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U.S. Citizenship  
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Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **SEP 18 2008**  
WAC 07 162 51780

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

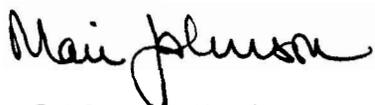
PETITION: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

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

  
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 and bible teacher. 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, the petitioner submits a brief and additional statements.

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 May 7, 2007.<sup>1</sup> 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 documentation accompanying the petition, the petitioner stated that the beneficiary had worked with the petitioning organization since 2002 pursuant to an agreement between the petitioner and God Loves Christian Fellowship Ministries, Inc. The petitioner stated that the beneficiary began his work with the petitioner in the Philippines and was paid \$50 monthly, which was the equivalent of P2,500. The petitioner also stated that the beneficiary began working at its Albuquerque, New Mexico church in March 2006. The petitioner submitted a copy of the beneficiary's Internal Revenue Service (IRS) Form 1040NR, U.S. Nonresident Alien Income Tax Return, for the year 2006, which shows that he reported no income for the year. The beneficiary attached a copy of a letter to his Form 1040NR from the petitioner which stated that it provided the beneficiary financial support in the form of "minister's allowances" in the amount of \$260 per week, and that these allowances were reimbursement for the beneficiary's housing and automobile expenses. The petitioner submitted no documentary evidence to corroborate the beneficiary's employment in 2005 or 2007. 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)).

In a request for evidence (RFE) dated June 1, 2007, the director instructed the petitioner to:

Provide evidence of the beneficiary's work history from May 10, 2005, to the present. 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 W-2 forms. 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 response, the petitioner stated that the beneficiary was approved for an R-1 nonimmigrant religious worker visa on March 10, 2006 and his "official job" with the petitioner did not begin until then. The

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<sup>1</sup> The director erroneously stated that the petition was filed on May 10, 2007. However, the stamp dated receipt reveals that the petition and fee were received on May 7, 2007.

petitioner further stated that “the beneficiary had no official work history for the organization from May 10, 2005 until March 10, 2006.” This contradicts the petitioner’s earlier statement that it employed the beneficiary pursuant to an agreement with God Loves Christian Fellowship Ministries, Inc. while the beneficiary resided in the Philippines, and that it paid him \$50 per month for his services. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Also in response to the RFE, the petitioner submitted a July 28, 2007 affidavit signed by the beneficiary and a representative of the petitioner, which stated that the petitioner provided the beneficiary with an allowance of \$260 per week in the form of cash and checks, which he began receiving on March 12, 2006. The petitioner submitted documents consisting of both originals and photocopies of “remittance slips” dating from March 12, 2006 July 29, 2007. These remittance slips are signed by the beneficiary purportedly acknowledging receipt of \$260 for the week designated. We note, however, that the remittance slip numbered 26, indicates that the payment was for the first week of September 2006 but is dated September 3, 2007. This raises the question as to when these documents were actually prepared. 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. at 591.

The petitioner also submitted a July 5, 2007 statement in which it stated that the beneficiary lived with his daughter and her husband at no charge, and that therefore the petitioning organization did not provide the beneficiary’s housing expenses. A June 30, 2007 letter from the beneficiary’s son-in-law confirmed that the beneficiary lived with him free of charge. These documents are inconsistent with the information the petitioner provided to the IRS in which it indicated that it paid the beneficiary a housing allowance. The petitioner submitted no documentary evidence to reconcile its inconsistent statements. *Id.*

The director determined that the petitioner had not submitted sufficient evidence to establish that the beneficiary had continuously worked for the organization throughout the qualifying period and denied the petition on August 27, 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.

On appeal, the petitioner states that on January 5, 2002, the beneficiary, as founder and president of God Loves Christian Fellowship Ministries, Inc., signed an agreement with the petitioner to become a “part, and an affiliate with” the petitioning organization and that the petitioner then “became responsible [for] paying or giving the beneficiary financial support, allowance or in some terms used ‘wage or salary.’” The petitioner states that the beneficiary received \$35 per week, the equivalent of P1,750. The petitioner submits copies of documents labeled “Acknowledgement Receipt,” wherein the beneficiary acknowledged receipt of monies received from 2002 through September 2007. The beneficiary acknowledged receipt of \$140 per month from 2002 through 2004, and \$1,040 per month thereafter. None of the documents is dated. Further, in the documentation accompanying the petition, the petitioner stated that it paid the beneficiary \$50 per month while he was in the Philippines. Additionally, in response to the RFE, the petitioner stated that the beneficiary had “no official work history” with the petitioner prior to March 10, 2006, and that it began paying him an allowance of \$260 only after approval of his R-1 visa petition.

The petitioner also submits copies of checks made payable to the beneficiary in the amount of \$260 and dated April 9, 2006, and April 1 and April 8, 2007. The copies of the checks do not indicate that they were processed by the bank; therefore they are not evidence that the beneficiary received the funds indicated. The petition submits a September 10, 2007 letter from [REDACTED], who identifies himself as an evangelist with Creator Connection Ministries. Mr. [REDACTED] states that he knows the beneficiary well, and that he is “a pastor and minister of the Gospel who does a legitimate ministry in Albuquerque, New Mexico and the surrounding cities.”

The petitioner has submitted conflicting documentation and statements regarding the beneficiary’s employment and compensation that he received while in the petitioner’s employ. While the petitioner states that the beneficiary began working for it pursuant to a 2002 agreement with his prior church in the Philippines, it also states that the beneficiary did not begin an “official” relationship with the petitioner until March 2006, when his R-1 visa was approved. The petitioner also initially stated that it paid the beneficiary \$50 per month while he was in the Philippines, then stated that the pay was \$35 per month. It also stated that it began paying the beneficiary an allowance in March 2006 for his housing and transportation. However, the petitioner later submitted documentation indicating that it paid the beneficiary \$1,040 per month beginning in January 2006, and that the allowance did not include housing.

The petitioner has submitted no verifiable documentation to corroborate that the beneficiary was employed during the qualifying period. We note that the petitioner states that none of its other workers are paid for their services as they are all volunteers, and it does not explain why the beneficiary would be the exception to its normal practice.

Given these unresolved inconsistencies in the record, 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.

Beyond the decision of the director, the petitioner has not 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.

In its undated letter accompanying the petition, the petitioner stated that the beneficiary would spend 40 hours per week performing his duties and that he receives “an allowance or financial support” in the amount of \$260 per week in exchange for his services. In correspondence with the IRS, the petitioner stated that the purpose of the allowance was for housing and transportation. However, in later documentation submitted in support of this petition, the petitioner stated that it did not assist the beneficiary with housing as he lived rent free with his daughter and son-in-law. The evidence provided by the petitioner to establish that it has paid the beneficiary this amount in the past, consisting of questionable “remittance slips,” receipts acknowledging payment months before the petitioner stated that it first paid the beneficiary, and unprocessed checks, is less than credible. The petitioner also admits that the beneficiary is its only paid employee and that all of its other workers are volunteers.

The petitioner’s documentation, therefore, does not clearly indicate that the beneficiary will be solely carrying on the vocation of a minister and that he will not be solely dependent upon supplemental employment or the solicitation of funds for his support. Accordingly, the petitioner had failed to establish that it has extended a qualifying job offer to the beneficiary. This constitutes an additional ground for denial of the petition.

Additionally, the petitioner has also failed to establish 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 discussed previously, the petitioner indicated that compensation for the position will consist of a \$260 monthly allowance. The petitioner has not submitted credible evidence that it has ever paid the beneficiary this allowance.

As evidence of its ability to pay the wage, the petitioner submitted a copy of its unaudited financial statements for March 31, 2007 and a copy of a bank statement showing the petitioner's balance as of April 12, 2007. The petitioner submitted none of the evidence required by the regulation cited above. Accordingly, the petitioner has failed to establish that it has the ability to pay the beneficiary the proffered wage. This is an additional ground for denial of the petition.

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.