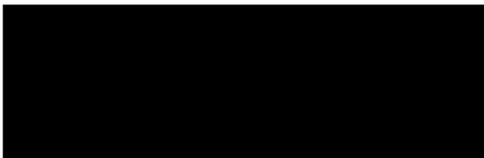


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prevent clear and warranted
invasion of personal privacy**

U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



JUL 29 2003

File: EAC 01 002 52098 Office: VERMONT SERVICE CENTER Date:

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: SELF-REPRESENTED

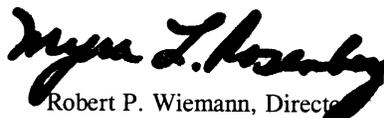
INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Director of the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(4), to perform services as the "Executive Assistant to the Pastor." The director determined that the petitioner had failed to establish that the position qualified as that of a religious worker.

On appeal, the petitioner submits a statement and additional evidence.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

The issue raised by the director to be addressed in this proceeding is whether the job offered by the petitioner to the beneficiary is a religious vocation or occupation. Title 8 C.F.R. § 204.5(m)(3)(ii) requires a petitioner for a special immigrant religious worker to show that the alien is qualified in the religious occupation. In addition, to establish that the job offered is a religious occupation, a petitioner for a special immigrant religious worker must show the religious nature of the work, the religious training required to do the job, and how the alien has met the training requirements. To establish that the job offered is a religious vocation, a petitioner must show that the job requires the taking of vows or a permanent commitment to a religious life, and that the alien has taken the requisite vows or made the requisite commitment. 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.
- B) That, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties.

In appropriate cases, the certificate of ordination or authorization may be requested.

- C) That, if the alien is a religious professional, he or she has at least a United States baccalaureate or its foreign equivalent required for entry into the religious profession. In all professional cases, an official academic record showing that the alien has the required degree must be submitted; or
- D) That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother, or that the type of work to be done relates to a traditional religious function.

A record of the petitioner's "Call Joint Board" meeting, dated September 5, 2000, states that the position of "Executive Assistant to Pastor... will help Pastor with administrative duties." The job description for the position of "Executive Assistant to Pastor" indicates the duties of the position to be:

1. Develop long and short term [sic] strategic plans for the church, in collaboration with the Pastor and inkeeping [sic] with the church vision. Establish standards and criteria for assessing the plans from time to time.
2. Lead with the Pastor in articulating and implementing the vision, ensuring it is disseminated to all levels of church life. Contributing to all efforts in evangelism, discipling [sic], training, mentoring, and developing spiritual gifts within the church.
3. Direct and expand the foreign missions initiatives of the church, preparing annual plans, contributions and involvement.
4. Oversee and direct administrative staff of the church as assigned by the Pastor, emphasizing their spiritual growth and contribution to the vision of the church. Assist in the annual evaluation of such staff.
5. Maintain accountability at all levels of duty assigned, by providing regular reports, evaluation and feedback.
6. Establish and coordinate a viable church public relations program and an annual church conference to address the issues of ministry development, foreign missions, gifting and training of the

- department leadership and membership.
7. Assist in the process and procedure of identifying persons to fill key ministry and administrative positions, as they become available.
 8. Guide and oversee various church projects and any other matters arising as assigned by the Pastor.

In another submission dated September 24, 2000, the petitioner articulates almost identical duties, but omits several of the aforementioned duties from the listing.

Another document states that the position of "Director--Foreign Missions Initiative (UBIA)," another full-time position, is to include: liaison, coordination, teaching and leading in worship and spiritual reflection at all functions; supervision and spiritual nurturing of all staff of the UBIA; conferring with "designated General and/or Executive Board;" and, providing oversight and furnishing reports on all actions as determined by the Board.

The petitioner lists the qualifications necessary to occupy the position of "Executive Assistant to the Pastor" as:

- Exhibit commitment, faithful service and devotion to our Lord Jesus Christ.
- Excellent communication, organizational and people skills.
- Comprehensive knowledge and ability with appropriate computer skills.
- Ability to build teams and motivate personnel.
- Must be a member of the church in good standing, knowledgeable of the church ordinances, ministry functions and contribution of each department of the church to the overall vision.
- Demonstrate leadership, loyalty and teachability [sic] to the Pastor and Board.

In his curriculum vitae, the beneficiary indicated that he also served as a minister on staff to the petitioner from 2000 to the present, and that he still serves as the "Director of Foreign Missions" for the petitioner. The beneficiary also indicated that he worked as the National Director of the "Trans World Radio KENYA" from 1993 to 1996, directly supervised and provided leadership to 40 staff, and that he regularly contributed to various ministries held by that organization. In this position, the beneficiary indicated that he served as a delegate at various "world functions" and that he also represented the organization at evangelistic consultations and preaching assignments throughout Africa. The beneficiary also indicated that he served as a project manager from 1988 to 1992, and as a Youth Ministry Director from 1980 to 1987. The beneficiary indicated that he provided ministry and radio programs in eastern, central, and

southern Africa. The beneficiary stated that he possessed: "Two years B.Sc. at the University of Nairobi, Kenya (1976-1979) [and] Cambridge 'A' levels at King's College Budo, Kampapoa Uganda (1975-1976)."

Also included in the record is a letter dated September 19, 1996, from the Regional Director of "Trans World Radio A.R.O." indicating that the beneficiary promoted the "Radio Ministry," preached, and was responsible for the "spiritual welfare" of the organization's staff during the three years that he worked for that organization.

The petitioner has submitted no other evidence of these assertions. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In a letter dated September 18, 1996, the writer states that the beneficiary and his spouse have been associated with the Nairobi Pentecostal church since 1986, and that while involved with that church, the beneficiary led the music ministry, assisted with the young adults of the church, and served as deacon for the church for two terms, "assisting the Pastors in physical responsibilities he could from time to time share in pulpit ministry as requested." It is noted that these duties are in the Pentecostal denomination, and not the petitioner's Baptist denomination.

In a letter dated November 18, 2001, the petitioner stated that the position "does not require any specific religious training or qualification" but that the qualifications of "an evident commitment to Jesus Christ, membership of this congregation in good standing and a strong administrative background" are considered as the requisites for the position. The petitioner also stated that this position would report directly to the pastor. The petitioner stated that the beneficiary provides valuable and extensive administrative experience and serves in a preaching and teaching capacity "from time to time." The petitioner also stated that the beneficiary would be a licensed minister in January 2002. The petitioner stated that the beneficiary has been a member of its church since 1997, that he also has experience serving as a deacon, "which requires non-formal religious vocational training," and that he has served in "a 'religious work' context for his entire professional life...."

The director of the Vermont Service Center found that the duties identified paralleled the duties and responsibilities of a business consultant, advisor or administrator, rather than the duties of a religious worker. In addition, he found that the position was not defined in the petitioner's church doctrine as a traditional religious occupation.

On appeal, the petitioner states that inadequate attention was

given to the extent of detail in the petition regarding the beneficiary's religious activities.

In a letter dated March 4, 2002, the petitioner now [emphasis supplied] states that the beneficiary also served, and continues to serve, as a licensed minister of the church. The petitioner states that there is no required educational prerequisite to be able to serve in this position. The petitioner also states that an application for the beneficiary's ordination has been submitted to the organization that serves as the regional representative body of the National Baptist Convention, USA, Incorporated.

The petitioner avers that the tasks articulated for the position of Executive Assistant to the Pastor all pertain to the administration of a religious spiritual activity and thus, should be considered as a religious occupation. Further, this, in combination with the beneficiary's current non-immigrant religious worker status, as well as his previous experience as a religious broadcaster, should establish that the role is that of a religious worker. The petitioner states that the beneficiary is often called upon to preach to its membership and other congregations throughout the world, and that the beneficiary is a "minister, responsible for conducting our worship services and assisting with all sacraments of the church." The petitioner also states that the beneficiary is an outstanding Bible teacher.

The petitioner has submitted a "Certificate of License" dated August 8, 1999, issued to the beneficiary as licensure of his ability to "preach and teach the Word...."

Also included in the record on appeal is a letter dated December 12, 2001, from the petitioner to the president of the Bethany Baptist Association, Longside, New Jersey, recommending the beneficiary "for training in catechism for ordination...." In this letter, the petitioner states that the beneficiary effectively serves as an "Assistant Pastor" in his position of Executive Assistant to the Pastor. The petitioner states that due to the church's growth, the ordination of the beneficiary is requested based on the recommendation of the Joint Board and the confirmation of the church body.

It is noted that some of the statements made by the petitioner on appeal are either in direct contradiction to other information supplied by the petitioner in previous submissions, or alleged statements of fact that were previously omitted. Discrepancies encountered in the evidence presented are called into question in the petitioner's ability to document the requirements under the statute and regulations. The discrepancies in the petitioner's submissions have not been explained satisfactorily. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by

independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988).

The petitioner has submitted insufficient evidence to establish that the position qualifies as that of a religious worker. The record fails to reflect that the beneficiary's activities for the petitioning organization require any religious training or qualifications. The petitioner has not demonstrated that its position of "administrative assistant to the pastor" is a qualifying religious vocation or occupation, since those duties identified indicate that this position consists of administrative and managerial activities rather than a position that would be filled by a salaried employee who completed training in preparation for a career in religious work. Further, the record fails to reflect that the training obtained by the beneficiary qualifies him to assume the position of a religious worker for the petitioner. The beneficiary has not been shown to be qualified to engage in a religious vocation or occupation. For these reasons, the petition may not be approved.

An issue not raised by the director that shall be discussed in this proceeding is whether the petitioner had received a valid job offer. 8 C.F.R. § 204.5(m)(4) requires that each petition for a religious worker must be accompanied by a qualifying job offer from an authorized official of the religious organization at which the alien will be employed in the United States. The official must state the terms of payment for services or other remuneration. In addition, 8 C.F.R. § 204.5(g)(2) requires that the employing religious organization submit documentation to establish that it has had the ability to pay the alien the proffered wage since the filing date of the petition. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

In a letter dated November 19, 2001, the petitioner stated that the position offered to the beneficiary is for a 40-hour per week position and that the wage, without overtime compensation, is to be \$53,560.

In a letter dated November 27, 2001, the petitioner's accountant states that copies of the beneficiary's federal income tax returns for 1998, 1999, and 2000, have been included in the record, and that the beneficiary worked as a consultant for the petitioner in 1998 and 1999, having not become an actual employee of the petitioner until 2000.

The petitioner has submitted its unaudited financial statements for December 31, 2000, indicating its cash-on-hand in its "general-PNC" fund as \$178,503, with net assets at \$145,082, and \$235,447 paid in salary and wages. Also included in the record are several of the petitioner's IRS Forms 941, Employer's

Quarterly Federal Tax Returns, indicating that the petitioner paid an average of \$43,135 per quarter, to an unknown number of employees, during each quarter from December 31, 1999 to September 30, 2000. Wages for this 12-month period totaled \$172,540. IRS Form W-3, Transmittal of Wage and Tax Statements for 1999, indicates that the petitioner paid \$142,246.48 in wages to 13 individuals during the tax year, with \$126,759.47 paid in 2000 to a total of 11 employees. Documentation dated after the filing date cannot be considered, as the petitioner must establish eligibility at the time of filing. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Also included in the record is the beneficiary's IRS Form 1040, U.S. Individual Income Tax Return for 2000, indicating his occupation as a "consultant," with his wages as \$12,923 for the tax year. The petitioner's corresponding IRS Form W-2, Wage and Tax Statement for 2000, indicates \$11,423.12 paid to the beneficiary during that tax year. In 1999, the beneficiary also listed his occupation as a "consultant," with his income of \$24,381 as "business income." The beneficiary's 1998 tax statement indicates an income of \$21,445, again as a "consultant."

The petitioner has not adequately established that the needs of the petitioning entity will provide permanent, full-time religious work for the beneficiary in the future. The petitioner has not demonstrated that it has extended a valid job offer to the beneficiary, or established its ability to pay the beneficiary the proffered wage.

Another issue not raised by the director in his decision that will be addressed in this proceeding is whether the beneficiary has been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing date of the petition.

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, 2003, 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, 2003, 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 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).

8 C.F.R. § 204.5(m)(1) states, in pertinent part:

Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or 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. All three types of 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 petition was filed on September 27, 2000. Therefore, the petitioner must establish that the beneficiary was working continuously as a religious worker from September 27, 1998 until September 27, 2000. The petitioner indicated that the beneficiary last entered the United States on July 24, 2000, as an R-1 non-immigrant religious worker, and that his authorized stay was to expire on July 16, 2005. As noted from the beneficiary's submission of copies of his passport, other entries into the United States by the beneficiary occurred on: July 20, 1998, May 28, 1999, June 23, 1999, July 3, 1999, March 23, 2000, and September 28, 2000. The petition also indicated that the beneficiary has never worked in the United States without

permission.

In a letter dated November 18, 2001, the petitioner stated that the beneficiary served as its Director of Foreign Missions from March 1, 1997 until August 31, 2000, as a self-employed consultant, that the petitioner paid the beneficiary a weekly retainer during this time, and that the beneficiary was placed on the petitioner's payroll on September 1, 2000.

Although the record does list some duties of the beneficiary, it does not provide a comprehensive description of the beneficiary's activities during the two-year period immediately preceding the filing date of the petition. The unsupported assertions contained in the record do not adequately establish that the beneficiary was actually performing the duties of a religious worker throughout the two years immediately preceding the filing date of the petition.

Another issue not raised by the director in his decision is whether the petitioner qualifies as a bona fide nonprofit religious organization as stated in 8 C.F.R. § 204.5(m)(3)(i). This section states, in pertinent part:

(3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit 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;

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit 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. This documentation includes, at a minimum, a completed Internal Revenue Service Form 1023, the Schedule A supplement which applies to churches, and a copy of the organizing instrument of the church which contains a proper dissolution clause and which specifies the purposes of the organization.

The petitioner has not submitted evidence to comply with the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A). Therefore, the petitioner must submit the evidence as required in 8 C.F.R. § 204.5(m)(3)(i)(B).

The petitioner has submitted:

1. Two incomplete State of New Jersey, Division of Taxation, Sales and Use Tax, Exempt Organization certificates, one dated September 15, 2000, indicating an effective date of July 1, 1966, and the other undated;
2. A statement from the petitioner indicating that it is tax-exempt;
3. The petitioner's Articles of Incorporation dated February 17, 1948, but containing no dissolution clause; and,
4. A letter dated November 27, 2001, from the petitioner's accountant that states that the petitioner is exempt from IRS codes without having to apply for the exemption.

The submissions do not meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A) or (B).

It is noted for the record that based on the inability to provide sufficient documentation to fulfill the evidentiary requirements of the permanent resident petition, the beneficiary also may not have been entitled to the R-1 religious worker classification previously granted. In addition, a mere showing that the beneficiary has been in the United States in nonimmigrant R-1 status, does not adequately establish that he was continuously working in a qualifying religious vocation for the two-year period immediately preceding the filing date of this petition. Further, the Bureau is not required to approve applications or petitions where eligibility has not been demonstrated. Each petition must be adjudicated based on the evidence contained in that record. *Sussex Engineering, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987); cert denied 485 U.S. 1008 (1988); *Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 597 (BIA 1988).

In reviewing an immigrant visa petition, the Bureau must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

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

ORDER: The appeal is dismissed.