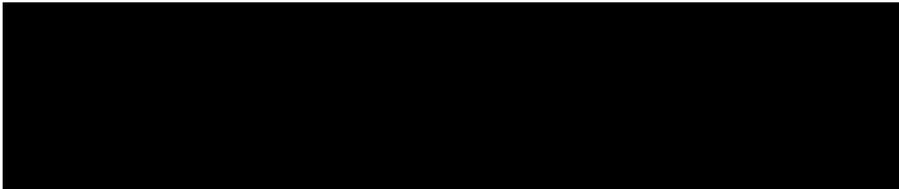


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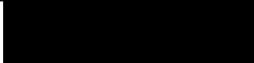
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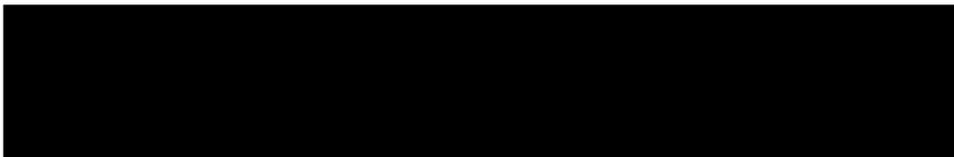
Petitioner:

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.


for 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 dismissed.

The petitioner is a congregation of the Korean American Presbyterian 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 senior pastor. 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 that it qualifies as a tax-exempt religious organization.

The director, in denying the petition on June 19, 2007, stated that the petitioner had failed to respond to a notice of intent to deny (ITD) issued previously. On appeal, counsel asserts that the petitioner did respond to that notice, and the director erred by stating otherwise. The petitioner's timely response to the ITD is, in fact, in the record of proceeding, but apparently it was not incorporated into the record until after the director issued the decision. The AAO will consider the ITD response to be part of the appeal.

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 first issue concerns the beneficiary's past experience. 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 March 15, 2007. 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.

Internal Revenue Service (IRS) Form W-2 Wage and Tax Statements indicate the petitioner paid the beneficiary \$13,200.00 in 2004, \$14,698.20 in 2005 and \$14,000.00 in 2006, thus establishing the beneficiary's employment during the two-year qualifying period.

In a letter accompanying the initial filing, the petitioner's Financial Officer, stated that the beneficiary "has been working for us as the Religious Education Director" and was "promoted to a Senior Pastor after he became ordained." Elsewhere in the letter, stated that the beneficiary was ordained "in May 2006," some ten months prior to the filing date. An ordination certificate from Seogyong Presbytery in Korea indicates that the ordination took place on May 17, 2006.

On May 9, 2007, the director issued an ITD, partly on the ground that the beneficiary was not an ordained minister throughout the two-year qualifying period. Rather, according to the petitioner, the beneficiary was the petitioner's religious education director for most of that period.

In response to the ITD (not considered prior to the denial), counsel stated:

The beneficiary is a minister/pastor. A minister is defined 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.[]" 8 C.F.R. § 204.5(m)(2).

The beneficiary has been employed by the petitioner since February of 2004 with a valid R-1 [nonimmigrant visa]. His job title was Religious Education Director. The beneficiary taught the word of God mainly to the youth congregation. He led groups in prayer, taught bible studies, gave sermons, and provided spiritual guidance and counseling. In essence, his duties were pastoral/ministerial in nature. He conducted religious worship and perform[ed] other religious duties. . . . [T]he beneficiary was in essence the assistant pastor. . . .

In comparing the job duties of a Religious Education Director to that of the Senior Pastor, they are essentially similar since both are ministerial in nature. . . . Hence, only the job title is different but the beneficiary has been carrying out the religious work in that ministerial nature and capacity for over . . . two (2) years preceding the filing of the present I-360 petition.

On appeal from the director's decision, counsel offers no further argument or evidence on this point, relying instead on the prior submission that the director had inadvertently disregarded.

Counsel's argument is not persuasive. In quoting the definition of "minister" at 8 C.F.R. § 204.5(m)(2), counsel omitted the final sentence, which in this context is crucial: "The term does not include a lay preacher

not authorized to perform such duties,” *i.e.*, “duties usually performed by authorized members of the clergy of that religion,” such as weddings and funeral rites. In comparing lists of the beneficiary’s duties in his earlier and later jobs, functions typically reserved for the clergy are conspicuously absent.

There is no evidence that the beneficiary was authorized to perform the duties of clergy when he was the petitioner’s religious education director. The record strongly implies otherwise, as the beneficiary did not assume the title of “pastor” until after he was ordained in 2006 (by an organization in Korea, even though the beneficiary was presumably in the United States at the time). Neither counsel nor the petitioner explained the purpose or practical effect of this 2006 ordination if, as counsel claimed, the beneficiary was already fully qualified as a minister.

Furthermore, the regulation at 8 C.F.R. § 204.5(m)(2) classifies both “religious instructors” and “religious counselors” within the definition of “religious occupation.” This regulatory distinction reinforces the finding that there is nothing inherently ministerial about the beneficiary’s educational and counseling activities while serving as the petitioner’s director of religious education.

An alien seeking classification as a special immigrant minister must have been engaged solely as a minister of the religious denomination for the relevant two-year period in order to qualify for the benefit sought. *See Matter of Faith Assembly Church*, 19 I&N 391, 393 (Commr. 1986). Here, the beneficiary was not ordained until less than a year before the filing date, and there is no evidence that, as director of religious education, the beneficiary was authorized to perform duties usually performed by authorized members of the clergy of the petitioner’s denomination.

For the above reasons, we find that the beneficiary was not engaged solely as a minister throughout the qualifying period. We affirm the director’s finding to that effect.

The remaining issue concerns the petitioner’s tax-exempt status. 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization seeking to employ the beneficiary qualifies as a non-profit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization’s assets and methods of operation and the organization’s papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

On the Form I-360 petition, under “IRS Tax #,” the petitioner wrote [REDACTED] This number is also known as the Employer Identification Number (EIN). The same EIN appears on the IRS Forms W-2 issued to the beneficiary.

The petitioner's initial submission included a determination letter from the IRS, dated November 17, 2000, confirming the tax-exempt status of a church with the same name as the petitioning church. The IRS letter, however, was sent to an address in Glendale, California, whereas the petitioning church is in Los Angeles, and the IRS letter lists the church's EIN as [REDACTED]

A document entitled *The Principal and Organization of the Church* indicates that the petitioning church was first incorporated on November 14, 1990 under a different name, with EIN [REDACTED] and that the church changed to its present name in 1999 with EIN [REDACTED]. Certificates of Incorporation in the record show that the [REDACTED] was incorporated in 1990, changing its name in late 1998 to the current name of the petitioning church.

In the ITD, the director stated that the IRS determination letter was not sent to the petitioner's current address, and therefore the petitioner had not established that the petitioning entity in Los Angeles is a qualifying 501(c)(3) tax-exempt organization. We note that the ITD allowed the petitioner only 30 days to respond, whereas a request for evidence, under 8 C.F.R. § 103.2(b)(8) (as in effect on May 9, 2007), would have allowed the petitioner 84 days to respond. In response to the ITD, the petitioner submitted documentation showing that the petitioning church was incorporated on November 14, 1990, the same date as the church at the Glendale address.

Following the denial of the petition, the petitioner filed an appeal on July 17, 2007. The receipt date of the appeal falls well within the 84-day response period that would have been allowed had the petitioner issued a request for evidence instead of an ITD on May 9, 2007.

On appeal, the petitioner submits a copy of a June 18, 2007 letter from the IRS, indicating that the IRS "incorrectly assigned more than one employer identification number to you. The number shown above [REDACTED] is the correct one. The following number has been incorrectly assigned: [REDACTED]" This letter is further evidence that the Glendale church, incorporated in 1990 and recognized by the IRS as tax-exempt, is the same entity as the petitioning church in Los Angeles.

The record contains no affirmative evidence that the Glendale church and the Los Angeles petitioner are two separate entities, and considerable documentary evidence that the petitioner was originally established in Glendale and simply moved to Los Angeles at a later time. The issuance of two different EINs certainly compounded the appearance that there were two separate entities, but the petitioner has adequately addressed this discrepancy. (We note that the director did not cite the two EINs in the ITD or in the denial notice.)

For the above reasons, we withdraw the director's finding regarding the petitioner's tax-exempt status. The denial decision stands, however, owing to the director's un rebutted finding regarding the beneficiary's lack of two years of continuous experience as a minister during the qualifying period.

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.