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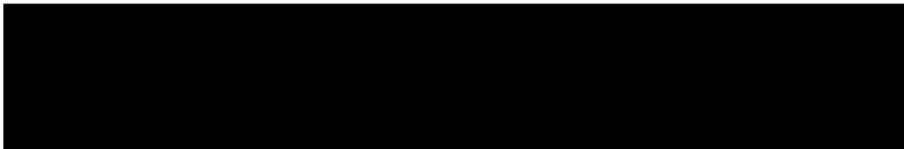
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
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U.S. Citizenship  
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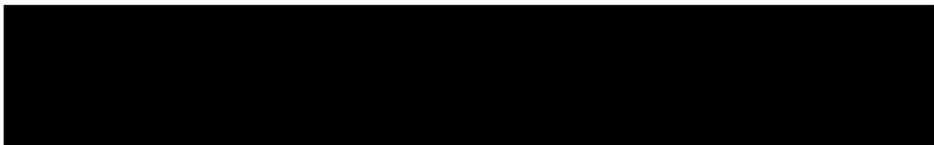
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FILE: [REDACTED]  
SRC 04 129 51829

Office: TEXAS SERVICE CENTER Date: MAR 26 2007

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:

SELF-REPRESENTED

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, Texas 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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.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 AAO will also enter a separate finding of fraud and material misrepresentation against the beneficiary.

The petitioner is a pre-school operated by a constituent church of Open Bible, a Pentecostal Christian denomination. 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 pre-school teacher. The director determined that, because of underlying credibility issues, the petitioner had not established that the beneficiary works in a qualifying religious occupation.

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 director questioned whether the petitioner seeks to employ the beneficiary in a qualifying occupation as defined by Citizenship and Immigration Services (CIS) regulations at 8 C.F.R. § 204.5(m)(2). The director did not state that the petitioner's description of the position of pre-school teacher is non-qualifying. Rather, the director found the petition to be tainted by questions of credibility.

In a letter accompanying the initial filing of the petition in April 2004, [REDACTED] President of the church that operates the petitioning pre-school, stated:

[The beneficiary] has been a Pre School Teacher since November 1969 to Present. . . .

She has worked with our Organization for the past four (4) years in the position of Teacher in our Day Care/Pre School Facility. . . . Her duties include but are not limited to stimulating and training young minds, counseling for both children and parents, participating in Vacation Bible Schools and Summer Camps. . . .

She has a wealth of experience as a Pre School Teacher and we have attached a list of her Previous Work Experience, Qualifications and Educational Background.

signed a separate document listing the beneficiary's "Previous Work Experience." We cite relevant excerpts of that list here:

<u>DATES</u>	<u>POSITION</u>	<u>INSTITUTION</u>
1970-71	Pre School Teacher	Unity Basic Hall, Montego Bay, Jamaica
1985-89	Pre School Teacher	Faith Temple Assemblies of God, Montego Bay
1989-96	Music Teacher	Self Employed, Private Music Lessons
1996	Church Music Corp [sic]	Tampa, Fl.
1996-97	Unemployed	Miami, Fl.
1997-98	Music Teacher	Self Employed
1999-2003	Pre School Teacher	[The petitioning institution]

Notwithstanding's statement that the beneficiary "has been a Pre School Teacher since November 1969," the list does not show continuous employment as a pre-school teacher since that time. The list shows barely any church work during the decade following the beneficiary's 1989 entry into the United States. For reasons we shall explain in due course, we take particular notice of the assertion that the beneficiary was either unemployed or self-employed as a music teacher throughout 1997.

Pay stubs submitted with the initial filing show that the petitioner paid the beneficiary \$14,940.50 in 2003, and \$560.00 every two weeks during the early months of 2004. The beneficiary's total compensation for 2003 is consistent with biweekly payments of roughly the same amount as shown on the 2004 stubs.

On November 10, 2004, the director issued a request for evidence, instructing the petitioner to submit additional documentation regarding the beneficiary's past and present work. We will discuss this evidence in greater detail later in this decision. For the moment, it will suffice to state that the documentation establishes that, for several years prior to the filing of the petition, the beneficiary worked full time for the petitioner, and simultaneously, to a lesser extent, for Greater Fort Lauderdale New Testament Church of God (GFLNTCOG).

The director, in reviewing prior filings involving the beneficiary, encountered evidence which led the director to question the beneficiary's credibility. In conjunction with an application the beneficiary filed on May 27, 1994, the beneficiary executed Form G-325A, Biographic Information. On that form, under "Applicant's Employment Last Five Years," the beneficiary did not identify any past or present employer, even though the period of time covered by the Form G-325A would have included time when she was supposedly working for Faith Temple Assembly of God, and, later, as a private music teacher. Instead, she wrote "Seeking

Employment.” We note that the “profession” line on the beneficiary’s passport, issued June 24, 1991, was left blank except for a dash (-). That application was later deemed abandoned and administratively closed.

On October 31, 1997, the beneficiary filed a petition on her own behalf,<sup>1</sup> indicating that she worked at GFLNTCOG. [REDACTED] prepared that petition. In a letter included with that petition, [REDACTED] stated:

Greater Fort Lauderdale New Testament Church of God is offering [the beneficiary] the position [of] Associate Director of Recruitment and Training.

Since January 1995, [the beneficiary] has been working full time in this position on a voluntary basis.

The Director, Texas Service Center, denied the 1997 petition on March 22, 1999, on grounds relating to the tax status of the Greater Fort Lauderdale New Testament Church of God. The record does not show that any appeal was filed from that decision.

On January 14, 2004, the beneficiary gave a sworn statement to a CIS officer. That statement reads, in part:

This is in reference to [REDACTED]. . . [H]e told me that he could help me get my papers. I paid him \$1000.00 for his assistance, he took me to meet atty. Punancy. The letter that was written on [my] behalf said that I was the Associate Director of Recruitment and Training, [but] I did not hold that position in the church. I was a pianist at the church, which was done on a voluntary basis.

The director denied the present petition, stating: “The beneficiary previously paid another congregation to fabricate a job offer letter for her.” The director concluded, based on this prior conduct, that the petitioner had failed to show that the stated job description as a pre-school teacher accurately reflects the true nature of the beneficiary’s past and intended future duties for the petitioner. When considering this issue, we must stress that this petitioner is not the entity that “fabricate[d] a job offer letter.”

We note that the director gave the petitioner no prior notice that the beneficiary’s statement would form the foundation of the denial, as required by 8 C.F.R. § 103.2(b)(16)(i), which relates to derogatory information of which the petitioner is unaware. This lack of disclosure is, itself, a serious procedural omission.

On appeal, [REDACTED] states that the beneficiary “has never paid anyone to fabricate a job offer for her. She came to Florida to visit her brother. [REDACTED] who had been her Pastor in Jamaica in 1980, heard that she was in Florida, and asked her to contact him. She started attending Church at the Greater Ft. Lauderdale New Testament Church of God and has been the organist since that time.”

<sup>1</sup> The Form I-360 petition identifies the church as the petitioner, but because the beneficiary herself, rather than any church official, signed the petition form, the beneficiary herself is effectively the petitioner in the 1997 proceeding.

letter fails to account for the beneficiary's own signed, sworn statement, in which she asserts that she paid a thousand dollars for a letter from identifying the beneficiary not as "the organist," but as "the Associate Director of Recruitment and Training."

Because the beneficiary herself signed the Form I-360 petition relating to the job offer from GFLNTCOG, she personally took responsibility, under penalty of perjury, for the accuracy of the claims within that petition. The filing of that petition constituted an attempt to procure benefits under the Act. If the beneficiary was never GFLNTCOG's Associate Director of Recruitment and Training, but she nevertheless knowingly submitted documents that referred to her by that title, then the submission of those documents amount to fraud and willful misrepresentation of material facts in furtherance of an attempt to procure benefits under the Act.

Based on the beneficiary's own un rebutted sworn statement, the AAO finds that the beneficiary, in a prior proceeding, knowingly submitted documents containing false statements in an effort to mislead CIS and the AAO on an element material to the beneficiary's eligibility for a benefit sought under the immigration laws of the United States. See 18 U.S.C. §§ 1001, 1546. The AAO will enter a finding of fraud.

At the same time, we must acknowledge that the finding of fraud concerns a *prior proceeding* that did not involve the present petitioner. At this time, the director has made no allegation of fraud against the present petitioner in this proceeding, nor any showing that the beneficiary has made false statements or presented false evidence regarding her work for this petitioner. The beneficiary's past activities do not automatically discredit the claims of her subsequent employers. Therefore, while the finding of fraud would have serious repercussions regarding the beneficiary's admissibility, pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), such repercussions should not affect adjudication of a different petition that is unaffected by the finding of fraud.

The visa petition procedure is not the forum for determining substantive questions of admissibility under the immigration laws. When eligibility for the claimed status is established, the petition should be granted. *Matter of O*, 8 I&N Dec. 295 (BIA 1959). This, of course, applies only to approval at the petition stage; CIS is by no means obliged, by the approval of such petition, to approve a subsequent adjustment application. The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Questions of inadmissibility arising from fraud or other factors should rightly be considered at the adjustment (or visa application) stage.

Having said the above, review of the record reveals legitimate and significant questions about the beneficiary's eligibility, but the director did not raise these issues in (or prior to) the denial notice. Section 101(a)(27)(C)(i) of the Act requires the beneficiary to have been, for at least two years immediately preceding the filing date, a member of the intending employer's religious denomination. CIS regulations at 8 C.F.R. §§ 204.5(m)(1) and (3)(ii)(A) mirror this requirement. 8 C.F.R. § 204.5(m)(2) defines "religious denomination" as a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and

ceremonies, established places of religious worship, religious congregations, or comparable indicia of a bona fide religious denomination.

The petitioner's religious denomination is Open Bible. Therefore, the petitioner must demonstrate that the beneficiary joined the Open Bible denomination no later than two years before the petition's April 5, 2004 filing date.

IRS Form W-2 Wage and Tax Statements and IRS Form 1099-MISC Miscellaneous Income statements issued to the beneficiary in 2001 through 2003 show that the beneficiary worked for two churches in each of those years: the petitioning church, and GFLNTCOG.<sup>2</sup> It is possible that the beneficiary worked for both churches in other years as well, but the evidence only covers the years 2001-2003. It bears emphasizing, here, that the director did not dispute the beneficiary's employment at GFLNTCOG. The director took issue only with the nature of that work ("organist" vs. "Assistant Director of Recruitment and Training").

From 2001 to 2003, the two churches paid the beneficiary the following amounts:

	<u>2001</u>	<u>2002</u>	<u>2003</u>
The petitioning church	\$13,613.15	\$13,912.75	\$14,940.50
GFLNTCOG	\$5,415.78	\$5,836.23	\$6,177.28

The beneficiary's 2001 earnings from GFLNTCOG were reported on two different forms: \$2,275 on IRS Form 1099-MISC, and \$3,140.78 on Form W-2. On her tax returns, the beneficiary stated her occupation as "teacher," but indicated that she had earned some of her income as a "musician" or "organist." The amount the beneficiary claimed to have earned as a "musician" in 2001 matched the amount on that year's Form 1099-MISC from GFLNTCOG.

It is clear from the above evidence that the beneficiary did not leave GFLNTCOG to work at the petitioning church. Rather, both churches employed her simultaneously. This is significant because GFLNTCOG does not belong, like the petitioner, to the Open Bible denomination. Rather, GFLNTCOG belongs, as its name implies, to the Church of God denomination. Both denominations fall in the Pentecostal range of the broad spectrum of Protestant Christian denominations, but this does not mean they belong to the same denomination, or that the descriptive term "Pentecostal" applies to a single, distinct denomination. Open Bible and the Church of God maintain separate ecclesiastical organizations and governing bodies.

It becomes necessary, therefore, to ascertain whether the beneficiary is a member of the Church of God denomination (employed nevertheless at an Open Bible church) or a member of the Open Bible denomination (employed nevertheless at a Church of God church). Attending services or working for a particular church is not *prima facie* evidence of denominational membership. In this respect, we note that the beneficiary's connections to the Church of God appear to go back much farther in time than her involvement with the petitioning Open Bible church.

<sup>2</sup> The earlier list of the beneficiary's "Previous Work Experience," which spans from 1964 to 2003, contains no mention of GFLNTCOG. It is not clear whether this omission was deliberate or inadvertent.

If the beneficiary was not formally a member of the Open Bible denomination throughout the period from April 2002 to April 2004, then she cannot satisfy the statutory and regulatory requirement of two years' membership in the intending employer's denomination.

We also note that, if the beneficiary is not a member of the Open Bible denomination, or was not a member at any time during her employment there as a pre-school teacher, then it would be very difficult to conclude that her duties as a pre-school teacher constitute a religious occupation within the Open Bible denomination, because membership in the denomination would clearly not be a condition of employment in that position. It stands to reason that traditional religious functions, within any given denomination, would be entrusted to workers within that denomination.

From the above, it is clear that the director's decision of November 7, 2005 cannot stand. At the same time, it is also clear that the petition cannot be approved unless and until the petitioner resolves some potentially disqualifying issues relating to the beneficiary's denominational membership during 2002-2004. Once these issues are resolved, the petition could, in principle, be approved, but this would not guarantee the beneficiary the ability to adjust status or obtain an immigrant visa. There would remain, at that stage, the issue of the beneficiary's admitted purchase of letters containing false statements, created specifically for submission as part of an immigrant visa petition.

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, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.

**FURTHER ORDER:** The AAO finds that the beneficiary, in a prior proceeding, knowingly submitted documents containing false statements in an effort to mislead CIS and the AAO on an element material to the beneficiary's eligibility for a benefit sought under the immigration laws of the United States.