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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[redacted]

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FILE: WAC 04 255 50302 Office: CALIFORNIA SERVICE CENTER Date: APR 0 6 2005

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Petition for Nonimmigrant Religious Worker Pursuant to Section 101(a)(15)(R) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition and certified the matter to the Administrative Appeals Office (AAO) for review. The director's decision will be affirmed and the petition will be denied.

The petitioner is a church. It seeks to classify the beneficiary as a nonimmigrant religious worker pursuant to section 101(a)(15)(R) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R), to perform services as a pastor for a term of three years. The director determined that the petitioner had not established its ability to pay the beneficiary's proffered salary, that it had made a qualifying job offer to the beneficiary, or that the beneficiary had belonged to the petitioner's religious denomination for at least two years prior to the filing of the petition.

The petitioner filed an appeal from the denial of the petition. The regulations, however, do not provide for such appeals. The director determined that the matter involves complex and/or novel issues of law, and certified the matter to the AAO pursuant to 8 C.F.R. § 103.4(a)(5). Counsel, in the appeal statement, offers no specific rebuttals to any of the grounds for denial, saying instead that a brief will follow in 30 days. Counsel has since informed the AAO that no brief has been, or will be, submitted.[1]

In the denial notice, the director noted that unauthorized employment violates an alien's nonimmigrant status. In this instance, at the time of filing, the beneficiary was an F-1 nonimmigrant student, not authorized to work in the United States. On appeal, counsel stated that the director "terminated the Beneficiary's current F-1 status because . . . the beneficiary [allegedly] has worked . . . in violation of his F-1 status." The record of proceeding now before the AAO does not address the beneficiary's F-1 status or any termination thereof. The decision certified to the AAO did not terminate the beneficiary's F-1 status; it simply mentioned that past employment could represent a violation of that status. We shall, therefore, limit consideration to the R-1 petition rather than any adverse action relating to the beneficiary's F-1 status.

Section 101(a)(15)(R) of the Act defines the nonimmigrant classification that the petitioner seeks on the beneficiary's behalf:

> (R) an alien, and the spouse and children of the alien if accompanying or following to join the alien, who-
>
> > (i) for the 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; and
> >
> > (ii) seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii).

The cited subclauses of section 101(a)(27)(C)(ii) of the Act apply to an alien who:

> (ii) seeks to enter the United States--

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[1] We note that the petitioner has since filed a second nonimmigrant petition on the beneficiary's behalf, with receipt number WAC 05 056 50781. That petition has been approved, which may explain counsel's decision not to submit further materials in support of the present petition. The AAO has not examined the record of proceeding for the approved petition, and therefore cannot comment on any similarities or differences that may exist between the two records of proceeding.

(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 Revenue Code of 1986) at the request of the organization in a religious vocation or occupation.

Citizenship and Immigration Services (CIS) regulations at 8 C.F.R. § 214.2(r)(1) state:

> Under section 101(a)(15)(R) of the Act, an alien who, for at least the two (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, may be admitted temporarily to the United States to carry on the activities of a religious worker for a period not to exceed five (5) years. The alien must be coming to the United States for one of the following purposes: solely to carry on the vocation of a minister of the religious denomination; to work for the religious organization at the request of the organization in a professional capacity; or to work for the organization, or a bona fide organization which is affiliated with the religious denomination, at the request of the organization in a religious vocation or occupation.

The first issue in contention concerns the petitioner's offer to pay the beneficiary $24,000 per year. 8 C.F.R. § 214.2(r)(3)(ii)(D) requires the petitioner to establish the arrangements made, if any, for remuneration for services to be rendered by the alien, including the amount and source of any salary, and a description of any other types of remuneration to be received.

The director instructed the petitioner to submit financial documentation to demonstrate the source of the beneficiary's proposed remuneration, and to verify the number of employees currently receiving compensation (on the Form I-129 petition, the petitioner had claimed three employees). In response, the petitioner submitted a copy of the Foursquare Licensing Process Guide issued by the petitioner's denomination, the International Church of the Foursquare Gospel (ICFG). This guide indicates the denomination's bylaws require each church "to pay to ICFG a tithe of the tithes and general offerings received by the church. . . . Additionally, each Foursquare church is required to give to general Foursquare missions and to file a monthly financial report." The document further states "each Foursquare church is charged . . . to carefully report its financial activity on a monthly and annual basis."

The petitioner did not submit copies of any of the monthly or annual reports that the denomination requires. Instead, the petitioner submitted copies of four bank statements, containing the following information:

	Beginning Balance	Average Balance	Ending Balance	Total Credits	Total Debits
May 2004	$1,026.67	$939.67	$2,510.23	$4,100.00	$2,616.44
June 2004	2,510.23	1,877.76	3,249.10	4,000.00	3,261.13
July 2004	3,249.10	2,518.84	2,354.61	4,000.00	4,894.49
August 2004	2,354.61	1,827.42	2,069.55	2,550.00	2,835.06

The petitioner indicated "[t]here is currently one employee" of the petitioning church, an assistant pastor earning $500 per month. This is not consistent with the petitioner's earlier statement that it has three employees.

In denying the petition, the director acknowledged the bank statements, but concluded that "the petitioner has not provided . . . credible information regarding its financial activity to reflect its ability to remunerate employees, including the pastor. . . . The petitioner has not submitted the required monthly financial activity report as required by ICFG to demonstrate that it is capable to meet all of its financial responsibilities."

The director, prior to the denial, had not specifically requested the ICFG monthly/annual reports, but the petitioner did not disclose the existence of ICFG's requirements until after the issuance of the request for evidence. Having voluntarily submitted evidence to establish that the petitioner is required to file such reports, it is valid to note the absence of such reports from the record.

The August 2004 bank statement reflects barely enough income to cover the assistant pastor's $500 salary and the beneficiary's $2,000 salary, even without taking into account the additional required expenditures of mission donations; the ICFG tithe; and the salaries of the two additional employees claimed on the Form I-129 petition. Furthermore, half of the bank statements show a net loss, with debits exceeding credits by several hundred dollars.

Considering the above factors, we concur with the director's finding that the petitioner has failed to "provide a complete picture of the petitioner's financial status" and to demonstrate that there will consistently be a sufficient source for the beneficiary's compensation throughout the proposed three-year term of employment.

The next issue concerns the terms of the job offer. On the Form I-129 petition, the petitioner indicated that the beneficiary will work full-time. Subsequently, counsel has stated "[t]here are currently 24 congregants" in the petitioning church, although a church membership directory names thirty individuals in eight families. The petitioner rents space from another church that actively uses the same property. The rental agreement in the record specifies "[t]he church will be used on Sunday from 2-5 pm and during the week on Tuesday from 6-9 pm. . . . No other days will be used unless by the permission of the pastor." The petitioner has not explained where the beneficiary would be working outside of these hours.

The director determined that, given the very small size of the congregation and the written agreement that gives the petitioner access to the church for only six hours a week, "[i]t appears that the beneficiary would not be able to [work] full-time" as claimed on the petition form. We agree with the director that the petitioner has not explained how the above terms are compatible with a *bona fide* offer of full-time employment.

Finally, there is the issue of the petitioner's religious denomination. 8 C.F.R. § 214.2(r)(2) defines "religious denomination" as a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, and religious congregations, or comparable indicia of a bona fide religious denomination. Here, the petitioner's denomination is the International Church of the Foursquare Gospel. 8 C.F.R. § 214.2(r)(3)(ii)(B) requires the petitioner to demonstrate that, immediately prior to the application for the nonimmigrant visa or application for admission to the United States, the alien has the required two (2) years of membership in the religious denomination. The petition was filed September 20, 2004. The petitioner must, therefore, establish that the beneficiary has been a member of the petitioning denomination (ICFG) for at least two years immediately prior to that date.

In a letter dated July 26, 2004, submitted with the initial filing of the petition, Rev. Soon Sik Kim states that the beneficiary was a member of San Pedro Korean Foursquare Church from January 2002 to December 2003. Rev. Kim identifies himself as "Senior Pastor," and the letter is on the letterhead of San Pedro Korean Foursquare Church. The petitioner's subsequent response to the director's request for evidence contains further correspondence from Rev. Soon Sik Kim, dated October 1, 2004, again on the letterhead of the church in San Pedro. Counsel identifies this individual as "Rev. Soon Sik Kim of the San Pedro Korean Foursquare Church." The response to the request for evidence also identifies the beneficiary as the senior pastor of the petitioning church. The Form I-129 petition, however, repeatedly identifies Rev. Soon Sik Kim as the senior pastor of the *petitioning* church. Counsel prepared the Form I-129, and Rev. Soon Sik Kim signed it; both their signatures are dated September 1, 2004. Thus, Rev. Soon Sik Kim was senior pastor of the San Pedro church in July 2004 and October 2004, but apparently was also senior pastor of the petitioning church for at least part of that same period. These facts are consistent with the director's finding that the petitioner has not shown that a *bona fide* offer exists for the beneficiary to be the full-time senior pastor of a church which, previously, seems to have shared its senior pastor with another church. (If Rev. Soon Sik Kim was not the senior pastor of the petitioning church as of September 1, 2004, then the document was signed under false pretenses and was never properly filed in the first place.)

The petitioner has submitted a copy of a letter dated January 14, 2004, addressed to the beneficiary as pastor of the petitioning church, from Arthur J. Gray II, corporate secretary of ICFG. Mr. Gray states: "At its meeting held on January 8, 2004, the Board of Directors recognized the establishment of your church as a Foursquare Gospel Church." Based on this letter, the director determined that the beneficiary had not been a member of the Foursquare Gospel denomination throughout the relevant 2002-2004 period. This conclusion, however, fails to take into account evidence that the beneficiary served at a *different* Foursquare Gospel church in 2002 and 2003. On the Form I-129, the petitioner indicated that the petitioning church was established in 2004. The rental agreement between the petitioner and another church was executed in late December 2003. All of this is consistent with the church preparing, in late 2003, for formal recognition and establishment weeks later in January 2004. That the petitioning church was not formally established until 2004 does not prove or imply that the beneficiary was not a member of the Foursquare Gospel denomination in 2002 or 2003, and it certainly does not contradict evidence that the beneficiary preached at another ICFG church during those years. We therefore withdraw the director's finding regarding the beneficiary's past membership in the petitioner's denomination. The remaining grounds for denial, however, still stand, and we therefore affirm the denial of the petition.

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 denial stands.

ORDER: The director's decision of October 21, 2004 is affirmed. The petition is denied.