



U.S. Citizenship
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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: JUL 19 2006

WAC 04 199 50696

IN RE:

Petitioner:

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:

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, Chief
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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner 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 director of sacred music at [REDACTED]. The director determined that the petitioner had not established that the church qualifies as a tax-exempt religious organization, or that the beneficiary's position qualifies as a religious occupation.

Part 1 of the Form I-360 Petition is labeled "Information about the person or organization filing this petition." Part 1 identifies the petitioner as [REDACTED]. The director considered the church to be the petitioner, and sent all relevant correspondence to the church. The church, however, is not the petitioner.

Pursuant to 8 C.F.R. § 103.2(a)(1), every petition must be executed and filed in accordance with the instructions on the form. 8 C.F.R. § 103.2(a)(2) requires the petitioner to sign the petition. Part 9 of Form I-360, "Signature," is the portion of the form dedicated to the signature of the petitioner; instructions in Part 9 include the attestation that the contents of the petition are true and correct. Here, no church official signed Part 9 of the Form I-360. Instead, the alien beneficiary signed this part of the form. Thus, the alien herself took responsibility for the petition, and she, herself, must be considered to be the petitioner. This change in recognition of the petitioner does not affect the validity of the petition or the appeal, because aliens are permitted to self-petition under this classification, and an attorney who represents both the church and the alien beneficiary filed the appeal. The petition and appeal, therefore, have both been properly filed, and counsel for the petitioner has been involved in the proceeding ever since the petition's filing.

We note that, prior to the present petition [REDACTED] had submitted another Form I-360 petition on this alien's behalf. That petition form, like the one in the present proceeding, was prepared by attorney [REDACTED]. The earlier petition, filed December 11, 2002, bears the signature of Rev. [REDACTED] pastor of [REDACTED]. In this decision, the term "2002 petition" shall refer to this earlier petition, the existence of which is relevant for reasons that shall become clear.

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).

Review of the record shows that the stated grounds for denial cannot stand, but that there remains, nevertheless, a serious challenge to the credibility of the petitioner's claims, which prevents approval of the petition at this time. The purpose of this remand order, therefore, is to give the petitioner the opportunity to respond to the credibility issue before that issue forms the basis of a new denial.

One of the two stated grounds for denial concerns the church's tax status. 8 C.F.R. § 204.5(m)(3)(i)(A) requires the petitioner to submit evidence that the intending employer is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations. The petitioner had submitted a copy of a determination letter from the Internal Revenue Service (IRS), dated August 14, 1997, acknowledging the tax-exempt status of [REDACTED]. The IRS letter is addressed in care of Rev. [REDACTED] the address is in La Mirada, California. The letter shows the church's employer identification number (EIN) as [REDACTED].

The director issued a request for evidence (RFE), instructing the petitioner to explain why the IRS letter does not show the church's address in Santa Fe Springs, California. In response, the petitioner has submitted a copy of the church's articles of incorporation, which shows the [REDACTED] address tied to Rev. [REDACTED] name (as on the IRS letter). This is consistent with the IRS letter having been addressed to the church in care of Rev. [REDACTED]. The petitioner has also submitted more recent official documents showing that the church, at its present address, is registered with the State of California. Counsel states that the organization simply changed addresses after the IRS had issued the letter.

The director, in denying the petition, repeated the assertion that the petitioner has not definitively shown that [REDACTED] is, in fact, the corporation identified on the IRS letter to Immanuel Korean Christian Fellowship. On appeal, counsel states: "The petitioner submitted the Change of Address form which reflects the Santa Fe Springs address. Petitioner points out that the employer identification number of the 501(c)(3) letter and the change of address form 8822 reflect the same EIN of: [REDACTED]."

A copy of the aforementioned IRS Form 8822 was submitted with the 2002 petition. The 2002 petition also includes a copy of IRS Form 941, Employer's Quarterly Federal Tax Return, for the first quarter of 2002. The Form 941 shows the church's present address and the EIN found on the IRS letter. Also, both Forms I-360 show the church's "IRS Tax #" as [REDACTED] and Rev. [REDACTED] whose name appears on the

IRS letter, signed the 2002 petition form and correspondence included with both petitions. Given this evidence, we conclude that Immanuel Fellowship Church is the same entity that received the IRS letter, and therefore we hereby withdraw the director's finding that the petitioner has failed to establish qualifying tax-exempt status.

The other issue in the director's decision is whether the petitioner seeks employment in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) defines "religious occupation" as 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.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

Citizenship and Immigration Services therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

Rev. [REDACTED] has offered this description of the petitioner's duties:

The petitioner has offered the beneficiary a full-time position as the Director of Sacred Music for the Petitioning Organization. This position requires the candidate to be one of the foremost leaders in the Church and within the Organization. The candidate will be required to prepare lessons and the sacred music used during worship services, lead the choral department, act as a full-time counselor, and coordinate activities within the many missionaries and all the people that they attend to. The candidate will lead and supervise the Sacred Music and Liturgical programs for the church to implement. She will counsel the members who seek guidance. She will attend meetings of church officers and with ministers from other churches to promote religious and missionary work. This position goes far beyond that of the choral director, in that certain hymnals and psalms are led by the Director of Sacred Music in such a manner that is specifically tied in with the worship service. The position requires the candidate to understand the nature of the worship service, sermon and the corresponding musical accompaniment.

The position requires the candidate to keep regular office hours at our church and work with the other employees of the church during the week with an extended workday on Sundays. Monday through Friday, she will prepare her programs for the upcoming worship service, as well as remain available to the other employees of our church for coordination and program planning. As we have worship services throughout the week, the candidate will be required

to prepare a minimum of six different choral pieces that directly correspond with the sermon texts, which she will be required to review with the pastor for proper coordination. This position requires the candidate to be able to relay the religious significance of each musical piece to the choir members as well, as the Director of Sacred Music does much of the secondary religious instruction for the choir members. This position is full-time and has a salary of \$2,000.00/month.

The record of proceeding for the 2002 petition includes this unattributed statement:

The duties of the position are a traditional religious function in that it requires the following:

- Oversees and coordinates all liturgy, prayer service and religious assembly in collaboration with the Pastor;
- Chair[s] and coordinates a liturgy planning team;
- Coordinates liturgical music, art and environment;
- Designs and maintains liturgical programs and files for liturgical events
- Purchases liturgical supplies and goods with the approval of the Pastor
- Creates authentic and original liturgical music for the choir or soloist and congregation
- Coordinate[s] student eligibility programs
- Helps substitute for absent religious teachers when they are involved in ministry assignments i.e. retreats, missions, meals on wheels, soup kitchen, etc.
- Work[s] with the other directors to determine what activities/programs can be provided to assist students in attaining a more complete spiritual awareness and understanding
- Works with Pastor to develop and schedule all religious events

The petitioner has submitted an excerpt from the *Book of Order*, which reads: “Singing of psalms with grace in the heart is a necessary and indispensable part of the common worship of the people of God. . . . Where there is a music director or other such person working in music, that person shall always consult with the Minister concerning the music or worship.” Counsel asserts that “the position of Director of Sacred Music is defined” in this document. While the document mentions “a music director,” there is no indication that this is a paid position. Also, the conditional nature of the phrase “[w]here there is a music director or other such person” indicates that such individuals are not always involved in religious services. Another significant flaw is the lack of evidence to show that the *Book of Order* is, in fact, applicable to the petitioner’s denomination. Thus, the *Book of Order* excerpt is not particularly strong evidence in the petitioner’s favor.

The description of the position, however, suggests that the director of sacred music is not merely a conductor or choir leader. The description shows the director to be involved in church business beyond simply obtaining music and overseeing rehearsals.

The director, in denying the petition, cited the list of duties from the 2002 petition, and asserted that some of these duties are secular in nature (for instance, purchasing supplies). The director has not shown, however, that the religious element of the position is negligible. The duties described appear to be largely religious in nature, and beyond what would be expected of a part-time volunteer from the congregation.

On appeal, counsel cites four published job announcements that establish, counsel claims, “that the position is traditionally a permanent, full-time salaried position.” Of the four announcements, one is a 10-hour-per-week student position at an unidentified college campus, and another is a 30-hour-per-week position at a Lutheran church. The other two positions, identified as full time, are at a Lutheran church and a Congregational church, respectively. The petitioner has not shown that any of these announcements relate to the Korean Evangelical Church of America, which is the denomination to which Immanuel Fellowship Church belongs.

Finally, the director noted that, in the 2002 petition, Rev. [REDACTED] had originally indicated that the petitioner worked on a “voluntary basis.” The director held that this statement contradicts the claim that the position is traditionally paid and full-time. Counsel, on appeal, correctly argues that there is no real contradiction here. A single instance of volunteer work does not prove that the position is not traditionally a paid, full-time occupation within the denomination.

While the petitioner’s responses to the director’s findings have been very weak, the director has not offered strong arguments to support the conclusion that a paid, full-time position as director of sacred music is not a qualifying religious occupation. The description of the duties of the position appears to be compatible with a finding in the petitioner’s favor, but the petitioner’s apparent inability to produce stronger evidence is of concern. If the director intends to pursue the nature of the occupation as a basis for denial, the director should first clarify what is said to be deficient in the existing description and evidence, and allow the petitioner a meaningful opportunity to remedy the deficiency.

As noted above, review of the record reveals another potential ground for denial, which the petitioner has not yet had the opportunity to answer. While the director was incorrect in finding a “contradiction” as described in the denial notice, other contradictory information is clearly present in the materials submitted in support of the two petitions filed on this alien’s behalf.

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 experience in the religious vocation, professional religious work, or other religious work. The petition was filed on July 6, 2004. Therefore, the two-year qualifying period began in July 2002. The church filed its earlier petition during this two-year period, on December 11, 2002. Therefore, evidence submitted in support of the 2002 petition is directly relevant to the adjudication of the 2004 petition now at issue.

The 2002 petition included two letters from Rev. [REDACTED]. In one letter, dated June 7, 2002, Rev. [REDACTED] stated that the beneficiary “served this church [on a] voluntary basis during January 1999 to January 2002.” Rev. [REDACTED] did not indicate, in this letter, what terms were in effect after January 2002. In the other letter, dated October 31, 2002, Rev. [REDACTED] stated: “In 1999 [the beneficiary] took the full-time, salaried position of Director of Sacred Music for our church. . . . This position is full-time and has a salary of \$2,000.00/month.” These letters contain a major contradiction, because one letter states that the beneficiary

worked on a “voluntary basis” from 1999 to 2002 and the other states that the beneficiary was “salaried” during the same period of time.

The church’s Form 941 return for the quarter ending March 2002 contains the following information:

Number of employees in the pay period that includes March 12:	1
Total wages and tips, plus other compensation:	\$6000.00

A copy of California Form DE-6 also shows that the petitioner paid one worker \$6,000 in the first quarter of 2002. The state form identifies this one salaried employee as [REDACTED]. Thus, the church’s contemporaneous tax documentation does not show that the beneficiary was a salaried employee as of March 2002.

The above information has general applicability when weighing the credibility of Rev. [REDACTED] statements, but it does not directly address the qualifying period that began in July 2002. Subsequent submissions, however, do concern this critical period.

In response to an RFE, the church submitted a letter, dated September 23, 2003 and jointly signed by Rev. [REDACTED] and by church secretary [REDACTED]. This letter states that the church “paid [a] monthly salary of \$2,000 to [the beneficiary] from December 2000 to December 2002.” Counsel, at that time, stated: “Payments were received in cash as the beneficiary could not obtain a social security number.” Counsel also stated that the beneficiary’s “personal bank statements . . . reflect that cash payments were received.”

Copies of the beneficiary’s bank statements show numerous deposits, but they do not reflect regular monthly payments of \$2,000. They show that much of the beneficiary’s income was in the form of wire transfers, many of which, receipts indicate, originated from Korea. For instance, on April 3, 2000, the beneficiary’s checking account received seven wire transfers, each in the amount of \$4,984.00, for a total of \$34,888.00. The beneficiary’s savings account received \$69,277.53 in deposits and wire transfers between April 18, 2000 and June 30, 2000. Almost all of this money was soon withdrawn or debited from the account, leaving a balance of \$554.53 as of June 30, 2000.

Thirteen of the bank statements pertain to the December 2000 – December 2002 qualifying period for the 2002 petition. These statements show numerous deposits and withdrawals, but no regular pattern of deposits that is consistent with a \$2,000 monthly salary. For instance, the checking account shows only one deposit in January 2001 (a wire transfer of \$415.00). The November 2001 statement shows four deposits, in the amounts of \$5,002.50, \$10,000.00, \$18,000.00, and \$221.97.

Five of the submitted bank statements fall within the July 2002 – July 2004 qualifying period of the second petition: September through December 2002, and July 2003. Only two of the statements show deposits of exactly \$2,000.00, on September 6, 2002 and November 21, 2002. In all, the five statements show total deposits of \$104,050.00, including a \$67,000.00 deposit on July 14, 2003 (three days later, a check for \$18,000.00 was presented for payment against the account). Clearly, the beneficiary was depositing and

withdrawing very substantial sums of money between 2000 and 2003, but not in a manner consistent with regular payments of \$2,000. The record is silent as to the purpose of these very large transactions.

We turn now to the second petition, filed in 2004. This more recent petition includes unsigned, uncertified copies of the petitioner's income tax returns from 2002 and 2003. Both returns are dated the same day, April 14, 2004, indicating that the petitioner did not file a timely return for 2002. Each return shows \$24,000 in "Business income" that the petitioner collected as "Music Director" for the church. The returns list the occupation of the petitioner's spouse as "homemaker." The tax returns do not show or account for any other income, such as the July 2003 deposit of \$67,000 into the petitioner's bank account.

The 2004 petition includes a copy of the church's 2004 budget, which lists regular monthly \$2,000 payments to the "Music Director." The petitioner has also submitted copies of three canceled checks from the church, each for \$2,000.00 and each payable to the petitioner: check number 1040, dated March 28, 2004; check number 1041, dated February 29, 2004; and check number 1043, dated April 11, 2004. The petitioner does not explain how check number 1041 came to be written a month before check 1040, or why the church apparently wrote only one other check (number 1042) during the six weeks between February 29 and April 11, 2004.

The petitioner submits copies of bank statements from two of the church's accounts, covering the period from February 28 to May 28, 2004. The statements from the first account show two checks [REDACTED] and [REDACTED] paid during March 2004; six checks during April 2004; and one check (for \$150.00) in May 2004. As of April 30, 2004, this account had a negative balance of \$1,472.33. The church's other account shows considerably more activity, with 25 checks in March 2004, 27 in April 2004, and 12 in May 2004. Neither set of bank statements shows that the church gave the petitioner, or anyone else, a \$2,000 check in May 2004.

In response to an RFE, the petitioner submitted copies of numerous checks dated between 2002 and 2005. Twelve of the checks are dated 2002. Ten of these are in the amount of \$500.00; the other two are for \$1,000.00. Most of these checks show no listed payee; there is only a blank line after "Pay to the Order of." An exception is a check dated March 31, 2002, which identifies the payee only as "[REDACTED]." The petitioner's bank statements from the corresponding months in 2002 show deposits that may correlate to these checks, but the checks do not show that the petitioner received \$2,000 per month. The twelve checks issued during 2002 total only \$7,000, less than a third of the proffered salary. The existence of these checks contradicts counsel's earlier claim that "[p]ayments were received in cash as the beneficiary could not obtain a social security number." Counsel discusses these checks, but offers no explanation for the contradictory claims.

Six of the checks are dated 2003. One of these again has a blank payee; the signature on the back of the check is only partially legible, but part of the name reads [REDACTED] (possibly the [REDACTED] identified on the church's quarterly tax return). This is clearly not a check issued to, or deposited by, the petitioner. The remaining five checks from 2003 are dated between July and December. The first three are in the amount of \$1,694.00 each. The checks from November 2004 onward show more or less regular monthly payments of \$2,000 to the petitioner. The October 2004 check was returned for insufficient funds, an issue that merits further inquiry in light of the ability to pay requirements of 8 C.F.R. § 204.5(g)(2).

Rev. [REDACTED] and counsel have each offered contradictory claims regarding the petitioner's compensation, stating that the petitioner was a volunteer until 2002 but also a salaried employee since 1999. The church has claimed since 2002 that the petitioner's salary is \$2,000 per month, but the church does not appear actually to have paid that amount prior to late 2004. In the meantime, the petitioner's bank statements show repeated financial transactions in amounts that appear to be substantially higher than anything that could credibly be explained away as subsistence-level financial support from friends or relatives. The size of the transactions, both into and out of the petitioner's personal bank account, suggest an activity that demands a significant volume of financial transactions, such as the operation of a business. We reiterate that it has not escaped our notice that the petitioner did not report any of these very large deposits as income on her 2002 or 2003 income tax returns. The church's demonstrable underpayment of the petitioner in 2002 and 2003, and the petitioner's six-figure income from unidentified other sources during that same time period, appear to be strong evidence that the petitioner supported herself through means other than full-time church work during much, if not all, of the qualifying period.

Contradictory claims speak directly to the petitioner's credibility and therefore are highly relevant in the present proceeding. If CIS fails to believe that a claim stated in the petition is true, CIS may reject that claim. 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). 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, 592 (BIA 1988).

The director must inquire into these issues and allow the self-petitioning alien beneficiary an opportunity to produce independent, competent objective evidence to resolve the inconsistencies in the record. Explanatory statements by the petitioner herself or by church officials would not amount to competent objective evidence; rather, they would be **unsupported claims**. Given that Rev. [REDACTED] has already offered contradictory statements, additional statements from Rev. [REDACTED] would appear to be of highly dubious credibility unless supported by strong, contemporaneous, and independently verifiable evidence.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, regardless of the outcome, is to be certified to the Administrative Appeals Office for review.