



U.S. Citizenship
and Immigration
Services

C-1

[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **AUG 04 2004**

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

PETITION: Immigrant 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.

for Robert P. Wiemann, Director
Administrative Appeals Office

PUBLIC COPY

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office 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, 8 U.S.C. § 1153(b)(4), to perform services as a minister. The director determined that the petitioner had not established (1) that the beneficiary had the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition; (2) that it had made a credible, *bona fide* job offer to the beneficiary; or (3) its ability to pay the beneficiary's salary.

On appeal, the petitioner submits several new documents and asserts that the director has misinterpreted honest errors in the earlier documentation.

The petitioner filed the appeal on February 23, 2001, but the California Service Center did not forward the appeal to the AAO until August 2003. The record contains no explanation for this significant delay.

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).

The regulation at 8 C.F.R. § 204.5(m)(1) 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." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate 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 27, 1999. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a minister throughout the two years immediately prior to that date.

In a letter accompanying the initial filing, [REDACTED] pastor of the petitioning church, states that the beneficiary "has completed all the requirements for ordination as a minister of the Gospel. She is one of the Ministers in our church and has been active in the Ministry for the past two and a half years." The letter is dated October 12, 1998, indicating that the beneficiary "has been active in the Ministry" since circa early 1996. This late-1998 letter shows the petitioner's telephone number as (213) 896-4321.

The petitioner's initial submission included a copy of the beneficiary's certificate of ordination, dated June 10, 1998, less than a year before the petition's filing date. The petitioner also submitted a copy of a letter from the Internal Revenue Service (IRS), recognizing the petitioner's tax-exempt status. This letter is dated February 11, 1998, and therefore it does not establish that the petitioning church existed, or qualified as tax-exempt, for the entire two-year qualifying period.

The director also requested evidence to establish the beneficiary's past work. The petitioner states that the beneficiary "has been paid for her services with checks," but the petitioner does not submit copies of the canceled checks. Instead, the petitioner submits copies of "Records of Payment," dating back to January 1997, which the beneficiary purportedly signed each week to acknowledge receipt of that week's paycheck. The petitioner also submits what purport to be pay receipts from the same period. All of the purported pay receipts and records, from 1997 to 2000, show the petitioner's telephone number as (323) 562-4338, even though, in 1998, the petitioner's letterhead listed the petitioner's telephone number as (213) 896-4321.¹ This discrepancy suggests that the pay receipts were prepared years after the fact, and therefore have no value as evidence except to undermine the petitioner's credibility.

The petitioner submits copies of tax documents, purporting to show that the petitioner paid the beneficiary \$4,121 in 1997, \$4,370 in 1998 and \$10,680 in 1999. Other documents in the record appear to indicate that at least some of the beneficiary's tax returns were filed late. A computer-generated IRS document indicates that the beneficiary reported \$4,370 in total income in 1999, whereas the tax return and other forms in the record purport that the beneficiary earned, and reported, \$10,680 in 1999. This conflict is unresolved and unexplained. Another conflict is that the petitioner's Form 990 returns indicate that the petitioner did not pay any salaries in 1998 or 1999 except for compensation of officers, none of whom is the beneficiary. We discuss the Forms 990 in greater detail further below.

The petitioner submits a new letter from [REDACTED] who states that the beneficiary "is one of the Ministers of our church, and has been active from **June 10, 1998 to Present time**" (emphasis in original). In another letter, Pastor Aguilar states that the beneficiary "has been serving one of our churches as ordained minister since June 10, 1998." This date conforms to the ordination certificate, but it cannot show the required two years of experience prior to the May 1999 filing date. If the beneficiary had been serving as a minister before June 10, 1998, the question arises as to why Pastor Aguilar has repeatedly specified June 10, 1998 as her starting date.

A newly submitted certificate from Union Amistosa Ministries, Inc., recognizes the beneficiary's "completing the final course of Pastor recognizing her as a Minister of Christ." This "Certificate of Completion" is dated July 10, 1999, several weeks *after* the filing date, and it implies that, prior to that date, the beneficiary had not yet completed her training and was not "recogniz[ed] . . . as a Minister."

¹ As of August 2004, (213) 896-4321 is currently registered to Cal Pacific Growers of Los Angeles.

The director questioned the credibility of the petitioner's documentation, based on irregularities in the record, such as tax forms that indicate that the petitioner paid no minister's salaries during the time purportedly covered by the beneficiary's salary receipts.

On appeal, the petitioner submits additional documents, but (as shall be discussed below) these documents raise more questions than they answer. The petitioner has claimed, at times, that the beneficiary began working in 1997, but the petitioner has also repeatedly specified that the beneficiary began working in June 1998. Given the many other credibility issues in this proceeding, we cannot accept that the beneficiary's tax returns (many of them filed late) are *prima facie* persuasive evidence of employment as a minister.

The next issue concerns the question of whether the petitioner has made a *bona fide* job offer to the beneficiary. The director requested information such as the size of the congregation and the number of individuals receiving compensation from the church, in order to determine whether the church had a realistic need for a full-time minister in addition to the pastor. In response, the petitioner, in an unsigned letter, states the "number of individuals currently receiving compensation is about 10-15 approximately." The petitioner does not explain this uncertainty as to the number of its paid employees. The letterhead of the new letter, dated November 20, 2000, shows the petitioner's telephone number as (323) 562-4338, indicating that the petitioner's telephone number changed at some point between October 1998 and November 2000. The petitioner has also submitted a "Church Member List," showing 49 names.

Prior to rendering a decision, the director reviewed computerized records pertaining to other petitions filed by the petitioner. The director, in the denial notice, stated "Service records indicate that the petitioner has submitted eleven (11) additional petitions for the same position." The director then listed the receipt numbers for these eleven positions. The director stated "with a church membership of forty-nine (49), and five (5) weekly services, it doesn't appear that there is a need for twelve (12) ministers." Therefore, the director concluded, the petitioner has not shown that it has extended a *bona fide* job offer to the beneficiary.

In an effort to verify the director's assertion, the AAO consulted computerized records. These records confirm that at least ten of the listed petitions were filed by the petitioner between 1998 and 2000; information relating to the eleventh petition has been archived and is not immediately available. The AAO also found information relating to another six I-360 petitions filed by the petitioner during the same period (two of which were on behalf of the same individual). Thus, the petitioner filed special immigrant religious worker petitions on behalf of at least sixteen people (including the beneficiary) in a period of less than three years.

On appeal, [REDACTED] states "we do not have forty-nine (49) church members; we actually have approximately One hundred and fifty (150) members [REDACTED] states "the person who was responsible for the list of members wasn't as reliable as I thought." The petitioner submits a new list of 152 names, most but not all accompanied by addresses. The petitioner also submits a new copy of a 1999 Form 990, indicating that the petitioner employs 18 paid, full-time ministers, not including Pastor Aguilar who is listed as unpaid. These 18 ministers are among, rather than separate from, the 152 listed members, indicating that the church has more than one minister for every eight non-minister members.

The petitioner has, on two occasions, submitted what purport to be copies of its 1999 Form 990. The first copy listed *no* salaried ministers; the second copy lists 18 salaried ministers, earning a total of \$159,660. (The list of salaried employees and officers shows no trace of the four paid employees listed on the earlier version of the form.) The petitioner offers no explanation at all as to why the two Forms 990 differ so radically from one another. The petitioner also submits a copy of what purports to be a 2000 Form 990,

indicating \$234,000 in salaries paid. The form lists only nine ministers, but this is not a complete list. Each of the ministers is said to have earned \$13,000 for the year, so the nine individuals account for only \$117,000. Assuming all the ministers earned \$13,000 per year, the \$234,000 figure works out, once again, to 18 ministers. The church's 134 members who are not ministers, therefore, must each contribute, on average, nearly \$1,750 per year just to pay for all the ministers' salaries.

Even with the larger membership size, the petitioner has claimed to employ an unrealistically high number of full-time ministers, in addition to a pastor. The petitioner did not mention any of these ministers on its tax forms until after the director learned of the extraordinarily high volume of petitions filed by the petitioner.

Given the nature of the petitioner's claims, and the numerous credibility issues which have arisen throughout this proceeding, we concur with the director's finding that the petitioner has not extended a *bona fide* job offer to the beneficiary.

The final issue concerns the petitioner's ability to pay the beneficiary's wages. The petitioner has not specified the terms of the beneficiary's compensation, even though 8 C.F.R. § 204.5(m)(4) requires such information. 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.

The petitioner submits copies of Form 990, Return of Organization Exempt from Income Tax, for calendar years 1998 and 1999. These documents contain the following information:

	1998	1999
Total revenue	\$45,529.79	\$115,206.00
Total expenses	45,961.56	66,472.86
Excess or (deficit) for the year	(431.77)	48,733.14
Cash, beginning of year	2,413.00	2,491.68
Cash, end of year	2,491.68	2,010.27

The itemized expenses listed in Part II of the Forms 990 do not include salaries or wages, even though there is a space for listing them. Rather, the petitioner's reported expenses consisted of "Legal fees," "Supplies," "Occupancy," and other expenses that are plainly not related to compensation of personnel.

Accompanying the 1998 Form 990 was Schedule A, "Supplementary Information," Part I of which calls for information about "Compensation of the Five Highest Paid Employees Other Than Officers, Directors, and Trustees." The petitioner listed "NONE." Part II, "Compensation of the Five Highest Paid Independent Contractors," is similarly marked "NONE," indicating that the petitioner did not report paying any non-officer salaries or contractor fees in 1998. The petitioner claimed to have paid four named officers (a secretary, a treasurer and two deacons) in 1998, none of whom is the beneficiary.

Taken at face value, the Forms 990 indicate that the petitioner did not pay the beneficiary any salary in 1998 or 1999, and despite substantial excess revenue, had minimal cash reserves on hand at the end of the year. This does not readily demonstrate the petitioner's ability to pay the beneficiary's salary, whatever amount that may be.

If the petitioner did, in fact, pay a salary to the beneficiary in 1998, then the Form 990 omits material information. If the Form 990 is correct, then the petitioner did not pay any salary to the beneficiary in 1998, and the documents claiming otherwise are, in fact, fraudulent. Either way, the inconsistencies in the petitioner's tax documents raise serious questions of credibility. 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988).

Because the petitioner's tax documents are not consistent with the beneficiary's tax documents, we cannot determine which (if either) are accurate. Therefore, the materials provided by the petitioner are not facially credible.

The director, in denying the petition, noted some of the above anomalies on the petitioner's tax documents. The director concluded that "the petitioner has not provided evidence of an ability to pay a living wage to the beneficiary, much less the eleven (11) additional beneficiary's [sic]." As noted above, the petitioner has responded by claiming to employ not 11, but 18 full-time ministers. The petitioner has submitted two very different versions of Form 990 for 1999:

	First version	Second version
Total revenue	\$115,206.00	\$265,230.00
Total expenses	66,472.86	226,132.86
Excess for the year	48,733.14	39,097.14
Compensation of officers, etc.	48,733.16	159,660.00

The director had noted that the copies of Form 990 were not certified by the IRS. The newly submitted copies are, similarly, uncertified. There is no evidence that the petitioner timely submitted either version of Form 990 to the IRS.

Given the enormous discrepancies between what purport to be two copies of the same document, it appears highly likely that the petitioner has simply altered the Form 990 to reflect the salaries of 18 ministers. We are unable to imagine any legitimate purpose for the petitioner to have prepared such widely divergent Forms 990 for the same year. Rather, the petitioner's claim to employ such a large number of ministers appears, from the available evidence, to be little more than a pretext for seeking immigration benefits on behalf of those individuals.

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

ORDER: The appeal is dismissed.