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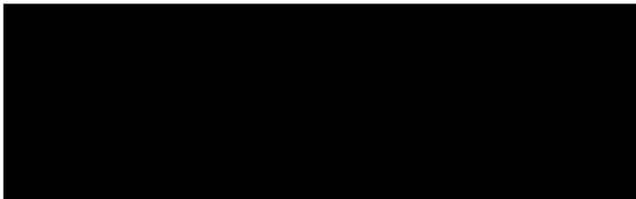
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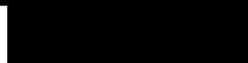


U.S. Citizenship
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C1



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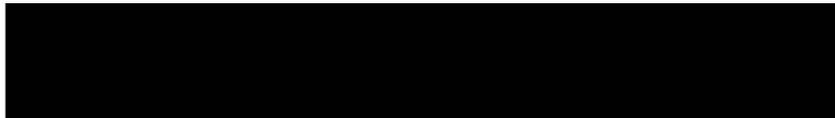
WAC 07 023 51621

Office: CALIFORNIA SERVICE CENTER

Date: **OCT 29 2008**

IN RE:

Petitioner:



Beneficiary:

PETITION:

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.

A handwritten signature in cursive script, appearing to read "Mai Johnson".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a conference of 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 a pastor. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

On appeal, counsel asserts that the director erred in finding that the beneficiary had not been a full-time paid employee since November 2004. Counsel submits additional documentation in support of the appeal.

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 issue presented on appeal is whether the petitioner established that the beneficiary had been continuously employed in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file a Form 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.” The regulation 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.”

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) 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 November 2, 2006. Therefore, the petitioner must establish that the beneficiary was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

In its October 27, 2006 letter accompanying the petition, the petitioner stated that the beneficiary was ordained as a minister by the Iglesia Evangelica Misionera in January 2003 and by the International Pentecostal Holiness Church on November 18, 2004, and that he has been working as a minister since March 25, 2003. The petitioner submitted a copy of an identification card from Association Iglesia Evangelica Misionera identifying the beneficiary as a pastor. The only date shown is January 2005. The Manual of the International Pentecostal Holiness Church contains provisions for the transfer of ministerial credentials from another "fellowship." However, the petitioner submitted no evidence to confirm that the beneficiary was ordained by the Iglesia Evangelica Misionera in 2003.

The regulation at 8 C.F.R. § 204.5(m)(3)(ii)(B) provides that if the alien is a minister, the petitioner must provide evidence that "he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy." Accordingly, the petitioner has not established that the beneficiary was qualified to practice as a minister throughout the qualifying period.

The petitioner stated that the beneficiary is the pastor of Vida Nueva, which began as the Hispanic Ministry of the Grace Pentecostal Holiness Church, and that Vida Nueva will compensate the beneficiary with an annual salary of \$28,000. The petitioner submitted no documentation to corroborate any employment by the beneficiary during the qualifying period.

In a request for evidence (RFE) dated December 11, 2006, the director instructed the petitioner to:

Provide evidence of the beneficiary's work history for the years 2004, 2005 and 2006. Provide experience letters written by the previous and current employers that include a breakdown of duties performed in the religious occupation for an average week. Include the employer's name, specific dates of employment, specific job duties, number of hours worked per week, form and amount of compensation, and level of responsibility/supervision. In addition, submit evidence that shows monetary payment, such as pay stubs or other items showing the beneficiary received payment. If any work was on a volunteer basis, provide evidence to show how the beneficiary supported himself during the two-year period or what other activity the beneficiary was involved in that would show support.

In a February 14, 2007 letter submitted in response, the petitioner stated that the beneficiary is the founder of the Vida Nueva Hispanic Church and that he is a full-time pastor paid by the local church. A February 7, 2007 letter signed by the beneficiary as pastor of Vida Nueva, [REDACTED] as its vice president and [REDACTED] as its treasurer, indicated that the beneficiary "planted Iglesia Vida Nueva as a Hispanic Mission under Grace Church at the end of year 2003," and that Vida Nueva had since become an independent church. In a February 4, 2007 "work contract," these officers of Vida Nueva also stated that the beneficiary "is required to work for at least 40 hours per week and he is compensated with \$2480 per month," and that the church also assists the beneficiary with gasoline and telephone expenses. The contract indicated that the "present contract will rule from now." The petitioner did not indicate the terms of the beneficiary's employment during the qualifying period.

The beneficiary provided a summary of his duties as a minister since 2004 and copies of his Internal Revenue Service (IRS) Form 1040, U.S. Individual Income Tax Return, for the years 2004 and 2005. Both of the tax returns are dated January 2, 2007 and contain no evidence that they were filed with the IRS. The beneficiary reported \$9,700 in self-employment income for 2004 and \$9,050 in wages for 2005. The petitioner also submitted copies of IRS Form W-2, Wage and Tax Statement, issued to the beneficiary by Grace Church in 2005 and 2006. The 2005 IRS Form W-2 indicates Grace Church reported wages of \$9,050 and housing of \$18,200. The 2006 IRS Form W-2 indicates that Grace Church reported wages for the beneficiary of \$11,760. The petitioner also submitted a copy of an IRS Form 1099-MISC, Miscellaneous Income, for 2006, reporting nonemployee compensation for the beneficiary from Canzion Institute of Music.

In response to a second RFE dated March 5, 2007, the petitioner stated that, during the year 2004, the beneficiary "received offerings, not an established salary because at that time the Vida Nueva Hispanic mission was planting and it took some time to incorporate it as a mission church at Grace Church," and therefore the church did not issue the beneficiary a Form-W2. The petitioner stated:

[The beneficiary] received as payment several offerings during the year 2004, January through August; from Vida Nueva Hispanic Mission the amount of \$600 – six hundred dollars – paid monthly, plus \$400 – four hundred dollars – for housing. The rent of the pastoral house was \$400

As of September these [sic] offerings came to \$1.100 – one thousand one hundred dollars – and \$400 for housing each month. The Church also paid for pastor's cell phone. And the pastoral family was provided with a car donated from another church.

The annual compensation for year 2004 was \$14.000 – fourteen thousand dollars.

The petitioner also stated that:

During the year 2005, Vida Nueva Hispanic Mission at Grace Church, paid a monthly salary of \$1,300, January through December. 8,400 for housing.

The annual compensation for year 2005 was \$24.000-twenty four thousand dollars.

In addition, the church paid for the pastor's cell phone and donated him a car for the value of \$3.250-three thousand two hundred and fifty dollars.

Additionally, the petitioner stated:

During the year 2006, Vida Nueva Hispanic Mission at Grace Church, paid a monthly salary of \$980 and \$1.500 for housing, January through December.

The annual compensation for year 2006 was \$29,760—twenty-nine thousand seven hundred and sixty dollars.

In addition to that, the church paid for the pastor's cell phone and gasoline expenses for approximately \$100 per month.

The petitioner provided a "History of Vida Nueva Church" that indicated:

At the beginning of the church, [the beneficiary] and his wife . . . were working to start a small prayer group for Hispanic people, because of the growing number of immigrants coming to live around this area, people in need for the Word of God.

This way and together with [redacted] and [redacted] and [redacted] they started to organize this service for the people putting on paper their goals, purposes and the way they intended to move forward.

After the first service they continued to meet for prayer and Bible studies every week for the first three months. They were meeting in a church's building and after a while they had to move into the pastor [redacted]'s house. At that moment 14 people were meeting every Sunday morning.

The pastor also was visiting Hispanics in jail . . . giving them counseling and moral support.

In the year of 2004, this small group of people, met the Senior Pastor of Grace Church – associate church with the International Pentecostal Holiness Church – and were offered to become a mission church under their ministry. They began to experience a time of growth and expansion and they went from meeting in a small Bible study room to the Fellowship room. They started organizing different ministries for different needs: praise and worship, youth, teaching, men and women. The congregation was formed by 50 adults and 20 kids by the end of year 2005.

The petitioner submitted copies of check stubs from Grace Church, indicating that the beneficiary was paid a salary of \$2,000 and a housing allowance of \$700 per month beginning on January 18, 2005 and continuing through December 15, 2005; and a salary of \$2,480 per month and a \$1,500 housing allowance beginning on December 21, 2005 and continuing through December 31, 2006. Thus the petitioner has provided conflicting documentation to indicate that the beneficiary was either paid \$15,600 in salary for the year 2005 plus \$8,400 for housing (as it stated in its March 5, 2007 letter), or \$22,000 in salary plus \$7,700 for housing (as indicated by the check stubs), or, as reported on the IRS Form W-2, \$9,050 in salary plus \$18,200, or total annual compensation of \$24,000 (again as indicated in its March 2007 letter). For 2006, the petitioner indicated that the beneficiary was paid either \$29,760 in salary and \$18,000 for housing (March 2007 letter), or \$11,760 in salary and \$18,000 for housing (check stubs, IRS Form W-2), or a total annual compensation of \$29,760 (March 2007 letter). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may, of course, 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). Further, the petitioner offered no explanation as to why documentation regarding the beneficiary's compensation referred to Grace Church as the payer instead of Vida Nueva. All documentation in the record indicates that the beneficiary has been paid or will be paid by Vida Nueva. The record contains no documentation that Grace Church is responsible or accountable for funds received or disbursed by Vida Nueva.

The director determined that although it appeared that the beneficiary “has been a full time paid senior pastor since 2005 the petitioner has failed to provide documented evidence that the beneficiary has been a paid full time senior pastor since November 2, 2004.” Based on the conflicting information regarding the beneficiary’s salary during 2005 and 2006, it is impossible to tell exactly what compensation was provided to the beneficiary, if any. Accordingly, we withdraw the director’s determination that the petitioner has established that the beneficiary has been paid for his services since 2005.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of “a number of safeguards . . . to prevent abuse.” See H.R. Rep. No. 101-723, at 75 (1990). The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged “principally” in such duties. “Principally” was defined as more than 50 percent of the person’s working time. Under prior law a minister of religion was required to demonstrate that he/she had been “continuously” carrying on the vocation of minister for the two years immediately preceding the time of application. The term “continuously” was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

The term “continuously” also is discussed in a 1980 decision where the Board of Immigration Appeals determined 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 (BIA 1980).

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

The “History of Vida Nueva Church” provided by the petitioner indicates that the church began as a part-time prayer group, which later became associated with Grace Church. The record does not clearly indicate when the position of pastor for Vida Nueva became a full-time occupation for the beneficiary. We note that in their February 7, 2007 letter, the beneficiary and [REDACTED] stated that the group became associated with Grace Church “at the end of 2003;” yet in the history of the church provided in response to the March 5, 2007 RFE, the petitioner indicated that the group became associated with Grace Church in 2004. The petitioner also indicated that the beneficiary’s compensation in 2004 consisted of “several offerings” during the months of January through August in the amount of \$600 monthly plus \$400 for housing, which increased to \$1,100 per month plus \$400 for housing. As evidence of this payment, the petitioner submitted a copy of the beneficiary’s IRS Form 1040, signed in January 2007, and reporting self-employment income of \$9,700, which is \$500 more than the amount that the petitioner stated he was paid for his services. We note that, although the beneficiary stated on his 2004 IRS Form 1040 that the

nature of his business was “religious service,” he listed his employment as “laborer” and claimed a \$922 deduction for “uniforms.” As the IRS Form 1040 was not dated until January 2007, three years after the beneficiary allegedly was paid for his services, it does not provide contemporaneous documentation of his employment in 2004. Like a delayed birth certificate, the late filing of the federal income tax returns three years after the claimed transaction raise serious questions regarding the truth of the facts asserted. *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).

On appeal, counsel states that the beneficiary was compensated for his services in 2004, and provided an affidavit from [REDACTED], an assistant to the bishop at the petitioning organization, in which he attested that the beneficiary was paid approximately \$14,000 for his work in 2004. According to [REDACTED], “This sum was calculated by the inclusion of offerings, housing, meals, and payment of his utility bills, office space, office equipment and supplies.” The petitioner provided no documentation to corroborate these payments. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Additionally, the petitioner again offers conflicting statements regarding the beneficiary’s compensation, as the total compensation initially alleged did not include payment of meals, utility bills, office space, office equipment and supplies. Further, we note that the beneficiary deducted these items as expenses on his IRS Form 1040 for the year.

Furthermore, as discussed previously, the petitioner has provided conflicting documentation regarding the beneficiary’s compensation for the years 2005 and 2006. The petitioner has submitted no competent objective evidence to explain the conflicting information. *Matter of Ho*, 19 I&N Dec. at 591. Additionally, the IRS Form 1099-MISC for 2006 indicates that the beneficiary worked outside the church for at least a part of 2006.

The evidence therefore does not establish that the beneficiary was continuously engaged in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition. The record does not clearly establish when, or if, the position of pastor became a full time position at Vida Nueva Church. The record also does not establish that the beneficiary has ever been compensated for his work for Vida Nueva Church.

Beyond the decision of the director, the petitioner has not established that the beneficiary’s prospective employer has the ability to pay the beneficiary the proffered wage.

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.

In its October 2006 letter, the petitioner stated that the beneficiary would receive an annual salary of \$28,000 including housing, insurance, professional expenses, and retirement. The petitioner further stated that the beneficiary would be compensated by Vida Nueva. In its February 14, 2007 letter submitted in response to the director's December 2006 RFE, the petitioner stated that local churches pay the salaries for pastors and that the beneficiary had "been supported by Grace Church "Vida Nueva" Hispanic Mission . . . every month to the present." However, the IRS Forms W-2 and the check stubs show that they were issued by Grace Church. The record does not include any documentation that shows a financial relationship between Grace Church and Vida Nueva.

The petitioner submitted copies of bank statements for Iglesia Vida Nueva for the months of January 2005 through January 2006 and a copy of Iglesia Vida Nueva's audited financial statement for 2006 combined with the accountant's compilation reports for the years 2004, 2005 and the first three months of 2007. The audited report indicates that Iglesia Vida Nueva paid \$29,846 in salary and benefits in 2006; however, the record is not clear that these were payments for the beneficiary's compensation. As noted, documentation submitted by the petitioner indicated that the beneficiary was paid by Grace Church and the petitioner submitted no documentation to show that Grace Church was reimbursed for payments to the beneficiary or was responsible in any other way for the financial obligations of Iglesia Vida Nueva. The net assets and ending cash for Iglesia Vida Nueva do not indicate that it had the ability to pay the beneficiary the proffered wage of \$28,000. The record therefore does not establish that the beneficiary's prospective employer has the ability to pay the proffered wage.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied 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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.