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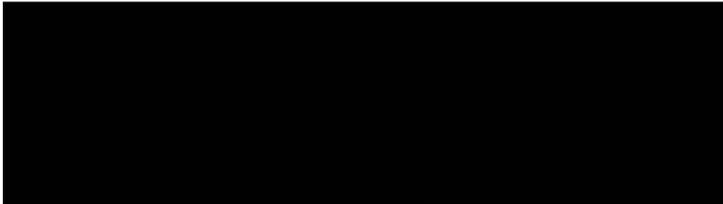
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **SEP 18 2008**
WAC 07 079 53045

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

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.

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 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 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, that the beneficiary came to the United States solely to work as a minister, that the beneficiary is qualified for the position, that the petitioner had extended a qualifying job offer to the beneficiary, or that the petitioner has the ability to pay the proffered wage.

On appeal, counsel submits additional documentation.

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 first issue 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 January 19, 2007. Therefore, the petitioner must establish that the beneficiary was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

With the petition, the petitioner submitted an October 31, 2006 letter from the Muscatine District, Iowa Annual Conference of the United Methodist Church, signed by [REDACTED] as district superintendent. [REDACTED] stated that the beneficiary came to the United States in 2001 and attended the Galilee Korean United Methodist church for over four years before becoming its associate pastor in 2004 pursuant to an R-1 nonimmigrant religious worker visa. The letter indicated that the beneficiary was appointed interim pastor of the petitioning organization in March 2006 and became its pastor in July 2006. In its November 12, 2006 letter accompanying the petition, the petitioner stated that the beneficiary received \$54,885 per year for his services "in addition to the use of the church parsonage." The petitioner submitted three church bulletins dated in November and December 2006 that identify the beneficiary as the pastor of the church. However, it submitted no other documentation to verify the beneficiary's employment during the two years immediately preceding the filing of the visa petition.

In a request for evidence (RFE) dated April 5, 2007, the director instructed the petitioner to:

Provide evidence of the beneficiary's work history beginning January 19, 2005 and ending January 19, 2007 only. 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 hat other activity the beneficiary was involved in that would show support.

The director also instructed the petitioner to submit copies of the beneficiary's Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, for the years 2005 and 2006.

In response, the petitioner submitted a May 20, 2007 letter from the Galilee Korean United Methodist Church signed by [REDACTED] as senior pastor. [REDACTED] stated that the beneficiary had worked as associate pastor for the church from October 2004 through February 2006. [REDACTED] stated that the beneficiary preached when the senior pastor was absent, was responsible for recruiting for Sunday school, training teachers and small group leaders, attending the classes, was in charge of administrative work and performed

“various pastoral duties such as counseling, organizing local outreach events and performing funerals.” [REDACTED] stated that the beneficiary worked approximately 40 hours per week and was compensated at the rate of \$38,000 per year.

The petitioner submitted a copy of a 2005 IRS Form W-2 issued to the beneficiary by the Galilee Korean United Methodist Church reporting wages paid of \$38,000. The petitioner also submitted copies of IRS Form 941 for 2005, Employer’s Quarterly Federal Tax Return, showing that the Galilee Korean United Methodist Church reported wages for one employee in the amount of \$20,000 for the quarter ending September 2005 and \$18,000 for the quarter ending December 2005, and a copy of Form W-3, Transmittal of Wage and Tax Statements, for the year 2005 in the amount of \$38,000. The petitioner also submitted a copy of a pay stub for the beneficiary indicating that the Galilee Korean United Methodist Church paid him \$3,000 in January 2006, and canceled checks made payable to the beneficiary from the Galilee Church in the amount of \$2,577.50 (\$3,000 less deductions).

Additionally, in a May 3, 2007 letter provided in response to the RFE, the petitioner stated that the beneficiary had worked as its pastor since July 2006 and served as its interim pastor from March through June “2007.” The petitioner stated that the beneficiary worked 40 hours per week, devoting approximately 10 hours to preparing his sermons; 15 hours to visiting families, the hospital, and counseling; and 15 hours to worship services, administrative work and conferences. The petitioner submitted a copy of the beneficiary’s Form W-2 for 2006, indicating that it paid the beneficiary \$18,600 in reportable wages (\$19,200 in reportable Medicare wages and tips). The petitioner also submitted copies of checks that it made payable to the beneficiary on the following dates and in the following amounts:

| | |
|--------------------|-------------|
| April 16, 2006 | \$ 1,650 |
| May 21, 2006 | 1,650 |
| June 15, 2006 | 1,650 |
| June 18, 2006 | 825 |
| August 13, 2006 | 2,100 |
| August 13, 2006 | 65.12 |
| September 11, 2006 | 2,100 |
| October 11, 2006 | 2,100 |
| October 29, 2006 | 300 |
| November 11, 2006 | 2,100 |
| December 10, 2006 | 2,100 |
| Total for 2006 | \$16,640.12 |
| January 14, 2007 | \$ 2,300 |
| February 11, 2007 | 2,300 |
| March 12, 2007 | 2,300 |
| March 18, 2007 | 120.07 |

The director noted that the petitioner failed to provide a day-to-day work schedule for the beneficiary. The director determined that although the petitioner provided a statement about the beneficiary’s duties and evidence that he was paid, the evidence was insufficient to determine that the beneficiary was engaged in full-time employment, and denied the petition on August 20, 2007.

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).

Section 101(a)(27)(C)(iii) of the Act provides 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 regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The 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). As noted, the petitioner failed to submit a detailed weekly work schedule as requested by the director. On appeal, the petitioner submits a copy of the beneficiary’s October 2007 calendar showing his congregational visits. However, as this is outside of the qualifying period, it is of no evidentiary value in establishing that the beneficiary worked full time for the two years immediately prior to the filing of the visa petition.

Counsel states on appeal that the beneficiary works at least 37 hours per week and provides a detailed weekly work schedule for the beneficiary. However, no documentation in the record supports this information from counsel. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and had it submitted the requested documentation on appeal, the AAO would not have considered this evidence for any purpose. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533.

The director noted that on its IRS Form 941 for 2005, the Galilee Korean United Methodist Church indicated that the beneficiary's position was that of education pastor, and that [REDACTED] indicated that the beneficiary's position was that of associate pastor. The director questioned whether the beneficiary had been engaged in the same position as that of the proffered position for two full years prior to the filing of the visa petition.

According to section 203(b)(4) of the Act and 8 C.F.R. § 204.5(m)(1), the beneficiary must have two years continuous experience in the occupation for which he or she is seeking entry into the United States.

As discussed above, [REDACTED] stated that the beneficiary had worked as associate pastor for the Galilee Korean United Methodist Church and that he preached when the senior pastor was absent, was responsible for recruiting for Sunday school, and for training teachers and small group leaders in addition to the administrative work and "various pastoral duties such as counseling, organizing local outreach events and performing funerals."

In his May 8, 2007 letter accompanying the petitioner's response to the RFE, [REDACTED] verified that the beneficiary had been appointed as associate pastor for the Galilee Korean United Methodist Church. He further stated that an associate pastor is an ordained pastor appointed to assist the pastor or senior pastor in the pastoral care of a congregation, and that the duties "include, but [are] not limited to, preaching, teaching, counseling, sanctifying, and administrative works." [REDACTED] also stated that a pastor is an ordained pastor appointed to attend to the pastoral care of a congregation, and that the duties include preaching, teaching, counseling and sanctifying.

We find that, although the IRS Form 941 from Galilee Korean United Methodist Church and the beneficiary's résumé indicate that he was the "education pastor," the position at the Galilee Korean United Methodist Church was that of associate pastor. We further find that the duties of the position of associate pastor are not substantially or materially different from that of the proffered position. We withdraw the director's statements to the contrary.

Nonetheless, according to the letter from [REDACTED] of the Galilee Korean United Methodist Church, the beneficiary worked for it from 2004 to February 2006. According to the tax documentation submitted, however, the church did not report any wages for the beneficiary during the first half of 2005. On appeal, the petitioner submits a copy of the beneficiary's unsigned and undated IRS Form 1040, U.S. Individual Income Tax Return, for the year 2005. Even if the wages paid to the beneficiary were meant to compensate him for his services for the entire year of 2005, it appears to have been all paid during the latter half of the year. [REDACTED] did not indicate how the beneficiary supported himself during the first half of the year. The record is therefore unclear as to whether the beneficiary was continuously engaged in work as a minister throughout 2005.

Additionally, the petitioner submitted no evidence of any compensation received by the beneficiary in March 2006. According to the documentation submitted, the beneficiary's employment with the Galilee Korean United Methodist Church ended in February 2006 and the petitioner began paying the beneficiary in April 2006. Again, the petitioner did not provide any evidence of how the beneficiary supported himself during this period. On appeal, the petitioner submits a copy of the beneficiary's IRS Form 1040 for 2006 on which he reported \$28,100 in self-employment income. The beneficiary did not identify the source of his self-employment income but attached a copy of his IRS Form W-2 for 2006 from the petitioning organization, which reports wages of \$18,600 but does not show any deductions for taxes. The record is therefore unclear

that the beneficiary worked continuously as a minister throughout this period and was not engaged in secular work.

Accordingly, the evidence 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 second issue on appeal is whether the petitioner established that the beneficiary entered the United States solely for the purpose of working for the petitioner as a pastor. The record reflects that the beneficiary entered the United States on October 1, 2001 pursuant to a B2 nonimmigrant visitor's visa which was valid until March 31, 2002. On September 24, 2002, the beneficiary was approved for an F-1 student visa, and on October 15, 2004 for an R-1 visa valid until June 30, 2007. The director concluded that the petitioner had not established that the beneficiary entered the United States solely for the purpose of working as a minister. However, the regulation does not require that the alien's initial entry into the United States to be solely for the purpose of performing work as a religious worker. "Entry," for purposes of this classification, would include any entry under the immigrant visa granted under this category or would include the alien's adjustment of status to the immigrant visa. We withdraw this statement by the director.

The director also concluded that the petitioner had failed to provide evidence that the beneficiary was authorized to work for the petitioning organization, as the beneficiary's R-1 visa was approved for work at the Galilee Korean United Methodist Church. However, neither the statute nor the regulations require that the alien's qualifying work in the United States must be while the alien is in a legal status for purposes of this petition and the beneficiary's unauthorized employment may not serve as a basis for denial of the petition. Unauthorized employment is generally considered where questions of admissibility arise, but the visa petition procedure is not the forum for determining substantive questions of admissibility under the immigration laws. When eligibility for the claimed status is established, the petition should be granted. *Matter of O*, 8 I&N Dec. 295 (BIA 1959). We therefore withdraw any inference in the director's decision to the contrary.

The third issue on appeal is whether the petitioner established that the beneficiary was qualified for the position.

The regulation at 8 C.F.R. § 204.5(m)(3)(ii)(B) provides that if the alien is a minister, the petitioner must provided evidence that "he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy."

In his October 31, 2006 letter, [REDACTED], stated that the beneficiary completed his bachelor's and master's degree in theology from Yonsei University in Seoul, Korea, and a Master's of Divinity degree from Garrett-Evangelical Theological Seminary, which is associated with the United Methodist Seminary in Evanston, Illinois. [REDACTED] also stated that the beneficiary had practiced as a minister since he was ordained in 1992. The petitioner submitted an October 18, 2006 "certificate of ordained minister" from the Chung-Cheong Annual Conference of the Korean Methodist Church, certifying that the beneficiary was ordained in 1991, and a copy of the beneficiary's 2004 master of divinity degree from the Garrett-Evangelical Theological Seminary. The petitioner stated that the beneficiary's duties as pastor included running the daily function of the church ministry, administering the holy sacraments, such as communion and baptism, and conducting weddings and funerals. The record sufficiently establishes that the beneficiary is qualified for the position as pastor.

The fourth issue on appeal is whether the petitioner has established that it has extended a qualifying job offer to the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

██████████ stated that the beneficiary was appointed pastor of the petitioning organization in July 2006. The petitioner stated in its November 2006 letter that the beneficiary's salary was \$54,885 per year in addition to use of the church parsonage. Although the petitioner did not provide a written offer of employment, it is clear that the proffered position is that of pastor and that the compensation would be at least that of \$54,885. The evidence therefore sufficiently establishes that the beneficiary has extended a qualifying job offer to the beneficiary.

The final issue on appeal is whether the petitioner has established that it has the ability to pay 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.

As noted above, the proffered wage is \$54,885 plus housing, which averages out to \$4,573.75. The record reflects that the petitioner paid the beneficiary \$16,640 in 2006, which averages to be approximately \$1,660 per month for the ten months that the beneficiary allegedly worked for the petitioning organization. The petitioner reported wages on the beneficiary's IRS Form W-2 of \$18,600 and Medicare wages of \$19,200, which averages out to \$1,860 and \$1,920, respectively. For 2007, the petitioner provided evidence of payments to the beneficiary from January through March 2007 totaling \$7,020. The evidence indicates therefore that the petitioner paid the beneficiary an average of \$2,340 per month, which would make a total of \$28,080 for the year. The petitioner has therefore not submitted evidence that it has paid the beneficiary the proffered wage in the past. Further, the petitioner submitted no documentary evidence that it has provided the beneficiary with use of the church parsonage.

As evidence of its ability to pay the proffered wage, the petitioner submitted copies of its 2005 income and expenses and of its "2006 Income/2007 budget" and "2006 expenses/2007 budget." The petitioner submitted none of the evidence required by the regulation cited above. Therefore, the petitioner has failed to establish that it has the ability to pay the beneficiary the proffered wage.

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.



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ORDER: The appeal is dismissed.