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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N.W.  
Washington, DC 20536

[REDACTED]

File:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date:

LIN 01 167 50036

IN RE: Petitioner:  
Beneficiary:

[REDACTED]

NOV 19 2003

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:

[REDACTED]

**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 Citizenship and Immigration Services (CIS) 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 for*

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 religious organization. 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 a "Pastor." In his decision, the director determined that the petitioner had not established that beneficiary was continuously engaged as a religious worker for the two years preceding the filing date of the petition.

On appeal, counsel indicated that a brief and/or additional evidence would be submitted in support of the appeal within 30 days of the date of the appeal. To date, no brief or additional evidence has been received by this office. Therefore, the record must be considered complete. Counsel stated on the Form I-290B, Notice of Appeal, that the denial is based upon information not elicited by the Request for Evidence, and raises new issues to which the petitioner has not had an opportunity to respond. Counsel asserts, "it is in error to take the date of ordination as the date of inception of ministerial duties."

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

The sole issue to be addressed in these proceedings is whether the petitioner established 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.

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 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 April 25, 2001. Therefore, the petitioner must establish that the beneficiary was working continuously as a pastor from April 25, 1999 until April 25, 2001. The petitioner indicated that the beneficiary entered the United States on February 3, 1993, as a B-2 visitor. On the Form I-360, Petition for Amerasian, Widow or Special Immigrant, the petitioner noted, for current status, that the B-2 is expired. Part 4 of the Form I-360 submitted by the petitioner, indicates that the beneficiary has worked in the United States without permission, but does not include the requisite explanation.

The record contains a letter dated April 24, 2001, from the Administrative Secretary of The Church of Pentecost - USA, Inc., on

letterhead of the National Office. The authorized official of the religious organization states, in part:

Rev. Samuel Yaw Aidoo is an employee of the above church as a full-time pastor in charge of Chicago District. He assumed that appointment after his ordination as full time pastor in the Church of Pentecost in January 1999. Prior to his appointment, he was a part-time minister in charge of [the] New Jersey District from 1992-1997.

The letter continues to describe the beneficiary's duties in very general terms, and indicates that the beneficiary "earns \$35,000 per annum and receives other remunerations [sic] such as free accommodation, health insurance, transportation, etc."

In response to the director's request for the beneficiary's certificate of ordination or other evidence of his authorization as a minister of the denomination, and clarification of the beneficiary's duties, the petitioner submitted a letter and a Certificate of Ordination. The petitioner's letter dated March 21, 2002, stated that the beneficiary is still performing the duties as previously described: seeing to the growth of the church, overseeing spiritual needs of the congregation; preaching, teaching and counseling; conducting religious ceremonies, and visiting the sick and needy members of the congregation. The "Certificate of Ordination" issued by the petitioner certifies that the beneficiary is "ordained into the full time ministry of the Church as Pastor" and is dated June 20, 1999.

In his decision the director states, in part, "Since the beneficiary was not ordained as a pastor until June 20, 1999, it must be concluded that the petitioner has failed to demonstrate that the beneficiary had at least two years of qualifying work experience during the two-year period immediately preceding the filing of the petition."

On appeal, counsel states, "Case law establishes that the date of ordination need not be the starting date of the ministry of the intended beneficiary. Further, the petitioner has a requirement for ordination that he previously be working as a minister of religion." As noted earlier, counsel failed to provide a brief or other evidence to support these assertions. 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). The petitioner, through counsel, has not submitted by-laws of the church or other objective documentation to substantiate the requirements for being made a pastor, to establish that there exists a distinction between "full-time pastors" and "part-time ministers," or to differentiate between the status, duties and requirements of full- and part-time pastors in this denomination.

Counsel's assertion that the director's decision is based on information not elicited by the Request for Evidence is not persuasive. At the time of submitting additional documentation, counsel and the petitioner had the opportunity to clarify and address any inconsistencies between its new submissions and documentation already submitted for the record. Further, all evidence in support of the petition should have been submitted with the initial petition, pursuant to 8 C.F.R. § 103.2(b)(1), or, when necessary, in response to the director's request for additional information, pursuant to 8 C.F.R. § 103.2(b)(8), and 8 C.F.R. § 204.5(m)(3)(iv).

Regarding the evidence in the record, we note that the petitioner's initial letter indicated the beneficiary became an employee as a full-time pastor "after his ordination as a full time pastor [emphasis added]" in "January 1999." This statement conflicts with the submitted Certificate of Ordination that states that the beneficiary was ordained as a "full time pastor" on June 20, 1999. The record is inconclusive concerning when the beneficiary became a full-time pastor, and thus when the beneficiary commenced the qualifying religious activities. The petitioner's initial letter indicates the beneficiary was a "part time minister in charge of New Jersey District from 1992 to 1997." This statement, however, conflicts with the information presented on the I-360 petition, which indicates that the beneficiary arrived in the United States in February 1993. The record does not substantiate that the duties performed by the beneficiary as a "part time minister" were the same as those of a "full time pastor." The record does not account for the period of 1997 until January (or June) of 1999, and does not indicate that the beneficiary was involved in any sort of ministerial activities during that timeframe, part of which may fall within the requisite two-year period during which the beneficiary must have been performing qualifying religious duties.

As noted in the director's decision, the petitioner's initial letter indicates that the beneficiary earns \$35,000 per year with additional benefits. The petitioner's letter in response to the request for additional evidence, however, states, "No individual or a group receives compensation of any kind in the church." These inconsistencies were not addressed or clarified on appeal.

We note further that the petitioner did not submit Internal Revenue Service (IRS) Form W-2 wage reports, attachments to IRS Quarterly Reports listing the beneficiary as an employee, cancelled checks, pay stubs, the beneficiary's individual tax forms, or other objective documentation to verify that the beneficiary was compensated by the petitioner during the two-year period preceding the filing date of the petition.

On appeal, the petitioner has apparently not recognized nor addressed the inconsistent issues discussed above. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of

the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In light of the discussion above, the petitioner has not established that the beneficiary was continuously engaged as a pastor for the two-year period preceding the filing date of the petition. Therefore, the petition must be denied.

Beyond the decision of the director, while we take note that an official of a religious denomination has certified that the beneficiary is qualified to perform duties as a full-time pastor, that statement is inconsistent with other documentation submitted in the record. The Certificate of Ordination is unsupported by transcripts or other documentation illustrating the course of study, qualifications of the trainers, and other details. The petitioner has not provided documentation of the structure of the religion, the authority which recognizes a particular person as a minister, the level of required learning to achieve that role, documentation concerning who appoints the individual and how they are recognized within the religious body, or other such information that would demonstrate the standards required for recognition as a minister in its denomination, and that the beneficiary has satisfied such standards. These issues call into question whether the beneficiary is qualified for the stated religious position within the religious organization.

Another issue not addressed by the director concerns whether the petitioner established that the beneficiary received a qualifying job offer. The petitioner's initial letter states that the beneficiary is paid \$35,000 a year by the petitioner. As discussed above, a subsequent letter from the petitioner indicated that no individual and no group is compensated by the church. The documentation submitted does not establish that the beneficiary has been compensated for the requisite two-year period. This undermines the petitioner's assertion that the beneficiary has received a qualifying job offer in accordance with 8 C.F.R. § 204.5(m)(4). The petitioner's letter of March 21, 2002, indicates that the beneficiary is on its payroll. We note that the submitted financial statements of the Church of Pentecost USA, Inc., are accountant's compilations that reflect the representations of management, and are not audited. This may reflect on whether the petitioner has had the ability to pay the beneficiary the proffered wage since the filing date of the petition, in accordance with 8 C.F.R. § 204.5(g)(2). As this appeal is dismissed on the grounds discussed above, these issues need not be examined further.

In reviewing an immigrant visa petition, CIS 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.