

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

C1

[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: NOV 21 2007  
WAC 06 269 50546

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:

[REDACTED]

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, 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 member church of the International Church of the Foursquare Gospel, a Pentecostal Christian denomination.<sup>1</sup> 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 a brief from counsel.

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

---

<sup>1</sup> The Form I-360 petition, signed by Pastor [REDACTED] of Christ My Sufficiency, identifies the International Church of the Foursquare Gospel as the petitioner. The record, however, does not show that [REDACTED] is authorized to act on behalf of the denomination as a whole. Furthermore, the address shown on the Form I-360 is the address of Christ My Sufficiency rather than any denominational headquarters. The AAO therefore considers Christ My Sufficiency to be the petitioner.

years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on September 5, 2006. 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.

An alien seeking classification as a special immigrant minister must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought, and must intend to be engaged solely in the work of a minister of religion in the United States. *See Matter of Faith Assembly Church*, 19 I&N 391, 393 (Commr. 1986).

In an August 10, 2006 letter accompanying the initial filing, [REDACTED] Senior Pastor of the petitioning church, stated that the beneficiary "became a Minister of God and a revivalist in our Church on August 22, 1999. He was granted 'R' visa to work for the Church since 2001." [REDACTED] stated that the beneficiary "will be reimbursed with the sum of \$16,500.00 per year for his services," but he did not indicate whether the petitioner had, thus far, been paying the beneficiary that amount. The initial submission included copies of certificates dated 1999 and 2000, but no direct evidence of qualifying ministerial work during the September 2004-September 2006 qualifying period.

On December 11, 2006, the director issued a request for evidence (RFE), instructing the petitioner to submit documentary evidence regarding the beneficiary's work history and compensation during the qualifying period. In response, Pastor Oluwasanmi stated:

As a means to create [a] financial cushion for the local Church in Brooklyn, [the beneficiary] distributes newspapers at night and work[s] for the Church during the day. He has elected not to be paid for sometime to enable the local church [to] accumulate funds to purchase real estate. He receives [an] allowance from the Church at this time.

[REDACTED] does not explain how the beneficiary "receives [an] allowance" but is "not . . . paid."

The petitioner submitted copies of the beneficiary's 2004 and 2005 income tax returns. The beneficiary filed both tax returns as "single," although the record identifies the beneficiary's spouse and three children, the eldest of whom was born in 1991. On the 2004 return, the beneficiary reported \$6,654 in business income. The returns include multiple copies of Schedule C, Profit or Loss From Business. The Schedules C for 2004 indicated that the beneficiary grossed \$10,144 as "help" at Expedi Printing, Inc., with a net loss of \$1,378 after expenses. The beneficiary reported a net profit of \$2,825 (from \$4,440 in gross receipts) working in "[news]paper delivery" for Morning Newspaper Delivery Inc., and net profit of \$5,207 (from \$10,000 gross) as "helper" of the petitioning church.

The 2005 return indicated that the beneficiary reported \$1,325 in wages and \$9,599 in business income that year. The record does not identify the source of the \$1,325 in wages. Schedules C identify three sources of the beneficiary's reported business income. He earned \$5,301 (net from \$10,144 in gross receipts) as "help" at Expedi Printing, Inc., \$780 (net from \$1,800 gross) as "help" at The Sandhar Corp., and the remaining \$3,518 (net from \$4,500 gross) as pastor of the petitioning church.

On March 28, 2007, the director issued a second RFE, instructing the petitioner to document “allowances that the petitioner provides [to] the beneficiary.” In response, the petitioner submitted photocopies of six checks from the petitioner to the beneficiary, in amounts ranging from \$150 to \$250. The dates of the checks range from April 1, 2003 to May 16, 2004, and therefore all of the checks fall outside the qualifying period, which began in September 2004.

The director denied the petition on May 23, 2007, citing the beneficiary’s low remuneration from the church and considerable secular employment as evidence that the beneficiary was not continuously carrying on the vocation of a minister throughout the qualifying period.

On appeal, counsel argues that the petitioner has shown that the beneficiary performed ministerial duties for the petitioner, and that the director cannot permissibly require monetary compensation as part of the qualifying experience. The lack of remuneration was not the sole or principal foundation of the director’s decision. (The beneficiary’s tax returns indicate some income, however minimal, from the petitioning church in 2004 and 2005.)

As cited earlier in this decision, the beneficiary must have been *solely* engaged as a minister throughout the qualifying period. The Ninth Circuit Court of Appeals, within whose jurisdiction this proceeding arose, has upheld the AAO’s interpretation of the two-year experience requirement. *See Hawaii Saeronam Presbyterian Church v. Ziglar*, 2007 WL 1747133 at \*1 (9<sup>th</sup> Cir., June 14, 2007). Here, the petitioner and counsel have repeatedly stipulated that the beneficiary’s chief source of income throughout the qualifying period was secular employment. This circumstance is *disqualifying on its face and requires no further discussion*.

We note that counsel asserts: “Pastors that are called will work, as long as they can find alternative means to meet their daily needs [they] will work for the Church regardless of the Church’s inability to pay full salary.” This apparent stipulation of the petitioner’s “inability to pay full salary” reinforces the denial of the petition, because, pursuant to 8 C.F.R. § 204.5(g)(2), the prospective United States employer must establish its ability to pay the beneficiary’s proffered compensation from the date of filing through the time the alien becomes a lawful permanent resident. 8 C.F.R. § 204.5(m)(4) requires churches seeking to engage ministers to demonstrate that the alien will be *solely* carrying on the vocation of a minister, something that the petitioner cannot demonstrate if the beneficiary holds a secular job or jobs owing to “the Church’s inability to pay full salary.” The church’s support need not be monetary in nature; it could be *in the form of room and board* – but the statute and regulations plainly rule out outside employment.

For the reasons set forth above, we affirm the director’s finding that the petitioner has not shown that the beneficiary continuously carried on the vocation of a minister throughout the two years immediately preceding the filing of the petition. 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.