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**U.S. Citizenship
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[Redacted]

FILE: [Redacted]
SRC 03 008 50111

Office: TEXAS SERVICE CENTER Date: FEB 10 2005

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:

[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.

Robert P. Wiemann, Director
Administrative Appeals Office

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DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a Christian missionary organization. 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 religious education director/minister. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a religious education director/minister immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary.

On appeal, the petitioner submits witness letters, financial documents and a brief from counsel.

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).

We will first examine the question of whether the proffered position qualifies as a religious occupation. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

Minister means an 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.

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious

hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

At the time of filing, the beneficiary was not in the United States. Rev. [REDACTED] "Director of Americas" for the petitioning organization, states that the beneficiary "has been working since 1999 to present as a Religious Education Director/Missionary in China." Rev. [REDACTED] lists the beneficiary's proposed duties for the petitioner:

Her job will be to: a) Advertise activities of the organization in Christian Newspapers and Flyers; b) Have training courses for missionary candidates; c) Have these missionary training courses quarterly; d) Teach subjects such as culture, language, personal and group evangelism, counseling, pastoring, church growth, Bible studies, church administration, Christian education, discipleship training, worship, worship music, preaching, Christian ethics, her experience in mission work, etc.; e) Invite volunteer teachers from churches and Theological Seminaries; f) Open these missionary training programs to the general public – there is no criteria for admission; g) To send missionaries; h) To start new churches through missionaries.

The director, in denying the petition, stated "[i]t cannot be determined that this is a permanent full-time job offer. The evidence does not show that this is a paid position. It cannot be determined that this is a traditional religious function." The training of missionaries and the founding of churches would appear to relate to a traditional religious function, and the petitioner has indicated that the position offered is paid, full-time and permanent. We also note that the petitioner claims that the position requires ordination as a minister. With regard to the petitioner's description of the beneficiary's *future* work, the director's finding does not appear to have strong support in the record, and we hereby withdraw that particular finding.

Regarding the beneficiary's *past* work, the director appears to be on stronger footing, as we shall discuss here.

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 October 9, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a religious education director/minister throughout the two years immediately prior to that date.

Rev. [REDACTED] claims that the petitioner paid the beneficiary \$18,000 per year in 1999 and 2000, raised to \$30,000 in 2001 and 2002. The petitioner's initial submission, however, contained no financial documentation or other contemporary evidence of these claimed payments.

The petitioner submits a copy of a document labeled "birth certificate," although it contains recent information about the beneficiary. The document, issued by the Beijing Police Department, identifies the beneficiary as "Owner of the [REDACTED] Corporation." The document is dated July 11, 2001. The record contains no other information about [REDACTED] Corporation. Clearly, as late as July 2001, Chinese authorities considered the beneficiary to be not religious worker, but rather the owner of a corporation.

The International Ministerial Fellowship, Minneapolis, Minnesota, issued a "Certificate of Ordination" to the beneficiary on February 27, 2002, upon the recommendation of Garden Valley Christian Center in Lindale, Texas. The record does not describe the studies or training that led to the issuance of this certificate.

On April 8, 2003, the director instructed the petitioner to submit "a detailed description of the beneficiary's prior work experience," as well as evidence to demonstrate the beneficiary's receipt of the funds that the petitioner claims to have paid to her. The petitioner asserted that payroll records were unavailable because the beneficiary worked in "Red China." The petitioner did not elaborate at the time.

The director also inquired as to the minimum qualifications for the proffered position. Rev. [redacted] replied that the "[q]ualification for this position is B.A. degree and Ordained minister." The beneficiary holds a bachelor's degree in Music Performance Arts. As noted above, the beneficiary holds a Certificate of Ordination, but it was not issued until February 2002.

The director denied the petition, stating that the petitioner has not shown that the beneficiary was consistently a paid employee, or that her work required ordination or qualified as a religious occupation. The director also cited *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978), to indicate that a certificate of ordination is not *prima facie* evidence that the holder of the certificate is a fully qualified, authorized member of the clergy.

On appeal, counsel states "the beneficiary was paid. However, her payment for services in China had to be concealed. Beneficiary has been imprisoned for her religious convictions. Attached are copies of receipts evidencing money which was sent to China for the beneficiary." The petitioner submits copies of several receipts, dated between 1999 and 2002.

The director, in the request for evidence issued April 8, 2003, had instructed the petitioner to submit "appropriate evidence (such as cop[ies] of pay stubs or checks)." The petitioner did not submit the pay receipts at that time, nor explain its failure to do so. Because the director had given the petitioner the opportunity to submit this evidence prior to the decision, the key question is not whether the pay stubs exist but whether the beneficiary submitted them when asked; and their submission on appeal does not overcome the petitioner's failure to submit them when first requested to do so. We need not consider the pay stubs on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

Even if we ignore the precedent set in *Soriano*, the pay receipts themselves raise further questions. The stubs do not establish *continuous* payments; there are gaps of up to seven months between some receipts. Also, there is no indication that any of the pay receipts relate in any way to the beneficiary or her compensation. The beneficiary's name appears on none of the receipts, while the name "Ms. [redacted]" or "Ms. [redacted]" appears several times.¹

Furthermore, the beneficiary was in the United States during the time that several of the receipts were issued. Rev. Paris, on appeal, acknowledges that the petitioner sometimes "visits the United States," but does not specify the frequency or duration of these visits. [redacted], senior pastor of Curtis Lake Christian Church, Sanford, Maine, states that the beneficiary has addressed his congregation "on numerous occasions"

[redacted] of Global Family Fellowship, in a letter submitted on appeal, repeatedly mentions a "Miss [redacted]" but does not state this individual's full name. As noted in this decision, an unidentified recipient in China issued receipts for payments to "Ms. [redacted]" at a time when the beneficiary is known to have been in the United States, and the petitioner had never previously indicated that the beneficiary used the alias "Ms. [redacted]". Nothing in the record demonstrates that the beneficiary and "Ms. [redacted]" are one and the same.

since 2000. Records show that the beneficiary was in the United States from June 16, 2000 to December 5, 2000, and from September 14, 2001 to March 9, 2002 (with a two-week absence from December 20, 2001 to January 3, 2002). During these two visits, the petitioner sent a total of eight payments to China. We find no credible evidence that these payments, sent to China while the beneficiary was at the petitioner's Texas headquarters, were "for the beneficiary" as counsel claims.

The beneficiary is known to have been in the United States for some seven months of the qualifying period. During that time, she was not in China to receive payments sent there. Furthermore, despite obviously being safe from Chinese authorities, the petitioner has not established that the beneficiary received any payment during her substantial time in the United States. Instead, Rev. Paris had indicated that the beneficiary "has been working since 1999 to present as a Religious Education Director/Missionary in China," which misleadingly implies that the beneficiary was in China the whole time. The petitioner did not mention that the beneficiary had traveled to the United States at all, let alone that the beneficiary had spent nearly a third of the qualifying period in the United States. On the Form I-360 petition, asked whether the beneficiary had ever worked in the United States without permission, the petitioner answered "no." The petitioner also claims to have paid the beneficiary consistently since 1999. These two claims appear to be mutually exclusive, given that, from June to December of 2000, the beneficiary was on a six-month visit to the United States as a B-2 nonimmigrant visitor for pleasure. B-2 nonimmigrants do not have employment authorization, and paid work in the United States for a Texas-based employer that claims to be the source for all of the beneficiary's remuneration would certainly appear to constitute unauthorized employment.

We also note that the beneficiary was ordained after more than five months in the United States, and left less than two weeks later. This would be consistent with a finding that, from September 2001 to February 2002, the beneficiary was engaged not in the duties of an educational director or missionary, but in preparation or training for ordination. At the very least, it is not immediately apparent that the beneficiary performed similar functions in China as she did in Texas during the qualifying period. If the petitioner intends for the beneficiary to continue working in China, it is not clear why the petitioner requires United States immigration benefits to do so (and, by spending long periods abroad, the beneficiary would be at risk of abandoning her permanent resident status). If, on the other hand, the petitioner intends to engage the beneficiary primarily in the United States, then it is significant that the beneficiary was in China for 17 months of the qualifying period. The burden is on the petitioner to establish that the beneficiary's past and intended future duties are essentially the same.

The beneficiary's ordination, less than eight months before the petition's filing date, suggests two possibilities: (1) The beneficiary's past duties as a "Religious Education Director/Missionary" closely match her proposed duties as a "Religious Education Director/Minister," in which case the distinction between the two titles is nonexistent, trivial, or meaningless. If this is the case, then we cannot conclude that those duties are the exclusive purview of an ordained minister, and the petitioner's claim that the position requires ordination is not credible, given that the beneficiary was supposedly performing those duties long before she was ordained.

(2) The past position of "Religious Education Director/Missionary" differs substantively from the prospective position of "Religious Education Director/Minister," and ordination is truly a fundamental, indispensable requirement of the latter position. If this is the case, then the beneficiary cannot possibly have performed the duties of a "Religious Education Director/Minister" continuously throughout the entire two-year qualifying period; she possessed the necessary qualifications for less than a third of that period.

The regulations at 8 C.F.R. § 204.5(m)(1) and (3)(ii)(A) require that the beneficiary must have carried on *the* vocation or occupation, rather than *a* vocation or occupation, indicating that the work performed during the qualifying period should be substantially similar to the intended future religious work. The underlying statute, at section 101(a)(27)(C)(iii), requires that the alien "has been carrying on such . . . work" throughout the qualifying period. An alien who seeks to work in occupation A has not been carrying on "such work" if employed in occupation B for the past two years. If the beneficiary seeks to enter the United States to work as a minister, she must have worked continuously as a minister throughout the qualifying period. Here, the beneficiary was a minister for only a fraction of the qualifying period. Thus, the beneficiary's recent ordination, like her extended visits to the United States, suggest that the beneficiary did not continuously engage in any one occupation or vocation throughout the qualifying period.

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).

For the reasons discussed above, we concur with the director's finding that the petitioner has not adequately or credibly demonstrated that the beneficiary has continuously worked in the proffered position throughout the two years immediately preceding the petition's filing date.

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.