



U.S. Citizenship
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **SEP 17 2008**

WAC 07 045 53057

IN RE:

Petitioner:



Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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 separate finding of fraud and willful misrepresentation of a material fact.

The petitioner is identified as a church affiliated with Immanuel Evangelical Holiness 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: (1) its status as a qualifying tax-exempt religious organization; (2) that the beneficiary had the requisite two years of continuous work experience as an evangelist immediately preceding the filing date of the petition; (3) that the beneficiary's position qualifies as a religious occupation; or (4) the existence of a credible job offer.

On appeal, the petitioner submits various letters and documents.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

Before we discuss, in detail, the stated grounds for denial and the petitioner's response thereto, we shall set forth the basis for our finding of fraud, because the facts underlying that finding necessarily color our interpretation of the claims and evidence set forth by the petitioner in support of the petition.

On the Form I-360 petition, the petitioner initially stated its address as [REDACTED] North Brunswick, New Jersey. This address was obscured and replaced with another address, [REDACTED], Freehold, New

Jersey. The Freehold address appears on the printed letterhead of a November 24, 2006 letter from Rev. [REDACTED] who stated “[o]ur church is located at the owned premises of [REDACTED] North Brunswick, NJ.” We note that, despite this reference to “the owned premises of [REDACTED] North Brunswick, NJ,” the petitioner’s financial documents in the record do not list any real estate or building(s) among the petitioner’s assets.

A lease agreement dated March 25, 2005 indicates that the petitioner leased the property in Freehold from [REDACTED]. A worship program dated October 8, 2006 shows the Freehold address; there is no mention of the North Brunswick address. A promotional flier for a November 2005 “Youth Winter Festival” (*sic*) also shows only the Freehold address. The petitioner submitted a photograph that shows a blue and white church and a sign that reads: “New Anointing Church / ([REDACTED])” This is the same telephone number shown on the petitioner’s printed letterhead, alongside the Freehold address. “333” is a Freehold telephone exchange. These materials indicate that the petitioner has represented the Freehold address not merely as a business or mailing address, but as the actual, physical site of church functions.

Because the director’s denial of the petition rested, in part, on the issue of the petitioner’s physical location, the AAO conducted a search of publicly available documents and records. That search revealed that the structures at [REDACTED] Freehold, New Jersey, and [REDACTED] North Brunswick, New Jersey are single-family houses, not churches; the records include photographs of both dwellings.¹ The beneficiary has listed the Freehold address as her home address on tax documents. There is no credible evidence that [REDACTED] ever owned the property or acted as the landlord thereof. It appears, rather, that the beneficiary owns (or owned) the property at the Freehold address. On his 2005 federal income tax return, contained in the record, the beneficiary listed the Freehold address as his home address, and also claimed a tax deduction based on “Home mortgage interest.”

The above information indicates that the purported March 2005 lease agreement is not authentic. Furthermore, the structure shown in the submitted photograph is clearly a purpose-built church, not the five-bedroom house that is known to be located at the Freehold address. The church shown in the photograph, therefore, is not located at the Freehold address, and the AAO construes the petitioner’s submission of that photograph as an attempt to defraud Citizenship and Immigration Services (CIS).

The petitioner has provided two addresses for the petitioning church, in Freehold and in North Brunswick. Because the structures at both of those addresses are known to be single-family dwellings rather than churches, the AAO has little reason to believe that the petitioning church actually exists as a bona fide church. It appears, rather, that the church exists only “on paper” through corporate and tax filings intended to create the appearance that a functioning church exists.

¹ A listing for the North Brunswick property is located at http://www.newstarrealty.com/community/bbs/zboard.php?id=etc&page=23&sn1=&divpage=1&sn=off&ss=on&sc=on&select_arrange=headnum&desc=asc&no=5731; a photograph of the house appears at http://www.newstarrealty.com/community/bbs/data/etc/Áý »çÀø2_1.jpg. The web page at <http://www.zipcodesandmore.com/zipcodesandmore/zipResults.aspx?zip=07728&city=FREEHOLD> includes a listing for the Freehold property; a photograph of that house appears at <http://tours.tourfactory.com/tours/tour.asp?t=394574>. (All sites visited March 4, 2008.)

On March 8, 2008, the AAO notified the petitioner of the AAO's intent to dismiss the appeal with a finding of fraud. In that notice, the AAO stated:

The alien beneficiary . . . has actively participated in creating the appearance of a church, for instance by signing a letter accompanying the appeal and by filing tax documents relating to New Anointing Church. The beneficiary has, by actively participating in the petition, sought to procure admission into the United States and other benefits provided under the Act by virtue of his claimed activity with New Anointing Church.

Section 212(a)(6)(C)(i) of the Act states: "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." Absent independent and objective evidence to overcome, fully and persuasively, our above finding, the AAO will dismiss the appeal and enter a formal finding of fraud and willful misrepresentation into the record. This finding of fraud and willful misrepresentation can be considered in future proceedings in which the beneficiary's admissibility is an issue.

The AAO allowed the petitioner fifteen days to respond to the allegations in that notice. To date, the AAO has received no response from the petitioner or from counsel, and therefore the AAO must conclude that the petitioner has chosen not to contest those allegations. The AAO will, therefore, enter a finding of fraud at the conclusion of this decision.

We turn, now, to the merits of the petition and the director's findings.

TAX-EXEMPT STATUS

8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

The petitioner's initial submission included a letter from the Internal Revenue Service (IRS), issued on August 27, 2004. The church name and Employer Identification Number on the letter match the information shown on the Form I-360 petition. The letter stated, in part: "In May 2004 we issued a determination letter that recognized your organization as exempt from federal income tax . . . under section 501(c)(3) of the

Internal Revenue Code.” The letter was addressed to [REDACTED], North Brunswick, New Jersey, which is the address originally used on the Form I-360 before the petitioner replaced it with the Freehold address.

On April 2, 2007, the director issued a request for evidence (RFE), noting that the petitioning church is located in Freehold, but the IRS letter was sent to North Brunswick. The director requested evidence to show that the petitioning church in Freehold is tax-exempt.

In response to the RFE, the petitioner submitted a copy of its New Jersey Sales and Use Tax Exempt Organization Certificate, Form ST-5, showing the church’s Freehold address. The petitioner also submitted copies of utility bills issued to the beneficiary at the Freehold address.

The director denied the petition on July 17, 2007, stating that the petitioner’s New Jersey Form ST-5 did not establish *federal* tax-exempt status, and that “[t]he petitioner has not submitted documentation establishing that the petitioning organization located at [REDACTED] Freehold, NJ 07728 is connected with the organization holding 501(c)(3) tax exemption located [at] [REDACTED] North Brunswick, New Jersey.”

On appeal, the petitioner submits an IRS Form 8109 Federal Tax Deposit Coupon addressed to the petitioner at the Freehold Address, showing the same Employer Identification Number as that shown on the IRS letter from 2004.

The petitioner’s Certificate of Incorporation, filed March 26, 2004, stated “[t]he location of the principal office of this corporation is c/o [the beneficiary], [REDACTED], North Brunswick, New Jersey.” That same address was also provided as the residential address of all five members of the petitioner’s Board of Trustees: the beneficiary, [REDACTED] (possibly a variant spelling of [REDACTED] [REDACTED] (possibly the same person as [REDACTED] and [REDACTED]. A correction to that certificate, filed April 2, 2004, stated “[t]he location of the principal office of this corporation is [REDACTED], North Brunswick, New Jersey.”

The available evidence includes several links between the Freehold address and the North Brunswick address. The AAO therefore withdraws the director’s specific finding that the IRS recognition letter does not apply to the petitioning entity. Nevertheless, given that there is no evidence that any church actually exists at either of the addresses that the petitioner has provided, the AAO cannot find that the petitioner is legitimately entitled to tax-exempt status. The AAO therefore affirms the overall finding that the petitioner has failed to demonstrate that it is a *bona fide* church.

PAST 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 December 4, 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.

introductory letter indicated that “[s]ince he joined our church in April, 2004, [the beneficiary] has performed his duties as a Minister.” The next paragraph of the letter contains the assertion that the beneficiary “has been performing for our church as a Minister since October 1, 2004.” signed a “Certificate of Experience” describing the beneficiary’s “Employment Period” as “April, 2004 – Present.”

Income tax documents submitted with the initial filing indicate that the petitioner paid the beneficiary \$5,000 in 2004 and \$19,500 (plus a \$12,000 “Parsonage Allowance”) in 2005. We note that the federal tax returns are marked as having been prepared by a paid preparer, but the preparer’s signature does not appear on the copies of the returns. Therefore, the returns do not comply with 26 C.F.R. § 1.6695-1(b)(1), which generally provides that an income tax return preparer must manually sign the return in the appropriate space provided on the return after it is completed and before it is presented to the taxpayer (or nontaxable entity) for signature.

In the RFE, the director requested further evidence of the beneficiary’s work history during the 2004-2006 qualifying period, including evidence of payment or other financial support.

In response, the petitioner submitted additional copies of the beneficiary’s 2004-2005 tax documents and newly available 2006 documents, showing that the petitioner paid the beneficiary \$25,000 in 2006. On his 2006 tax return, the beneficiary reported \$6,259 in “gambling winning” and deducted \$6,259 in “gambling losses.” A previously submitted copy of a bank statement shows \$1,805.90 in withdrawals from the petitioner’s bank account at a casino in Atlantic City, New Jersey over the course of two days in August 2006. These two documents, taken together, appear to indicate that the beneficiary gambled with what were ostensibly church funds, and reported his winnings and losses on his individual income tax return. The beneficiary’s 2005 federal income tax return also reports gambling activity, showing \$3,065 in “gambling winnings” and a \$3,065 deduction for “gambling losses.”

In denying the petition, the director found that the petitioner had made contradictory assertions, stating in the same letter that the beneficiary began working for the petitioner on October 1, 2004, and on November 11, 2004. The director also noted that incorporation documents dated March 2004 placed the beneficiary on the petitioner’s board of directors. The director found that the petitioner’s claims lacked credibility because of these inconsistencies.

On appeal, the beneficiary, referring to himself in the third person, asserts that he worked as an unpaid volunteer “until September 30, 2004,” and then, upon attaining R-1 nonimmigrant religious worker status, became a paid worker beginning in October 2004. The beneficiary notes the petitioner’s submission of tax documents to establish that the beneficiary received payment throughout the December 2004-December 2006 qualifying period.

Once again, the credibility issues cited in the AAO’s finding of fraud come into play here. Given that several of the petitioner’s bedrock claims have been discredited by independent evidence, the petitioner’s

unsupported assertions have negligible weight. 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 tax documents are not primary evidence of the beneficiary's compensation, because they do not document the financial transactions themselves. When the petitioner and the beneficiary have compromised their credibility, information that they report on tax forms carries greatly diminished weight.

All of the beneficiary's qualifying experience is purported to have taken place at the petitioning church. Because the record contains no credible evidence that the petitioning church physically exists, the AAO cannot see how the beneficiary could have worked for the petitioner during the two-year qualifying period. Given the derogatory evidence, and the petitioner's failure to rebut it, the AAO concludes that claims regarding the beneficiary's experience with the petitioning church are no more credible than the petitioner's claims to have been located at [REDACTED], North Brunswick, and at [REDACTED] Freehold.

The AAO affirms the director's finding that the petitioner has not adequately established that the beneficiary worked continuously as a minister throughout the two-year qualifying period.

RELIGIOUS OCCUPATION

The next issue concerns the nature of the beneficiary's claimed work for the petitioner. The director, in denying the petition, cited the regulatory definition of "religious occupation" at 8 C.F.R. § 204.5(m)(2):

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The director concluded: "the petitioner has not established that the duties of the beneficiary's prospective occupation relate to a traditional religious function."

The petitioner, however, has claimed that the beneficiary's position is that of a minister, not a religious occupation. Ministers fall under a separate regulatory definition at 8 C.F.R. § 204.5(m)(2):

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection

between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

Because the requirements for a minister differ substantially from those for an alien in a religious occupation, the director's arguments regarding "traditional religious functions" are not applicable in this proceeding. The director's related finding is withdrawn for this reason.

JOB OFFER

The final stated ground for denial concerns the petitioner's job offer to the beneficiary. 8 C.F.R. § 204.5(m)(4) requires an authorized official of the religious organization seeking to employ the beneficiary 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).

At the time of filing, [REDACTED] described the beneficiary's "primary duties":

1. plan, administer, implement, and monitor missionary programs and activities of the church under the supervision of senior pastor;
2. provide administrative leadership for the missionary committee, the professional staff, and all volunteers within the church;
3. provide congregational direction for missionary and evangelism through the use of effective organizational leadership, communication, family and spiritual counseling, fellowship activities, group facilitation, and strategies designed for congregational revitalization;
4. set educational guidelines to provide a diverse curriculum of spiritual enrichment through evangelism and missionary work and expose the congregation to new experiences that provide life long learning opportunities through missionary and evangelism, and conduct Bible Study Classes and teach Bible to church members; and
5. Plan and arrange Sunday Worship Service, and perform the Sunday liturgy.

The director's RFE did not touch on the specifics of the beneficiary's duties or job offer, except in the context of the beneficiary's work history. The director requested a specific breakdown of the beneficiary's duties and the hours involved in performing those duties. In response, the petitioner repeated the list shown above.

The director also asked the "[n]umber of volunteer and paid ministers and staff serving the petitioner's church." In response, [REDACTED], identified as "Pastor," stated: "There are five Sunday School teachers [and] 20 members in the choir. . . . There is only one minister and one Evangelist who get paid."

In denying the petition, the director stated that the petitioner failed to provide requested information in response to the RFE. The director also noted that the petitioner had filed another special immigrant religious

worker petition on behalf of another alien.² The other alien was said to be employed as an evangelist, with the following duties described by [REDACTED]

1. plan, administer, implement, and monitor missionary programs and activities of the church under the supervision of the pastor;
2. prepare, plan and arrange Sunday School;
3. perform the Sunday liturgy;
4. lead the Bible classes;
5. assist the pastor of church administration;
6. visit the sick and lonely members;
7. provide congregational direction for missionary and evangelism through the use of effective organizational leadership, communication, family and spiritual counseling, fellowship activities, group facilitation, and strategies designed for congregational revitalization;
8. set educational guidelines to provide a diverse curriculum of spiritual enrichment through evangelism and missionary work and expose the congregation to new experiences that provide life long learning opportunities through missionary and evangelism, and conduct Bible Study Classes and teach Bible to church members; and
9. counsel our members, including for the children and youth group.

The director stated: "The duties of the proffered position of Minister are completely encompassed by the duties of the position of Evangelist. It appears the positions of Evangelist and Minister perform almost identical duties. Therefore, the petitioner has not established that the beneficiary's services as a Minister are required or that the duties that the beneficiary performs are actually associated with the position of Minister."

The director also noted that the petitioner supposedly employs "only one minister," yet the beneficiary supposedly works "under the supervision of the senior pastor." The director stated: "The petitioner's list of employees does not indicate any other employees or volunteers who match the description of 'Senior Pastor' as described in the beneficiary's duties."

The petitioner, on appeal, submits an hourly breakdown of the beneficiary's duties. The director had requested this information in the RFE, and the petitioner did not submit it at that time. Therefore, the AAO will not consider this information on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533, 537 (BIA 1988).

Regarding the "senior pastor," the beneficiary (describing himself in the third person) states that he himself succeeded "[REDACTED]" as senior pastor of the petitioning church, and that "[b]ecause he has both the position of the Minister and the Senior Pastor, it was not particularly necessary to include both in the staff list." The flaw in this explanation is that the petitioner's RFE response included new correspondence from [REDACTED], indicating that [REDACTED] had not yet left the church at the time the staff list was prepared.

² The receipt number of the other petition is WAC 07 059 50072; the petition is located in [REDACTED]

When considering whether the director's misgivings about the job offer are warranted, we cannot ignore the evidence that led to the finding of fraud in this proceeding. The petitioner has supposedly offered the beneficiary a position as the minister of a church at [REDACTED] North Brunswick, which later purportedly relocated to [REDACTED], Freehold. Because there is no church at either address, we cannot reasonably find that the petitioner has extended a *bona fide* job offer to the beneficiary. The record contains no reliable evidence that the beneficiary has ever performed the functions of clergy for the petitioner, or that the petitioner engages in any activities that would justify the employment of a minister.

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.

The AAO finds that the petitioner, with the beneficiary's participation, 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. See 18 U.S.C. §§ 1001, 1546. The AAO will enter a finding of fraud and willful misrepresentation of a material fact.

Additionally, the evidence is not credible and will not be given any weight in this proceeding. If CIS fails to believe 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 fraudulent documents brings into question the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *See Matter of Ho* at 591.

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.