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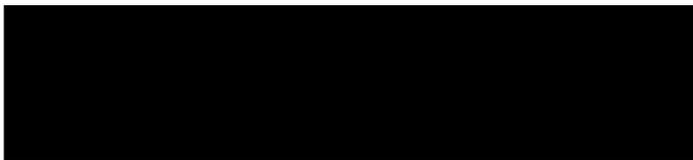
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: JUL 27 2007

EAC 06 030 51344

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.

Maura DeAdmich

f 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 a Pentecostal Christian 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 minister. The director determined that the petitioner had not established its ability to compensate the beneficiary, or that it had made a qualifying job offer to the beneficiary.

On appeal, the petitioner submits arguments from counsel and amended financial information and documents.

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)(4) relates to the job offer. It requires an authorized official of the religious organization in the United States to state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration). With respect to that remuneration, the regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part:

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 letter accompanying the initial submission, [REDACTED], Senior Pastor of the petitioning church, stated: "We have been committed as an organization to give financial support/compensation to the [beneficiary] and his family, in addition to housing accommodation, etc[.] in exchange for services rendered." The petitioner's initial submission contained no specific details about the beneficiary's compensation.

Because the petitioner's initial submission consisted of little more than a letter from the petitioner, the director issued a request for evidence (RFE) on December 13, 2005. Among other things, the director instructed the petitioner to submit additional financial evidence and materials relating to the beneficiary's compensation.

In response, the petitioner submitted a letter from [REDACTED] who stated: "We have been committed as an organization to give financial support/compensation to [the beneficiary] and his family, in addition to housing accommodation, etc. in exchange for services rendered. We have been able to do that since his arrival in March 2003." [REDACTED] thus discussed the terms of payment, and asserted that the petitioner has been "committed" and "able" to pay the beneficiary, but [REDACTED] did not say whether or not the petitioner actually *had been paying* the beneficiary.

A form that the petitioner had submitted to the Internal Revenue Service in 2004 indicated that 25 "active members are currently enrolled in the church," and that the "average attendance at the worship services" numbered 20 persons. The handwritten annotation "as of 1/1/04" follows those figures. [REDACTED] asserted that, as of early 2006, the petitioner's "congregation currently has a membership of fifty (50)."

The petitioner also submitted a copy of an agreement between the petitioner and the beneficiary, requiring the petitioner to provide the beneficiary with housing and a weekly cash stipend of \$125. The agreement indicates that the beneficiary is responsible for utilities. The agreement, dated March 20, 2003, also states: "The method of payment shall comply with all relevant State and Commonwealth laws," and acknowledges "the taxation implications." While this 2003 agreement required the petitioner to compensate the beneficiary, the agreement itself is not evidence of subsequent compensation.

The petitioner also submitted a "Tax Year 2004 Financial Statement," which included the following items:

Total Revenue	\$16,971
Contributions, gifts, grants, and similar amounts paid out	1,178
Disbursements to or for the benefit of members	5,390
Compensation of officers, directors, and trustees	0
Other salaries and wages	0
Any expense not otherwise classified	4,616
Total Expenses	13,109
Total Assets	3,862

Attached lists itemize the “Contributions,” “Disbursements,” and unclassified expenses. The complete list of “Disbursements” reads as follows:

January	Fire Victim Donation	\$150
February	Musicians	100
	Missionary Work	500
March	Musicians	100
	Missionary Work	300
April	Missionary Work	800
May	Missionary Work	450
June	Missionary Work	720
July	Musicians	600
	Missionary Work	100
August	Musicians	550
	Missionary Work	120
	Financial Support Donation	100
September	Missionary Work	350
October	[not specified]	100
November	[not specified]	100
December	Missionary Work	250
Total Expense		
(Disbursements to or for the benefit of members)		5,390

None of the itemized lists shows any payments directly to the beneficiary or for expenses that could reasonably trace back to the beneficiary. The petitioner’s end-of-year total assets, which are what remain of the total revenue after expenses, are not sufficient to pay the beneficiary’s weekly stipend. Furthermore, if those assets were still in the church’s possession at the end of the year, then the petitioner was obviously not paying out those assets to the beneficiary throughout the year.

The director denied the petition on July 13, 2006, stating that the petitioner’s own financial documents do not show that the petitioner has been paying the beneficiary or contributing to his support. The director observed that the itemized financial documents leave no room for past payments to the beneficiary. Also, the director noted the Internal Revenue Service document and its reference to a 25-member congregation. The director made two findings: “It does not appear that the organization has sufficient resources to pay the offered wage,” and: “The record does not satisfactorily establish that the beneficiary has been given a valid job offer.”

On appeal, counsel correctly observes that the smaller congregation size was as of early 2004, and that the director failed to acknowledge the petitioner’s claim that the congregation has since doubled in size. A congregation of 50 could conceivably provide \$125 per week for the beneficiary. Whether \$125 per week could reasonably support the beneficiary, his spouse, and their four children is a separate question.

Regarding the more serious matter of the petitioner’s financial documents, counsel claims: “\$5,390 shown . . . as being disbursed to or for the benefit of members and the itemized account attached showing these

disbursements were to missionaries and musicians were actually amounts paid in part to [the beneficiary] as wages. Amounts paid to him should have been [classified] as wages. Additional disbursements made to him were omitted from" the line item marked "Other salaries and wages." Counsel also asserts that the \$3,862 claimed as "Total Assets" was incorrect, and should actually have read \$2,152.

The petitioner submits an amended version of its 2004 financial statement. According to this document, the petitioner made only four "Disbursements to or for Benefit of Members" in 2004:

January	Fire Victim Donation	\$150
February	Musicians	100
March	Musicians	100
July	Musicians	100

The petitioner also submits a new chart, showing 40 payments to the beneficiary during 2004, totaling \$6,650, for an average of \$147.78 per payment. Month by month, the payments break down as follows:

January	3 payments	\$450
February	5 payments	800
March	4 payments	600
April	5 payments	1,075
May	2 payments	300
June	4 payments	725
July	4 payments	600
August	3 payments	500
September	2 payments	550
October	3 payments	350
November	3 payments	350
December	2 payments	350

The monthly figures submitted on appeal bear scant resemblance to the monthly breakdown submitted previously. The dates and amounts do not match on the two lists. Thus, it is not and cannot be the case that the petitioner simply miscategorized its payments to the beneficiary as "missionary work." These serious discrepancies do not vanish into irrelevancy simply through the submission of an "amended" statement. The submission of a new set of numbers does not compel us to act as though the first set never existed.

The regulation governing the prospective employer's ability to pay, at 8 C.F.R. § 204.5(g)(2), requires certain specified types of documentary evidence, such as audited financial statements. Here, the petitioner's submissions do not conform to the regulatory requirements. The petitioner's submission of two grossly conflicting accounts of its 2004 expenditures provides an eloquent illustration for the necessity of such strict documentary requirements. The director, in rendering the initial decision, relied on figures provided by the petitioner itself. Now, on appeal, the petitioner effectively concedes that its original submission was massively inaccurate. (Otherwise, there would be no cause for submission of an "amended" version.)

Counsel argues, in effect, that because the petitioner submitted flawed and erroneous information to the director, and the director relied on that information, the director's decision must likewise be flawed and erroneous. This in no way demonstrates that the director made an incorrect decision based on the information available at the time.

We note that, although the petitioner's 2003 agreement with the beneficiary makes specific reference to compliance with tax laws, the record does not contain any tax returns, wage statements, or other tax documents.

Assuming, for the sake of argument, that we accept the petitioner's new figures on appeal, this would necessarily require us to regard much of the original "Tax Year 2004 Financial Statement" as an utter fabrication, because there is simply no credible way to reconcile the two sets of figures. They cannot possibly both be accurate, and they cannot possibly both have been compiled in good faith from original documents and records. When the petitioner makes two irreconcilable claims of this sort, it becomes difficult to place any confidence in any of those claims. 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. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988). 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. *Id.* at 582, 592.

In an attempt to provide independent objective evidence, the petitioner submits photocopies of canceled checks on appeal. These documents corroborate some, but not all, of the claimed payments to the beneficiary, while at the same time demonstrating that the petitioner's original "financial statement" was not correct. Section 204(b) of the Act, 8 U.S.C. § 1154(b), provides for the approval of immigrant petitions only upon a determination that "the facts stated in the petition are true." False, contradictory, or unverifiable claims inherently prevent a finding that the petitioner's claims are true. *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).

The checks also suggest that the petitioner did not adhere to the agreement dated March 20, 2003. The checks do not show regular payments of \$125 to the beneficiary. Rather, they show payments in varying amounts at arbitrary intervals (*e.g.*, five payments in February but only two in May). Also, while housing is purportedly part of the beneficiary's compensation (it would have to be, because the petitioner's payments to the beneficiary are well below minimum wage), the record contains no objective evidence to show that the petitioner has provided the beneficiary's housing. There is no evidence that the petitioner owns the site identified as the beneficiary's residential address, and neither the original financial statement nor the "amended" version show mortgage or property tax payments, nor do the documents show any real property among church assets. The petitioner claims to have paid \$1,375 in "rent [and] utilities," but this is an unrealistically low figure for a dwelling housing the beneficiary, his spouse, and his four children (and the 2003 agreement stipulates that the beneficiary, not the petitioner, is to be responsible for all utility payments). As the petitioner's credibility has been gravely compromised we cannot accept the petitioner's own unsubstantiated claim that the petitioner houses the beneficiary. *Matter of Ho* at 591,592.

Even if the church does own or rent the property where the beneficiary resides, this would appear to mark yet another deficiency in not only the original financial statement, but also in the “amended” version which purports to be more accurate than the prior version. Throughout this proceeding, the petitioner’s own documents have consistently raised more questions than they have answered.

These questions reflect not only on the issue of the petitioner’s ability to pay the beneficiary, but also on the related issue of the existence of a valid job offer. The little real evidence that the record contains indicates that the petitioner has not abided by the terms of the 2003 agreement. This, in turn, supports the director’s finding that the petitioner has not established a valid, credible job offer. Evidence of haphazard payments to the beneficiary cannot suffice in this regard, whether those payments are called “salary,” “donations,” “love offerings” or any other name.

We note that, in a statement submitted with the initial filing of the petition, the beneficiary stated:

I am remunerated by the church for my full-time ministerial, evangelizing and outreach services and functions. I took a temporary part-time job as a delivery person to supplement my income, due to extra ordinary circumstances but am not in anyway solely dependent on the supplemental employment for support, nor does it interfere with my full-time church responsibilities.

The beneficiary did not specify when he took this “temporary part-time job,” or when (or if) it ended. The use of the present-tense phrase “nor does it interfere” suggests that the beneficiary still held this secular job at the time of filing. 8 C.F.R. § 204.5(m)(4) requires, in the case of a minister, that the employer show that “the alien will be solely carrying on the vocation of a minister.” An individual who works part-time as “a delivery person” is not “solely carrying on the vocation of a minister.”

The beneficiary’s admitted secular employment raises an additional issue. 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 continuous experience in the religious vocation, professional religious work, or other religious work. An alien minister seeking classification as a special immigrant religious worker must have worked solely as a minister throughout the two-year qualifying period. See *Matter of Faith Assembly Church*, 19 I&N Dec. 391, 393 (BIA 1986). Secular employment at any time during this two-year period would necessarily be a disqualifying factor.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.