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

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 1 0 2005
WAC 02 274 50867

IN RE: Petitioner: [redacted]
Beneficiary:

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter 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 (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 the beneficiary had the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established its ability to pay the beneficiary's proffered wage.

The issues of continuous work and ability to pay are separate, independent (rather than cumulative) issues; an adverse finding on either issue is, by itself, sufficient to warrant denial of a petition.

On appeal, the petitioner submits photographs, bank statements, and other documents.

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 Revenue 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).

Citizenship and Immigration Services (CIS) regulations at 8 C.F.R. § 204.5(m)(1) indicate 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 experience in the religious vocation, professional religious work, or other religious work. The petition was filed on September 6, 2002. 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. The petitioner indicates that the beneficiary entered the United States on August 13, 2001, and therefore the beneficiary was outside the United States for nearly half of the qualifying period.

The petitioner's initial submission contained little information regarding the beneficiary's past work. Therefore, on April 3, 2003, the director requested "evidence of the beneficiary's work history beginning September 6, 2000 and ending September 6, 2002," including "the employer's name." In response to this notice enior pastor of the petitioning church, stated that the beneficiary "started his formal relationship with our Church September 01, 2001" and "has been working in our midst since September 1st, 2001." letter included a weekly schedule of the beneficiary's activities, and specified that the schedule covers "Period: From September 01, 2001 to September 06, 2002." The schedule includes "Teaching & Preaching" every Sunday from 10:00 a.m. to 1:00 p.m.

The petitioner also submitted a letter indicating that the beneficiary worked at Gonzalez Catan's First Evangelical Baptist Church in Argentina from April 4, 1995 to August 1, 2001. The petitioner identified no other employer apart from itself and the church in Argentina.

On October 9, 2003, the director again requested "a listing of the beneficiary's employment history." In response, epeated that the beneficiary "has been working in our midst since September 1st, 2001 . . . in addition to a long experience . . . in Argentina." The petitioner submitted copies of programs from various church services, showing the beneficiary's name. The earliest of these programs is dated October 6, 2002 (after the filing date), and therefore the programs do not place the beneficiary at the petitioning church during the two-year qualifying period. There is no contemporaneous documentation placing the beneficiary at the petitioning church prior to the filing date. The petitioner submitted copies of letters and other documents regarding the beneficiary's work in Argentina.

The director denied the petition, in part because the petitioner had submitted insufficient evidence to establish that the beneficiary worked continuously as a minister throughout the two-year qualifying period. On appeal, the petitioner submits the beneficiary's 2002 income tax return and a Form 1099-MISC Miscellaneous Income statement, indicating that the petitioning church paid the beneficiary $5,390 in 2002. This amount is less than two months at the proffered salary of $2,900 per month, and therefore it does not demonstrate the beneficiary's continuous employment during 2002. The tax return shows the $5,390 paid by the petitioning church, and $7,500 in "Other Income." The source of the other income is not specified. The statute and regulations do not permit an alien minister to engage in other, secular employment.

At no time in the proceeding did the petitioner indicate that the beneficiary worked anywhere other than the petitioning church and the church in Argentina during the 2000-2002 qualifying period.

The petition in the present proceeding is not the first petition filed on the beneficiary's behalf. Review of the beneficiary's alien file reveals a letter, dated October 30, 2001, from an official of Iglesia Bautista Carmenita, also known as Carmenita Baptist Church of Norwalk, California (hereafter "Carmenita"). The official indicates that the beneficiary "is currently cooperating as a religious worker as pastor in our Church." Programs from Carmenita show that the beneficiary participated in that church's 10:15 a.m. Sunday services on October 21, 2001 and November 4, 2001.

If the beneficiary was at Carmenita at 10:15 a.m. on the above Sundays, then he cannot have been "Teaching & Preaching" at the petitioning church at the very same time, as shown on the previously submitted schedule. The documentation from Carmenita never mentions the petitioning church, and the materials from the petitioning church never mention Carmenita. Thus, two overlapping claims have been made regarding the beneficiary's activities and whereabouts during late 2001.

8 C.F.R. § 103.2(b)(16)(i) requires advance notice when derogatory evidence surfaces. Therefore, on May 25, 2005, the AAO issued a notice to the petitioner. The AAO listed the above information, and stated:

> Because of these contradictions and discrepancies, the credibility of your claims is in serious doubt.
>
> Accordingly, we advise you that we will reject your claims, and dismiss your appeal, unless you are able to provide convincing, contemporaneous documentary evidence to show that the beneficiary began working at your church in September 2001 as you have claimed. We also call for a thorough and persuasive explanation for your failure to mention Iglesia Bautista Carmenita in response to repeated requests for information about the beneficiary's work history. (While an explanation *alone* will not suffice, in this instance an explanation is clearly in order *in addition* to the required documentary evidence.)

The AAO allowed the petitioner 30 days to respond. To date, two months after the issuance of the notice, the record contains no further correspondence from the petitioner. We conclude, therefore, that the petitioner has elected not to contest the information cited in the AAO's notice.

The petitioner has never submitted adequate documentation to support its claim that the beneficiary worked at the petitioning church from September 1, 2001 onward. The information detailed above indicates that the beneficiary was, in fact, working for a different church during at least part of that time. We are not obliged to infer eligibility based on the reasoning that, while the two claims contradict each other, both claims involve churches and therefore the beneficiary must have been at one church or another during the period in question. 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). If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS,* 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Based on the above, we conclude that the petitioner's claim to have engaged the beneficiary's services continuously since September 2001 is not credible.

The next issue concerns the petitioner's ability to pay the beneficiary's salary of $2,900 per month, which is $34,800 per year. 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's initial submission included an "Analysis of Revenues & Expenses" dated March 31, 2001. There is no indication that this document was audited or part of an official annual report. The document

shows savings of $10,885.68; year-to-date income of $226,903.43; and year-to-date expenses of $233,950.26. This document predates the beneficiary's arrival in the United States, and therefore the beneficiary's salary is obviously not among the expenses already accounted for on the document. Also, church officials indicate that the beneficiary is establishing a *new* Hispanic ministry for the church, and therefore the document would not account for the salary of any hypothetical predecessor in the beneficiary's position.

The director requested additional evidence of the petitioner's ability to pay the beneficiary's salary. In response, the petitioner submitted a copy of its "Fiscal Year 2003-2004 Budget Proposal," including the budget for the preceding year. A budget indicates the petitioner's *planned* income and expenses; it does not confirm the accuracy of the figures listed therein.

The director's second request for evidence also included a request for evidence of the petitioner's ability to pay the beneficiary's salary. In response to this second request, the petitioner has again submitted budget documents as well as an unaudited balance sheet.

The director, in denying the petition, found that the petitioner's budget documents and unaudited balance sheets "have little evidentiary value." The above-cited regulation at 8 C.F.R. § 204.5(g)(2) 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 non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

On appeal, the petitioner submits Forms 1099-MISC showing that it paid the beneficiary $5,390.00 in 2002 and $29,027.30 in 2003. These two amounts, put together, total less than one year's pay at the proffered wage. In conjunction with the unrebutted credibility issues already discussed above, we find that the petitioner has not credibly established that it has consistently been able to pay the beneficiary's full proffered wage from the time of filing onward.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.