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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]

JUN 17 2005

FILE: [Redacted]
EAC 01 230 60473

Office: VERMONT SERVICE CENTER

Date:

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:

Attached is a request for evidence relating to the above proceeding. Pursuant to federal regulations at 8 C.F.R. § 103.2(b)(8), you are allowed twelve (12) weeks from the date of this notice to respond to the above address. That same regulatory section specifies that additional time may not be granted. All evidence submitted in response to a request for evidence must be submitted at one time. The submission of only some of the requested evidence will be considered a request for a decision based on the record. 8 C.F.R. § 103.2(b)(11). By regulation, we cannot, and will not, consider multiple or untimely submissions. If your response does not establish that the petition was approvable at the time it was filed, then the petition cannot be approved. 8 C.F.R. § 103.2(b)(12). Please submit any response directly to the AAO at the above address.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The AAO reopened the matter on petitioner's motion, and affirmed its previous decision. The AAO now moves to reopen this matter pursuant to 8 C.F.R. § 103.5(a)(5)(ii) for purposes of entering a new decision.

Your church 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 pastor. Parish and archdiocese officials indicate that the beneficiary was an assistant pastor until the autumn of 2000, at which point he became the parish administrator. Critical to this proceeding has been the petitioner's failure to establish that the beneficiary had the requisite two years of continuous work experience as an assistant pastor/pastor/administrator/priest immediately preceding the filing date of the petition. *See* 8 C.F.R. § 204.5(m)(3)(ii)(A).

You have, in the past, provided some evidence to link the beneficiary with your church in 1999, 2000 and 2001, but the contemporaneous evidence was not sufficient to establish that the beneficiary's work for the church took the form of full-time, compensated work as a minister. Whenever a critical element of the petition rests largely or entirely on after-the-fact witness statements, it is imperative that those statements be credible and wholly consistent with the rest of the record.

In preparing to reopen this proceeding, we have reviewed the evidence and statements in the beneficiary's file. This review of the materials submitted by you has revealed inconsistencies and apparent contradictions. Unless you are able to provide credible documentary evidence to persuasively overcome these discrepancies, the AAO will dismiss your appeal. In order to give you an opportunity to address these discrepancies prior to our decision, we issue this notice, including several questions in **bold** type.

1. The record is inconsistent regarding the source and extent of the beneficiary's compensation during the 1999-2001 qualifying period. In an affidavit dated February 25, 2002, the beneficiary states: "I was remunerated \$400.00 per week for my living expenses, which included in part some donations from parishioners." Later, in a statement dated October 20, 2004, the beneficiary states: "I have been employed *without a salary*. While it is difficult to work *without financial compensation* I am committed to the work of the church" (emphasis added). It is difficult to reconcile the beneficiary's statement that he "was remunerated \$400.00 per week" with his later claim that he worked "without financial compensation"; these assertions appear to contradict one another.

In a letter dated March 6, 2002, the Very Reverend Father Nicholas Apostola, chancellor of the Romanian Orthodox Archdiocese in America and Canada, stated the petitioning church "is currently providing [the beneficiary] with an apartment and a salary commensurate with the guidelines of our Archdiocese." In a later letter, dated September 10, 2003, Fr. Apostola states that the beneficiary "was provided an apartment including utilities by the parish as well as an appropriate salary either in cash or in-kind, *sometimes paid by the parish* and *sometimes* by individual parishioners" (emphasis added). Thus, the record contains contradictory claims regarding whether the beneficiary received a salary. There is also some question about the source of the beneficiary's compensation; some letters state that the expense was split between the parish itself and individual parishioners, whereas other letters appear to indicate that parishioners alone bore this burden, which is why the church has no financial documentation of any payments to the beneficiary. **Please resolve this discrepancy. Please submit documentation to show how much of the beneficiary's compensation was paid directly by the parish. If the parish paid none of it, please explain why you submitted letters that indicate that the parish did provide some of the funds. Because part of the**

beneficiary's compensation includes housing, please explain why the beneficiary was apparently living in Hagerstown, Maryland at least as late as June 1999.

2. Discussion of the beneficiary's compensation leads to another issue that arises upon our review of the record. The regulation at 8 C.F.R. § 204.5(g)(2) states:

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. In a case where the prospective employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by the Service.

The priority date of a petition filed for classification as a special immigrant under section 203(b)(4) of the Act shall be the date the completed, signed petition (including all initial evidence and the correct fee) is properly filed with the Service. 8 C.F.R. § 204.5(d). You filed the present petition on April 30, 2001. Parish council president Stefan Metcaniuc has stated that the beneficiary will receive "a weekly salary of \$400.00 plus room and board. Our parish is financially capable to pay said salary. Should we encounter any unforeseen problems, our Archdiocese will provide us with funds." Other officials have indicated that the church will also pay for the beneficiary's utilities. Therefore, you must establish that you have consistently had the ability to pay the beneficiary \$400 per week (equal to \$20,800 per year), plus food, housing costs, and utilities, since April 30, 2001.

Your claim that the Archdiocese will supply additional funds if needed cannot suffice without evidence that the Archdiocese has such funds available, and that the Archdiocese has agreed to such an arrangement. You have submitted a letter, dated April 18, 2001, from Fr. Apostola, who states: "If the parish for any reason cannot continue to meet these financial requirements, the Archdiocese will assume these responsibilities *while he is being reassigned to another parish.*" This arrangement does not establish your ability to compensate the beneficiary at the proffered rate; it establishes only that the beneficiary will cease to work for your parish if you are unable to pay. 8 C.F.R. § 204.5(g)(2) requires evidence that *the employer* has the ability to pay; not that there exists some other entity that will assume responsibility if the employer defaults.

When considering your church's ability to pay, we turn to the translated minutes from the church's annual meeting on February 11, 2001. These minutes state, on page 37: "The financial situation of the church is somewhat critical. It is at its survival limit, having need of funds for emergency repairs." At the meeting, the beneficiary presented a "Financial Account," which you have submitted. The document includes monthly income and expense figures from March 1999 through December 2000. There is no evidence that the figures in this account resulted from an audit. On its face, this "Financial Account" indicates that the church's entire income for 2000, from all sources, was less than \$13,000, well short of the proffered annual salary of \$20,800 (plus additional consideration for utilities and other expenses above and beyond the \$400 weekly base wage). **Please provide persuasive documentation that your church had become financially viable eleven weeks after this meeting, when you filed the petition, and that the church has consistently been able to provide the beneficiary's full level of compensation since April 30, 2001.** The petition cannot be approved without

evidence to establish that you have been, since April 30, 2001, able to pay the beneficiary's full compensation.

3. You previously submitted a letter from an official of [REDACTED] Church in Roebling, New Jersey, indicating that the beneficiary "has been active in our Church over the past one year." The letter is not dated, but you submitted the letter in May 2000. An accompanying letter from [REDACTED] then president of your church council, states that the beneficiary has worked at the church in Roebling "[o]ver the past year." Mr. [REDACTED] letter is dated May 8, 2000. Thus, officials of your church and the church in Roebling both indicate that the beneficiary had performed work at the Roebling church from c. May 1999 to May 2000. Both letters indicated that this arrangement was to continue into the future, with the Roebling church contributing toward the beneficiary's compensation.

Please provide dates and times showing when (during the 1999-2001 qualifying period) the beneficiary was working at the church in Roebling. Submit contemporaneous documentation from the church in Roebling to establish that the beneficiary received the promised compensation, and to specify what exactly the beneficiary was doing while at that church. Please explain why the detailed hourly schedule you submitted does not mention any of the beneficiary's claimed visits to the church in Roebling.

4. Witnesses state that the beneficiary has performed the typical duties of a Romanian Orthodox priest. In addition to ministerial duties, several witnesses state that the beneficiary has personally performed extensive repairs and renovations to the church building. For instance, in a 2002 statement, parishioner [REDACTED] states: "Some of the projects he has completed in the past three years is repair of the roof in both the church and social hall areas, he ripped out the bathrooms . . . and put in clean, modern lavatories . . . scraped and painted the fence around the church and improved the grounds with flowers and grape vines . . . and cleaned up the [storage] rooms to be put to use as recreational areas for the kids and offices for our Bishop." On April 6, 2002, several members of the petitioner's parish council signed a joint letter, stating that the beneficiary "focused his efforts also on the Maintenance of the Church. He helped in raising money for repair work and did repair work himself." A joint letter from several parishioners states that petitioner "put a tremendous number of hours, days, weeks and months of volunteer work to repair, renovate and reconstruct the building." Other letters indicate that "he himself was the one doing most of the work," "many times without anybody's help."

Please be advised that building maintenance is not qualifying religious work. The regulation at 8 C.F.R. § 204.5(m)(2) states that, for a minister, there must be a reasonable connection between the activities performed and the religious calling of the minister. Building renovations are not activities generally connected with the religious calling of a minister, and they do not become more so simply because the building being repaired is a church, any more than renovations to a hospital are connected with the profession of a surgeon.

On average, roughly how many hours per week from April 1999 to April 2001 did the beneficiary spend personally performing renovations on the church (for example, repairing the roof)? Where did this work generally fit into his work schedule?

You have submitted a photograph of the beneficiary apparently working on the roof of the church. The photograph is dated May 26, 1999. You have also submitted three canceled checks, respectively dated June 2, 3, and 4, 1999, payable to Home Depot. Presumably, these checks paid for supplies used in the aforementioned repairs and renovations. The beneficiary's name is written on all three of them, along with

various addresses. The June 3 and June 4 checks state the beneficiary's address as Hagerstown, Maryland.

When did the beneficiary reside in Hagerstown? When did he reside at the church's property in Philadelphia? Please submit documentation to show who owned (or rented) the property at the Hagerstown address at the time the beneficiary lived there. Please explain whether the church paid the rent for the Hagerstown dwelling, and if the church did pay this rent, please provide contemporaneous documentation to that effect (such as rent checks, a lease in the church's name, etc).

You have submitted multiple copies of what purports to be an hour-by-hour accounting of the beneficiary's activities from April 11, 1999 to September 14, 2002. **When was the information in this document compiled? Who compiled it? Were each day's activities recorded at the end of (or shortly after) that same day? If the information was not recorded as it happened, what records were consulted when compiling the schedule?**

Numerous witnesses have asserted that the beneficiary performed extensive work on the roof and other areas of the church building. The hourly schedule shows one entry that reads "Helping for the roof repairs," from 8:00 a.m. to 5:00 p.m. on May 24, 1999. This entry proves that roof repair is a task considered worthy of inclusion in the schedule. The schedule does not list roof repair on any other date, and there are no other, more general, references in the schedule to repairs or renovations. Thus, the schedule, which places the beneficiary on the roof for only one day, is at variance with several witness statements that indicate that the beneficiary personally performed a substantial amount of the repairs. **Why does the hourly schedule not agree with witnesses' claims regarding the amount of repair work the beneficiary performed?**

As noted above, the photograph showing the beneficiary on the roof of the church is dated May 26, 1999. The hourly schedule you provided does not indicate that he performed roof repairs that day; the tasks listed in the schedule for May 26, 1999 are "Matins," "Divine Liturgy," "Social Hour," "Bible School" and "Vesper." Also, the schedule includes "Shopping for church's needs" on only three days during the qualifying period: May 8, 2000; July 31, 2000; and February 12, 2001. The schedule does not list shopping on June 2-4, 1999, which are the dates on the checks payable to Home Depot. **Why does the hourly schedule not agree with the information on the checks?**

You have submitted copies of handwritten minutes from the church's annual parish assembly meeting. The minutes indicate that the meeting began at 1:00 p.m. on February 11, 2001, and that the beneficiary participated in this meeting, offering a financial report. The aforementioned hourly schedule shows many meetings, such as Tuesday night parish council meetings, and it also shows "Social Time" most Sundays at 1:00 p.m. Clearly, the schedule distinguishes between parish meetings and "social time," because it contains both terms. The schedule for February 11, 2001 does not mention the parish assembly meeting at which the beneficiary is said to have presented a financial report. Instead, it states "1-2 pm / Social Time." This is yet another instance in which the schedule is not consistent with the other evidence presented. **Please provide credible, contemporaneous evidence to resolve this discrepancy.**

Due to inconsistencies between the schedule and the purportedly contemporaneous evidence, these materials are not credible. **Please submit independent and objective evidence to establish the veracity of these documents.**

You are hereby afforded 12 weeks from the date of this letter in which to respond to this notice. This office must receive your response no later than 87 calendar days after the date of this notice. The regulations at 8 C.F.R.

§§ 103.2(b)(8) and (11) categorically specify that this response period *cannot* be extended, and that your entire response must be submitted *at one time*; you may not submit a partial response with the promise that further materials will follow in the future. If you choose to respond, please submit your response to the address shown on the first page of this letter. Also, please reference the beneficiary's A-number, [REDACTED] in your response.