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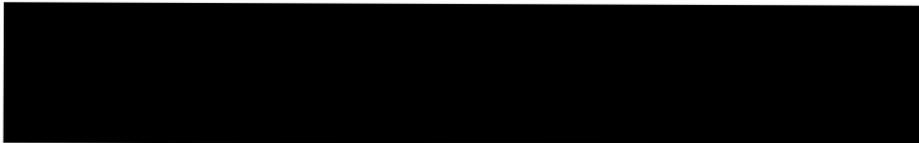
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



S. Citizenship
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JAN 08 2007
EAC 04 134 50575

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont 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 an association of Baptist churches. 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 minister at [REDACTED]. 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, or that a valid job offer exists.

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 March 27, 2004. 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.

An addendum to the Form I-360 petition includes this statement: “In order to financially support himself and his family, [the beneficiary] has had to work part-time as a Baker to supplement his income from church

work. From October 1999 to the present, [the beneficiary] has worked at [redacted] located at [redacted]

Rev. [redacted], Senior Pastor of [redacted] states: "In February of 2001 [the beneficiary] became an associate missionary to a new sister church called [redacted] in Mashpee, MA . . . where he ministers by preaching, teaching, visiting and counseling." Rev. [redacted] Executive Minister of the petitioning entity, states that the beneficiary is an "ordained Minister of the Gospel" who "has been serving as OCBA [Old Colony Baptist Association] Missionary in the last three years to [redacted] In a second letter, Dr. [redacted] states that the petitioner "has been carrying on the vocation as a full-time Minister of the Gospel . . . during the past three years." The initial submission contained no evidence to establish how, if at all, the petitioner compensated the beneficiary for his ministerial work.

On June 10, 2005, the director instructed the petitioner to submit further evidence regarding the beneficiary's work during the two-year qualifying period. In response, Rev. Dr. [redacted], Executive Minister of the petitioning entity, stated that the beneficiary "has worked as a Missionary of the church since February 1, 2001 holding the position of Association Mission Minister and receives \$500.00 (five hundred dollars) in cash salary, [and] two weeks vacation." Dr. [redacted] did not specify the time intervals for the beneficiary's salary payments (e.g., weekly, biweekly, etc.)

The petitioner submits a copy of the beneficiary's Internal Revenue Service (IRS) Form 1040 federal income tax returns for 2003 and 2004, along with the accompanying IRS Form W-2 Wage and Tax Statements. On both returns, the beneficiary identified his occupation as "Baker." In 2004, the beneficiary filed IRS Form 2106-EZ, Unreimbursed Employee Business Expenses. On this form, the beneficiary identified his occupation as "Minister." The beneficiary and his spouse claimed a total of \$61,538 in wages for 2003, and \$67,937 in wages for 2004. Forms W-2 show the following income:

Employee	Employer	Amount
The beneficiary's spouse	[redacted]	\$16,615.50
The beneficiary	[redacted]	35,802.40
The beneficiary	[redacted]	2,929.00
<u>The beneficiary</u>	[redacted]	<u>3,120.00</u>
2003 TOTAL:		\$58,466.90
The beneficiary's spouse	[redacted]	\$16,917.50
The beneficiary	[redacted]	29,848.31
The beneficiary	[redacted]	170.56
<u>The beneficiary</u>	[redacted]	<u>21,000.00</u>
2004 TOTAL:		\$67,936.37

Apart from the Forms W-2 listed above, the petitioner submits a copy of an IRS Form W-3 Transmittal of Wage and Tax Statements. This document purports to show that Praying Strong paid the beneficiary \$6,000

in 2003. The form, however, is dated August 10, 2005. Thus, the petitioner did not execute this Form W-3 when it should have been executed, in time for the beneficiary to file his 2003 income tax return in early 2004. Instead, the petitioner did not report these wages until two months after the director requested additional documentation relating to the beneficiary's past work.

We note, also, a discrepancy between the amount shown as income on the beneficiary's 2003 income tax return (\$61,538) and the total of the amounts shown on the Forms W-2 for that year (\$58,466.90). We further note that this discrepancy is not \$6,000, and therefore the untimely Form W-3 cannot explain or resolve that discrepancy. There is no evidence that the beneficiary's 2003 tax return reflects any income from the petitioning church. More importantly, the Forms W-2 establish that the beneficiary worked in a variety of secular jobs during 2003 and 2004.

The tax documents do not identify Works by name. We note, however, that the Forms W-2 show the address for Inc., as " " which is similar to the address previously provided for . It appears, from the available information, that Inc., owns or operates

The director denied the petition on December 2, 2005, noting that the beneficiary's primary source of income in 2003 and 2004 was as a baker at a doughnut shop. The director stated that this evidence "seems to contradict" the claim that the petitioner has employed the beneficiary "as a full-time Minister." The director also noted the relative lack of evidence to show the extent of the beneficiary's religious work during the qualifying period.

On appeal, counsel asserts that the beneficiary "has been employed full-time in a religious occupation since March 1995 and continues to be so employed" (counsel's emphasis). Counsel asserts that the beneficiary worked as an associate mission minister at from February 2001 to November 2005, and as senior pastor at the same church from November 2005 onward. Officials of and of the petitioning organization maintain that the beneficiary has consistently worked 40 hours per week for

The petitioner submits copies of paychecks issued to the beneficiary in 2005, showing that paid the beneficiary \$500 about once a week. This evidence falls outside the 2002-2004 qualifying period. We note that many of these weekly checks are consecutively numbered, indicating that issued no checks, except to the beneficiary, for months at a time.

The petitioner re-submits copies of the Form W-2 from 2004 and the Form W-3 from 2003. Neither of these forms establishes full-time continuous employment. Assuming that paid the beneficiary \$500 per week in 2003 and 2004, thus matching the rate of pay shown in the checks from 2005, the tax documents show that the petitioner paid the beneficiary for 12 weeks of work in 2003 and 42 weeks of work in 2004. Neither counsel nor the petitioner explains how wages of only \$6,000 could reasonably be consistent with full-time year-round employment throughout all of 2003.

The petitioner has readily admitted, and documented, that the beneficiary's main source of income in 2002 and 2003 was as a baker in a doughnut shop. Section 101(a)(27)(C)(ii)(I) of the Act requires that the beneficiary seeks to enter the United States solely for the purpose of carrying on the vocation of a minister of a religious denomination. Here, the beneficiary has clearly not been solely or even, it seems, primarily engaged as a minister, and the record contains no indication that the petitioner or the beneficiary intend to deviate from the beneficiary's employment arrangements that were in place as of the filing date. Special immigrant classification requires the beneficiary to have been and intend to be engaged solely as a minister of a religious denomination. *See Matter of Faith Assembly Church*, 19 I&N Dec. 391, 393 (BIA 1986). We find, therefore, that the director acted correctly in finding that the petitioner had not established the beneficiary's eligibility for the classification sought.

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.