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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship and Immigration Services

[Handwritten signature]

[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: JUL 19 2004

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:
[Redacted]

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.

[Signature]
Robert P. Wiemann, Director
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 Form I-360, Petition for Amerasian, Widow or Special Immigrant, filed with Citizenship and Immigration Services (CIS) indicates that the Hebron Ministries, Depauville, NY is the petitioner. The petition, however, appears to be signed by Carlos Hernandez. Therefore, the Hebron Ministries cannot be considered as having filed the petition on behalf of Mr. Hernandez, and Mr. Hernandez shall be considered as the self-petitioner.

The petitioner seeks classification 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 minister. The director determined that the petitioner had not established that his prospective employer qualified as a bona fide nonprofit religious organization or that it had the ability to pay the proffered salary. The director also determined that the petitioner had not established that he was qualified for the proffered position.

On appeal, counsel submits additional documentation.

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)(3)(i) 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 § 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 § 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 § 501(c)(3) of the Internal Revenue Code (IRC) 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 submitted a letter dated March 25, 1998 from the IRS affirming that the [REDACTED] had been granted tax-exempt status in 1993 as an organization under section 509(a)(2) of the IRC. Section 509(a)(2) refers to private foundations that are supported in part by organizations that may include churches. The petitioner also submitted a copy of the [REDACTED] Articles of Incorporation for incorporation in the state of California. On appeal, the petitioner submits copies of the [REDACTED] for the state of Michigan. [REDACTED] conform to the regulatory requirements, describing the religious purposes of the organization and containing a proper dissolution clause.

The petitioner did not submit a completed copy of the Form 1023, to include the financial statements of the organization for the last four years in a Statement of Revenue and Expenses. The submissions do not meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A) or (B), and fail to substantiate the petitioner's claim that the prospective employer is a bona fide religious organization.

The regulation at 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. The director determined that the petitioner had not established that he was qualified as a minister.

The regulation at 8 C.F.R. § 204.5(m)(2) defines minister as:

[A]n individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

With the petition, the petitioner submitted a letter from the secretary/treasurer of the Hebron Ministries, which stated that the duties of the proffered position would include acting as general pastor in the local church as

well as attending other churches upon invitation, supervising bible school, and general church administrative work. The petitioner submitted a copy of a diploma issued to him in 1993 by the [REDACTED] certifying that he had completed the basic program of [REDACTED]. The petitioner also submitted a copy of a 1992 certificate of ordination from the [REDACTED].

In response to the director's request for evidence (RFE) dated August 14, 2002, the petitioner submitted evidence that further expanded upon the duties of the proffered position. The petitioner indicated that the duties of the proffered position requires the petitioner to provide spiritual guidance and counseling to the congregation and to perform weddings and funeral services.

Article VIII of the [REDACTED] outlines the requirements for ordination in the denomination, including approval by the Board of Directors, which determines if the candidate has the necessary experience, and demonstrated ability as a minister of the Gospel. The evidence indicates that the petitioner worked as an associate pastor in Guatemala with the [REDACTED] for approximately 2½ years before entering the United States. The evidence also reflects that the petitioner has served as pastor of the [REDACTED] church in Los Angeles. The evidence is sufficient to establish that the petitioner is qualified for the proffered position.

The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part, that:

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 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 annual reports, federal tax returns, or audited financial statements.

According to its president, the [REDACTED] has 150 churches throughout the world, including 17 in the United States. The position offered to the petitioner is in Los Angeles with a salary of \$1,500 per month. The petition was filed on July 23, 2001. According to [REDACTED] the president of [REDACTED] from January 2001 to the date of his letter in November 2002, the petitioner received compensation from the Guatemalan ministry and supported himself with income from his properties in Guatemala.

The petitioner submitted copies of bank statements for the [REDACTED] for the months of December 2000, January 2001, and February 2001. The record also includes a copy of an apparent balance sheet for the [REDACTED] in Los Angeles for the months of March through June 2001. In response to the RFE, the petitioner submitted bank statements for the months of June through July of 2002 and October 2001 for [REDACTED] which has an address in Texas.¹ On appeal, the president of the [REDACTED] states that the ministries have never failed to pay its missionaries and pastors.

¹ Although the bank statements reflect addresses in Texas, statements from the Hebron Ministries indicate that Iglesia Cristiana Hebron is located in Guatemala.

The record includes copies of several checks from [REDACTED] made payable to the petitioner in 2001. These checks are in varying amounts and do not appear to have been made with any regular frequency. For example, the petitioner received three checks in March 2001, two in the amount of \$4,000 and one for \$2,500; however, the record does not reflect any checks for January or February of that year. The record shows one check in May 2001 for \$4,000, one in June for \$5,234.88, one in July for \$5,400 and one in August for \$3,400. Additional checks written on the [REDACTED] "Guatemalan Account" and made payable to the petitioner indicate that he received \$2,200 in February 2001 for "tickets" and another \$4,000 in April.

The above-cited regulation states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of evidence. The record is unclear as to the financial relationship between the Hebron Ministries and the churches with which it claims affiliation. The record is also unclear as to the purpose of the funds received by the petitioner, as the amounts vary and far exceed the proposed monthly salary.

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.