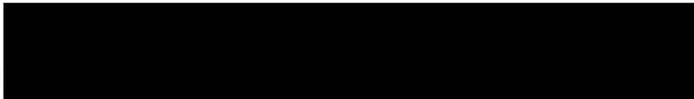
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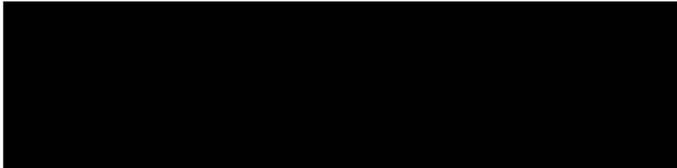
Petitioner:

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.

  
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 an association of Baptist churches. 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 the pastor of International Church for all Nations. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a pastor immediately preceding the filing date of the petition.

On appeal, the petitioner submits letters and documents intended to establish the beneficiary's service as a pastor.

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) 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 March 22, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a pastor throughout the two years immediately prior to that date.

An alien seeking classification as a special immigrant minister must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought, and must intend to be engaged solely in the work of a minister of religion in the United States. *See Matter of Faith Assembly Church*, 19 I&N 391, 393 (Commr. 1986). We note that the Ninth Circuit Court of Appeals, with jurisdiction over the California Service Center, 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).

Translated letters from officials of Ebenezer Baptist Church of Rio de Janeiro, Brazil, indicated that the beneficiary was ordained as a pastor in late 2002. Rev. [REDACTED], Senior Pastor of that church, stated that the beneficiary "worked from October 1, 2002 to December 9, 2004 as Pastor (Minister of Religion)," earning a monthly salary of 2,400 Brazilian reals, roughly equivalent to \$1,050 in United States currency.

Copies of checks from the petitioning organization to the beneficiary at the International Church of all Nations show "Monthly Support" from January through November of 2005. The earliest checks show a single \$1,000 payment per month. Beginning in March, the checks show two \$500 payments per month, except that there is only one \$500 check each for October and November. Because the copies show the checks in an unprocessed state with pay stubs still attached, the initial submission did not include evidence that the beneficiary actually received these payments.

In a letter dated November 7, 2005, [REDACTED] the petitioner's Executive Director of Missions, stated that the beneficiary "will be provided \$3,379.52 per month by the [petitioner] and other sources in 2006. This includes salary, transportation, mobile phone, and health insurance." Mr. [REDACTED] did not identify the "other sources" or specify how much of the beneficiary's compensation would come from "other sources" than the petitioner. An August 16, 2004 letter from Mr. [REDACTED] indicated that the beneficiary "will be paid a salary of \$30,000 per year." We note that \$3,379.52 per month equals \$40,554.24 per year. The two compensation figures, therefore, differ significantly from one another. The letters did not indicate how these intended future rates of compensation compared to the beneficiary's prior compensation.

On October 4, 2006, the director issued a request for evidence, instructing the petitioner to submit "evidence of the beneficiary's work history beginning March 22, 2004 and ending March 22, 2006," including evidence "that shows monetary payment." In response, the petitioner submitted a new letter from [REDACTED], who reaffirmed and expanded the information provided in his earlier letters. Rev. [REDACTED] did not provide the requested documentary evidence of monetary payment, or explain the absence of that evidence. Rev. [REDACTED] simply repeated the prior claim that the beneficiary received 2,400 reals per month.

An unsigned document on the petitioner's letterhead indicated that the beneficiary had worked for the petitioner for over 40 hours per week since January 2005, with a typical week's duties consisting of 15 hours of preaching and Bible study services, eight hours of "evangelism and outreach," and 23 hours of "administrative duties." The document listed the beneficiary's "Annual Salary" as "\$30,000/year, which includes salary and all housing/transportation allowances," despite the earlier assurance that the petitioner's annual compensation would exceed \$40,000. The same letter indicated that the petitioner "has paid [the

beneficiary's] full-time salary for more than two (2) years," with no reference to any "other sources" contributing toward the beneficiary's support.

The petitioner submitted copies of the three final semimonthly paychecks for 2005 that had not been included in the petitioner's initial submission. As before, these checks were not processed before being copied. An Internal Revenue Service Form 1099-MISC Miscellaneous Income statement indicates that the petitioner paid the beneficiary \$11,500 in "Nonemployee compensation" in 2005. This sum is consistent with payments of \$1,000 per month minus \$500 (reflecting the single \$500 check for October 2005).

With regard to 2006, the petitioner submitted copies of seven unprocessed \$500 checks – one from January and two each from February, March and April. The interruptions in October 2005 and January 2006 were neither acknowledged nor explained.

Also unexplained was the discrepancy between the beneficiary's claimed compensation of \$30,000 per year (or \$40,554.24 per year) and the documented compensation of less than \$12,000 per year. The petitioner provided no documentary evidence to show that it had provided the balance of the amount to the beneficiary in other forms, such as housing and insurance. For instance, the petitioner submitted no evidence that it owned or leased the property where the beneficiary was said to reside.

The director denied the petition on July 16, 2007, stating that the evidence is inconsistent with the petitioner's claims regarding the beneficiary's compensation and job title, and that the petitioner failed to submit adequate evidence of the beneficiary's claimed past work.

On appeal, [redacted] condemns the director's "arbitrary conclusion" that a letter from "the church in Brazil," is not "sufficient proof" of the beneficiary's work in Brazil. The director had requested evidence of compensation, and the petitioner did not explain why no such evidence was forthcoming from Brazil. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The beneficiary's prior employment and compensation is clearly material to the proceeding.

[redacted] discusses a site visit by an Immigration Officer (IO), and states that the petitioner "made it clear to the Service that [the beneficiary's] compensation consisted of monetary payments paid by the [petitioner] and a housing/living allowance, which combined equal and/or exceed the amounts quoted in the referenced letters." Passing a site visit does not mandate approval of the related petition, particularly when issues are involved that would not be apparent from a site visit. The site visit confirmed that the beneficiary is an active minister, but there are other eligibility factors that must be met before the petition can be approved.

Regarding the petitioner's own claimed prior compensation of the beneficiary, [redacted] asserts "[w]e no longer receive cancelled checks. We are still in the process of working with our bank to obtain copies of the cancelled checks." Mr. [redacted]'s letter is dated September 4, 2007. To date, over a year later, the record contains no copies of processed checks. Bank statements would also presumably confirm processing of the checks, but the petitioner has not submitted this evidence either.

denounces what he calls the director's "blatant assumption" that the photocopied paychecks were not consistent with the proffered rate of compensation. [REDACTED] asserts "the housing/living allowance that the local church provides to [the beneficiary] is not monetary in nature." The record indicates that the beneficiary has resided with [REDACTED]. Rev. [REDACTED] is the beneficiary's father in law, but neglected to mention that relevant fact until the AAO raised the issue in subsequent correspondence. While [REDACTED] is also a minister with the church, it does not follow that the beneficiary's housing has been provided by "the local church." The record does not show that the church owns [REDACTED]'s house, or that the funds expended in supporting the beneficiary are drawn from church assets rather than [REDACTED]'s personal assets. Rev. [REDACTED] appears to be the "other sources" to which [REDACTED] had alluded earlier.

The letter from [REDACTED] is dated October 10, 2005, but it was notarized almost two years later, on September 13, 2007. In that letter, [REDACTED] asserted that he provides the beneficiary and his family with housing, food, telephone, transportation and insurance worth \$2,379.52 per month. This amount, added to the \$1,000 monthly checks, adds up to the \$3,379.52 per month stated in [REDACTED]'s previous letter. In that letter, however, [REDACTED] did not indicate that housing would be part of that compensation. Rather, he stated that the \$3,379.52 per month "includes salary, transportation, mobile phone, and health insurance." Only on appeal does the petitioner claim that the stated amount included housing costs. This revision of the petitioner's claim lacks credibility.

On August 8, 2008, the AAO notified the petitioner of its intent to dismiss the appeal. That notice reads, in part:

In denying the petition, the director found that the record contained "no evidence that the petitioning church provide[d] any benefits to the beneficiary for 2005 and 2006." On appeal, your organization has submitted an October 10, 2005 letter from [REDACTED], indicating that he supports the beneficiary "and his family" with housing, food, and other benefits. Mr. [REDACTED] listed his address as [REDACTED] which is the address previously provided for the International Church for all Nations. (A 2006 church publication submitted on appeal provides a different address for that church). . . .

Publicly available information raises several questions relating to [REDACTED]'s letter. Your organization has claimed that the beneficiary's housing represents part of his compensation package. The record, however, contains no evidence that the property at [REDACTED] [REDACTED] was ever owned or leased by the church as an organization (rather than by [REDACTED] as an individual). If the beneficiary's housing did not come from church assets, then we cannot reasonably conclude that such housing was a benefit provided by the church. Housing provided by a church employee who, in turn, purchased or leased the property with his own assets is not church-provided housing.

According to her passport, the beneficiary's spouse is the daughter of [REDACTED] and [REDACTED]. Therefore, it is not readily apparent that [REDACTED] housed the beneficiary's family based on the beneficiary's employment, rather than his family relationship with the beneficiary. . . .

Your submissions identify <http://www.ichurchforallnations.org> as the web site of the International Church for all Nations. That web site identifies [REDACTED] as the church's senior pastor. The web site of the Southern Baptist Convention also identifies [REDACTED] as the pastor of the International Church for all Nations.<sup>1</sup> On appeal, however, you claim that the beneficiary is the senior pastor of that same church. This discrepancy raises further doubts about the credibility and accuracy of your organization's claims.

The highly questionable claim that the beneficiary received housing because he worked for the church, rather than because he is [REDACTED]'s son-in-law, casts doubt on your organization's overall credibility, as does your claim on appeal that the beneficiary, not [REDACTED] is the senior pastor of the International Church for all Nations. The petition cannot be approved absent a full and persuasive resolution of such doubt.

In response, the petitioner submitted the new address used by International Church for all Nations, and explained that because that church typically uses rented or borrowed spaces for worship, the church uses the pastor's home address as its mailing address. The petitioner also submitted evidence supporting the claim that the beneficiary is a minister. The question at the root of the AAO's inquiry, however, was not whether the beneficiary is a minister at all, but rather the extent to which he engages in ministerial duties.

[REDACTED] states "We committed \$1,000 per month to the church planter. The church committed \$1,500 per month." These sums, together, add up to \$30,000 per year. The petitioner has repeatedly gone back and forth between two conflicting versions of the beneficiary's total compensation. Furthermore, the record is devoid of evidence that International Church for all Nations committed or provided any of its assets to the beneficiary's support. [REDACTED] and International Church for all Nations are not interchangeable.

The petitioner indicated that [REDACTED] had been the beneficiary's predecessor as the senior pastor of International Church for all Nations, and that the church had simply been delinquent in updating its web site. Letters and documents submitted in response to the AAO's August 8, 2008 notice identify both the petitioner and his spouse as "pastors" of International Church for all Nations, but the petitioner also submitted copies of income tax returns that identify the beneficiary's spouse's occupation as "homemaker" (2005) or "home care" (2006 and 2007).

On his 2005 income tax return, the beneficiary twice identified himself as a "sound engineer," once under "Occupation" and once under "Principal business or profession." In later years, the beneficiary stated his occupation and principal business as "clergy." The beneficiary's documented self-identification as a "sound engineer" does not lend credence to the claim that the beneficiary has worked solely as a minister in the United States.

[REDACTED] stated that he took on an assistant pastor because "business at the company [where] I have been working began to demand more involvement from myself." [REDACTED] thus stipulated that he has not

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<sup>1</sup> <http://sbc.net/churchsearch/church.asp?ID=3231%2D30327>, visited on July 22, 2008.

worked solely as a pastor, but he provided no other information about his outside employment. The AAO's efforts to learn more about this employment led to the issuance of a second notice of intent to dismiss on September 17, 2008. That notice read, in part:

In response to the AAO's August 8, 2008 notice, [REDACTED], the beneficiary's father-in-law and his predecessor as Senior Pastor of the International Church for all Nations, stated that he engaged the services of an assistant pastor because "business at the company [where] I have been working began to demand more involvement from myself." Records maintained by the Georgia Secretary of State identify [REDACTED]'s company as Legacy Trading Company, Inc. That company's 2008 Corporation Annual Registration identifies [REDACTED] as the company's chief executive officer. This evidence proves that the position of senior pastor of International Church for all Nations is not necessarily a full-time, exclusive position.

Other records maintained by the Georgia Secretary of State indicate that the beneficiary . . . filed a Certificate of Organization on August 7, 2008 for Information Express Media LLC. The filing identifies the beneficiary as a "Member/Manager" of the domestic limited liability company. This document creates a very strong presumption of the beneficiary's disqualifying intent to engage in secular business in the United States.

In response, the beneficiary states that, because of adverse actions by CIS unrelated to the present proceeding:

we started to make arrangements to go back to Brazil. After the last notices we had received and the eminent possibility of having to leave the country, I decided to open the referred company in order to create a link for a future possible opportunity of coming back to U.S.A. with a business visa in case we did not hear positively from your office in Washington. This is NOT my intention since I came to this country.

The beneficiary, in effect, asserts that he had no intention of actually operating Information Express Media, LLC, but he created that company only to create a foothold for future immigration proceedings, at which point he would resume his ministry. The beneficiary's stated willingness to manipulate the immigration process in this way does not reduce the credibility problems evident throughout this proceeding.

The latest correspondence attributed to [REDACTED] reads, in part:

I was not informed or know that [the beneficiary] had applied for a LLC corporation. Had I been consulted, I would have said no. He now tells me that he was starting this LLC in case his appeal was denied. His feeling was that he might have an opportunity to return to the US on a business visa. He also tells me he has not done any work for Information Express Media LLC. . . .

Many full-time pastors in our association do part-time consultations during their free time. [The beneficiary] is a full-time pastor without legal permission to do part-time work. Had I known, I would have corrected it.

(*Sic.*) The assertion regarding “part-time consultations,” coupled with ██████████’s documented involvement with a company outside the church, does not indicate that pastors under the petitioner’s jurisdiction routinely work exclusively as ministers. This raises the question of how much work the beneficiary actually intended to do through his limited liability company. An intent to do such work would disqualify him for classification as a special immigrant minister. On the other hand, if the beneficiary was correct in his assertion that he had no such intent, then he was essentially “gaming the system” by setting up a “dummy” company solely to procure immigration benefits for himself.

The record establishes that the petitioner has engaged the beneficiary, to some extent, as a minister during part of the two-year qualifying period. Because of discrepancies and contradictory assertions in the record, however, we cannot be confident that the beneficiary’s ministerial work was either *exclusive* or *continuous* during that time. The record simply contains too many anomalies – such as the beneficiary’s registration of a secular company, his self-identification as a sound engineer, and repeated inconsistencies in the description of the beneficiary’s compensation package – to permit a finding that the petitioner has credibly met its burden of proof.

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 burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.