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

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **MAY 04 2006**
WAC 05 030 52923

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:



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.

A handwritten signature in cursive script, appearing to read "Maie Pluzon".

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 appeal will be sustained and the petition will be approved.

The petitioner is an international ministry. 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 pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a pastor immediately preceding the filing date of the petition.

On appeal, the petitioner submits copies of previously submitted documents and arguments from counsel and an official of the petitioning entity.

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).

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 November 12, 2004. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a pastor throughout the two years immediately prior to that date.

The regulation at 8 C.F.R. § 204.5(m)(2) defines a “minister” as 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.

[REDACTED], president of the petitioning ministry, states:

[W]e appointed [the beneficiary] as an Ordained Minister, on September 8, 2001. He has been authorized to perform religious duties in general and specifically as described in the attached list of his activities. . . .

Since April 2000, he has been and continues to minister every Wednesday in our Bible studies . . . and each Saturday since July 17, 2004. . . .

In the evenings, he preaches in several churches ministering the Word of God, holding Conferences about Leadership, Counseling, Marriage, Ethics, & Family issues, etc.

His normal Pastoral duties include, but are not limited to, preaching, teaching, officiating baptisms, weddings, church administration, etc. He leads home cell groups as well, counseling and helping people to overcome their problems and will be placed as Pastor in our new church, which is opening soon.

The “attached list” mentioned by [REDACTED] includes functions such as preparing and teaching Bible studies, preaching, and visiting homes for counseling.

The petitioner submits a document entitled “WORK HISTORY (For the last two years).” This document is a list of dates, ministers, and churches, for example: “Nov. 22 [REDACTED], ‘Iglesia de Sión.’” The petitioner indicates that the list pertains to “Engagements, Churches and Ministries where [the beneficiary] has been ministering the Word of God.” The petitioner indicates that the beneficiary is generally known by the given name ‘[REDACTED]’ the Spanish version of “[REDACTED]”

Copies of the beneficiary’s 2000-2003 tax returns indicate that the only income that the beneficiary reported was from religious work of an unspecified nature.

The director issued a request for evidence, instructing the petitioner to submit a description of the beneficiary’s intended future duties as well as “evidence of the beneficiary’s work history beginning November 12, 2002 and ending November 12, 2004 only. Provide a breakdown of duties performed in the religious occupation for an average week.” The director also requested financial documentation showing compensation for the work the beneficiary performed.

In response, [REDACTED] states:

Specific job duties are normal pastoral duties including but not limited to: Conduct religious worship, Bible teaching, preaching, officiating weddings, baptisms, Church Administration, Mentoring and Counseling; Speaking at Seminars and Conferences. . . .

[The beneficiary] has been an active member of [the petitioning] denomination . . . since April 5, 2000 and continues to date. We appointed him as an Ordained Minister on September 8, 2001. Since that time, his position has been as an Associate Pastor and as a Teacher. He has prepared Bible studies for couples, youth, workers, and leaders. Also he has designed a wide variety of documents, flyers, etc. He has ministered every Wednesday in our Bible studies. . . . Since July 17, 2004, he has conducted Bible studies on Saturdays as well.

The petitioner submits copies of checks and money orders from churches and from individuals, payable to the beneficiary, his spouse, or to [REDACTED] which the petitioner had previously indicated is a "spiritual name" sometimes used by the beneficiary. The checks are dated 2003 and 2004. This corroborates the assertion that the beneficiary has worked at numerous churches. The petitioner also submits a copy of the beneficiary's 2004 income tax return, which follows the general pattern established by returns from earlier years.

The director denied the petition, stating:

No evidence was submitted that specifically indicates that the beneficiary, himself, ever worked as a "Pastor." Previous experience earned in an "associate" position does not appear to be similar to that of a "Pastor" or "Ministry" position.

The petition indicates that the beneficiary's duties are similar in scope and function to the term "minister" as defined in the regulations. . . .

Therefore, the petitioner has not established that the beneficiary has been performing the duties as an ordain [*sic*] pastor for the two-year period immediately proceeding [*sic*] the filing of the petitioner [*sic*].

We note that the director mailed the denial notice not to the petitioner, but to the beneficiary. Because counsel received a courtesy copy, counsel was able to file a timely appeal on the petitioner's behalf.

On appeal, [REDACTED] states: "The duties as a 'pastor' we are offering to [the beneficiary] are the same as the duties he has been performing over the two-year period as a mid-level management, 'associate pastor.' . . . During this period, [the beneficiary's] work experience included only the duties normally performed by a pastor and authorized, ordained minister of our church." [REDACTED] asserts: "There is no formal distinction accorded to the term 'Associate Pastor' within our church."

The director appears to have based the denial on the beneficiary's status as an "associate pastor" rather than as a "pastor." The director did not specify how the beneficiary's duties as an "associate pastor" fall short of

those of a minister. [REDACTED] in his initial letter, indicated that the beneficiary's "normal Pastoral duties include, but are not limited to, preaching, teaching, officiating baptisms, weddings, church administration, etc." The ordination certificate in the record shows that the beneficiary was authorized to perform these functions throughout the 2002-2004 qualifying period.

The record offers no indication that the beneficiary was anything other than an ordained minister throughout the 2002-2004 qualifying period. The difference in titles between "associate pastor" and "pastor" appears to reflect hierarchical differences rather than any material variation in the duties performed.

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 met that burden. The sole basis for denial, as stated by the director, does not survive appellate review as adequate grounds for denial of the petition. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained.