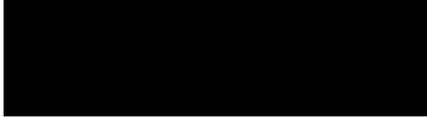


C1

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

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File:

Office: NEBRASKA SERVICE CENTER

Date: **MAR 28 2003**

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:

PUBLIC COPY

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, Nebraska Service Center. The matter is now before 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 an assistant pastor. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

On appeal, counsel submits a statement and additional evidence.

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.

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

The first issue raised by the director is whether the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

The petition was filed on May 2, 2001. Therefore, the petitioner must establish that the beneficiary was working continuously as a religious worker from May 2, 1999 until May 2, 2001. The record indicates that the petitioner last entered the United States on August 26, 1989, and that he is in the United States as an "overstay." Part 4 of the Form I-360 submitted by the petitioner indicates that the beneficiary has worked in the United States without permission. No other documentation is included in the record to explain this assertion.

In a letter dated April 23, 2001, the "Superintendent" of the petitioner stated that the beneficiary has served at the petitioner's affiliate, the Holiness Evangelistic Church of Kansas City, Missouri, as a fulltime "minister" since he joined the organization in 1997. The petitioner stated that the beneficiary started the Holiness Evangelistic Church in 1998 as a full-time minister, and that presently he is serving the affiliated church as its "Assistant Pastor" and coordinator of its Ethnic ministry. The petitioner also stated that the beneficiary will carry out his ministerial assignments under the "Church's Home/Foreign Missions Office" in conjunction with the petitioner.

In a letter dated April 24, 2001, the pastor of the Holiness Evangelistic Church stated that the beneficiary voluntarily served the church in his capacity of "Ethnic and Missionary outreach pastor" and assistant pastor. The writer stated that the beneficiary also assists him in daily administrative duties required to fulfill the needs of the organization and that his other services to the church include Sunday school teaching, visitation to the sick and elderly, and hospital ministries. Additional duties are indicated as missionary work consisting of conducting prison ministry and providing ethnic religious programs to those who do not have an adequate understanding of the English language. This writer also stated that the Holiness Evangelistic church is an affiliate organization of the International Pentecostal Holiness Church (IPHC).

Other than the attestations of the petitioner and the representative of the Holiness Evangelistic Church, no additional evidence of the affiliation between these two churches is included in the record. 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).

The petitioner stated:

Although [REDACTED] has not received formal salaries to date [sic] due to his inability to obtain work authorization, he has none the less received reimbursements for expense [sic] incidental to his stay in the United States.

In a letter dated November 29, 2001, the senior pastor of the Holiness Evangelistic Church stated that since his own appointment as senior pastor in 1998, he has only been able to devote part of his time to the ministerial duties because of the business activities of the church, and that he has had to rely upon the beneficiary to carry out many of the daily ministerial duties while retaining Sunday morning preaching and evening bible study classes. The writer indicated the duties of the position as similar to those as stated by the petitioner, and that the beneficiary also attended religious symposiums, conferences, and conventions. The time delineated for the beneficiary's work week totals 30 hours.

Some of the duties identified as performed by the beneficiary are comprehensively administrative and clerical in nature, and are not considered to come within the purview of a qualifying religious vocation or occupation. In addition, those duties identified in the beneficiary's schedule as presented by the senior pastor of the Holiness Evangelical Church are on a part-time 30-hour per week basis only.

On appeal, counsel states that the beneficiary has been exclusively engaged in missionary work since 1998 while establishing the Holiness Evangelical Church in Kansas City under the umbrella of the International Evangelical Holiness Church (Harvest Conference of the IPHC) with which it is affiliated. Counsel contends that the petitioner stated that while the beneficiary was not paid a salary or on the payroll that he did receive "payments in kind such as "missionary/special offerings." Counsel further contends that another letter from the petitioner indicates that the beneficiary does receive reimbursements for expenses "incidental to his stay in the United States."

Counsel argues that the Bureau erred in its determination that the beneficiary must be a salaried full-time employee to fulfill the statutory and regulatory requirements. Counsel states that financial records submitted indicate that the beneficiary did receive allowances from the petitioner in the amount of approximately \$18,000.00 in 2000, "on behalf of the minister's allowances and evangelism." Counsel asserts that this is reflected in the petitioner's income and expense journals. Counsel also states that the representative of the Holiness Evangelistic Church acknowledges this fact as well.

The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Here, counsel contends that the position being offered the beneficiary is that of a "missionary" and that the Department of State's Foreign Affairs Manual (FAM) permits "missionaries" to receive allowances or other reimbursement for expenses incidental to their temporary stay. Counsel states that the beneficiary's work as a "legitimate minister" performing missionary work qualifies him as a missionary in this context. This reference directly quoted by counsel, however, stipulates further requirements for this particular position. The FAM also states that the individual must be entering the United States "temporarily" for the sole purpose of performing missionary work on behalf of a denomination...."

The FAM bears no direct correlation to the religious worker classification as defined in either the Immigration and Nationality Act of 1952, as amended, or Title 8 of the Code of Federal Regulations, nor is it binding on the Bureau, but serves as a guide only. Further, the record fails to reflect that the beneficiary entered the United States as a "missionary" as defined in the FAM.

In review, the beneficiary states that he entered the United States in 1989 as a non-immigrant. He received a "diploma" in 1991 from the Kansas City College and Bible School in Overland Park, Kansas, and was unknown to the petitioner or the Holiness

Evangelistic Church until 1997. No evidence of his performance of missionary work related to a particular denomination is included in the record.

Counsel states that the evidence submitted also establishes that the beneficiary received payments for his ministerial duties as reflected in the church's financial records and supporting letters. Counsel asserts that the petitioner also meets all other requirements to require an approval of the instant petition.

Counsel submits duplicates of two letters and the financial telefax already included in the record. Counsel also has submitted a letter dated April 5, 2002, from the Holiness Evangelistic Church. In this letter, the writer states:

As previously noted, [REDACTED] has received ministerial/ special offerings over the past few years for the ministers' services and evangelism in the amount of \$35000.00 as reflected in the payments received in 2000 and 2001 from the Harvest conference.

These payments were in lieu of salary but covered special offerings and reimbursements for expenses.

Submitted on appeal is an unaudited income and expense report for selected accounts in 2000 for the "Kansas Conference PHC." Total net income for this entity is indicated as a negative balance of \$1,851.00 at the end of 2000. Also submitted on appeal is a legible copy of the 2001 income and expense statement for the Kansas Conference PHO. This document indicates a net income of \$12,522.00 at the end of 2001. Neither of these documents includes evidence of any payments made to the beneficiary. In addition, the statements are unaudited self-representations of the Kansas Conference PHC. Further, evidence regarding the relationship of the "Kansas Conference PHC," the Holiness Evangelistic Church, and the petitioner has not been provided.

In evaluating a claim of prior work experience, the Bureau must distinguish between common participation in the religious life of a denomination and engaging continuously in a religious occupation. It is traditional in many religious organizations for active members to volunteer a great deal of their time serving on committees, visiting the sick, serving in the choir, teaching children's religion classes, and assisting the ordained ministry without being considered to be carrying on a religious occupation. It is not reasonable to assume that the petitioning religious organization, or any employer, could place the same responsibilities, control of time, and delegation of duties on an unpaid volunteer as it could on an employee. Nor is there any means for the Bureau to verify a claim of past "volunteer work" similar to verifying a claim of past employment. For these reasons, the Bureau holds that lay persons who perform volunteer

activities are not engaged in a religious occupation and that their voluntary activities do not constitute qualifying work experience for the purpose of an employment-based special immigrant visa petition.

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 continuously performing the duties of a qualifying religious vocation or occupation throughout the two-year period immediately preceding the filing date of the petition. The record contains insufficient evidence to establish that the beneficiary was paid any wages by the petitioning organization during the two years immediately preceding the filing date of the petition, nor that the work performed was on other than a volunteer basis. Therefore, the petition must be denied.

Beyond the decision of the director, another issue in this proceeding is whether the petitioner has had the ability to pay the beneficiary the proffered wage since the filing date of the petition. 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 January 2, 2002, the petitioner states that it is a viable organization with over 106 employees and over 5000 parishioners. The petitioner asserts that it has assets in excess of \$150,000.00. The petitioner also states:

We intend to employ [REDACTED] [REDACTED] as a full time paid Minister at the Holiness Evangelistic Church and place him on out [sic] payroll once he receives work authorization from the INS.

Although the exact salary has not been determined to date it is expected that he will commence with a salary of at least \$25,000.00 per term. A proffered [sic] salary which IPHC has the capability of paying.

It is not clear from this statement what timeframe "per term" signifies.

In a letter dated November 29, 2001, the senior pastor of the Holiness Evangelistic Church stated that the beneficiary would receive a salary after his petition is approved.

Also included in the record is a telefaxed statement bearing the petitioner's letterhead. This document indicates that the petitioner has \$45,000.00 on deposit in a savings account. The same page also contains a copy of a Certificate of Deposit dated January 9, 2002, for the Kansas Conference of the PHO of Independence, and indicating a balance of \$10,626.35. No further documentation is included in the record to indicate the relationship between the petitioner and this organization. Further, as the petition was filed on May 2, 2001, this evidence cannot be considered. A 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). Additionally, while both the petitioner and counsel assert that the beneficiary has been provided with a stipend throughout his association with the Holiness Evangelical Church, the financial documentation provided does not support these assertions.

The petitioner has not furnished the church's annual reports, federal tax returns, or audited financial statements. The documents submitted do not satisfy the regulatory requirements. 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. For this additional reason, the petition may not be approved.

Another issue not raised by the director in his decision is that 8 C.F.R. § 204.5(m)(3)(ii)(D) 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.

The petitioner states that the beneficiary is fully authorized to conduct religious instruction and is a highly qualified minister, as he was ordained in 1996 by the New Life Christian Fellowship of Sullivan, Missouri, and received another ordination certificate from the petitioner's organization in 2001.

Included in the record is a facsimile of a "Certificate of Ordination" dated August 30, 1996, issued by the New Life Christian Fellowship, Inc., Sullivan, Missouri, and granting the beneficiary "Divine Ordination to the Gospel Ministry." Also included in the record is another "Certificate of Ordination" dated April 7, 2001, certifying the beneficiary as an ordained minister for the petitioner's organization. The issuance of these documents by a religious organization does not conclusively establish that an alien qualifies as a minister for immigration purposes. *Matter of Rhee*, 16 I&N Dec. 607, 610 (BIA 1978).

Also included in the record is a Diploma of Theology issued by the Calvary College of Theology, Port Harcourt, Rivers State, Nigeria on May 30, 1987. The petitioner also has submitted a copy of the diploma awarded to the beneficiary by the Kansas City College and Bible School, Overland Park, Kansas, on May 31, 1991, with a Bachelor of Arts degree in Religion. No transcripts or additional evidence of the beneficiary's attendance at these schools is included in the record.

The petitioner also has submitted numerous letters attesting to the beneficiary's accomplishments in his field while still in Nigeria, including the fact that the beneficiary studied religion, initiated a pastoral singing group, performed as a pastor at one of the churches, and later lectured at the college before he relocated to the United States. Other letters from the petitioner invite the beneficiary to participate in various ministerial conferences or presentations.

The petitioner states that the beneficiary is qualified to perform the duties of the position, yet lists no qualifications necessary to prepare an individual for these duties. 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 "assistant pastor" is a qualifying religious vocation or occupation, since those duties identified indicate that this position consists of activities normally expected of an active member of a religious congregation rather than a position that would be filled by a salaried employee who completed training in preparation for a career in religious work. For this additional reason, the petition may not be approved.

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 organization....

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 (IRS) 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 IRS 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 IRS 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 states that its organization is a bonafide non-profit religious organization and exempt from tax under the appropriate IRS code. The senior pastor of the Holiness Evangelistic Church also attests that his church is a bonafide tax-exempt organization.

Included in the record is a copy of a letter of recognition of tax exemption issued by the IRS to the Holiness Evangelistic Church in Belton, Missouri, on March 13, 2000. Also included in the record is a copy of a letter of recognition of tax exemption issued by the IRS on February 7, 1964, to the Pentecostal Holiness Church, Oklahoma City, Oklahoma, and stating that the organization received tax exemption status on January 9, 1947. This letter also states that the organization's conferences, agencies, local congregations and institutions whose names appear in its directory "as recently submitted" [in 1964] to the IRS, are also exempt. No evidence that the petitioner is one of these recognized entities is included in the record. It also is noted that the petitioner has submitted no evidence of the legal affiliation between itself, the Holiness Evangelical Church in Kansas City or Belton,

Missouri, the Pentecostal Holiness Church in Oklahoma City, Oklahoma, or any other entity with which it claims affiliation.

The submissions do not meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A) or (B). Thus, the petition also must be denied for this reason.

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).

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.