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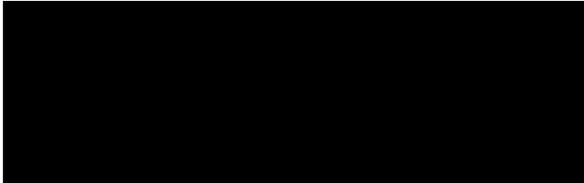
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: NOV 21 2007
SRC 06 216 53401

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, Texas 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 church of the Free Will Baptist 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 an associate pastor. The director determined that the petitioner had not established its ability to pay the beneficiary's proffered salary.

On appeal, the petitioner submits a brief from counsel and witness statements.

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 sole stated basis for denial concerns the petitioner's ability to compensate the beneficiary. The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part:

Ability of prospective employer to pay wage. 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 June 23, 2006 letter accompanying the initial submission, certified public accountant [REDACTED] stated that the beneficiary "is living with [REDACTED] and [REDACTED] and receiving compensation from" the petitioning church. [REDACTED] offers the following breakdown:

Support Provided by [REDACTED] Monthly:

| | |
|--|-----------------|
| Rental Value of Residence | \$1,200.00 |
| Utilities | 200.00 |
| Food | 500.00 |
| Internet and Telephone | 57.00 |
| Total Shared by Three Members Living in Household: | <u>1,957.00</u> |
| Per Person | 652.00 |
| Cash | 90.00 |
| Cell Phone | 46.00 |
| Total Provided by Bakers: | <u>788.00</u> |
| Support Provided by Church: | 400.00 |
| Transportation: | 360.00 |
| Total Provided by Church | <u>760.00</u> |
| TOTAL MONTHLY SUPPORT: | \$1,548.00 |
| TOTAL ANNUAL SUPPORT: | \$18,576.00 |

(Emphasis in original.) The initial submission includes a copy of a November 5, 2004 letter from [REDACTED] containing the same figures.

The petitioner also submitted copies of canceled checks, showing that the church paid the beneficiary \$400.00 per month, consistent with the above letter. Tax documents likewise reflect that the petitioner paid the beneficiary \$4,800 in 2005. The initial submission contains nothing from the [REDACTED] family to confirm the nature or extent of its claimed support for the beneficiary, or to establish the family's financial situation.

A table included with the initial filing lists the church's itemized expenses by month from May 2004 through April 2005, with proposed annual amounts for 2005-06. The table shows a \$945.77 loss for 2004-05, and a projected \$21,928.60 loss for the following year. The table also assumes a projected 37% increase in church income in 2005-06 compared to 2004-05. The record does not reveal the basis for this assumption.

On December 11, 2006, the director issued a request for evidence (RFE), instructing the petitioner to submit “evidence of the petitioner’s ability to pay the beneficiary’s wage . . . in the form of copies of annual reports, federal tax returns . . . , or audited financial statements.”

In response, the petitioner submitted copies of “[y]early financial report[s]” for the fiscal years ending in 2004, 2005 and 2006. These documents resemble the table that accompanied the initial submission; the document for 2004-2005 appears to be a photocopy of the table submitted earlier. The document labeled “2005-2006” contains exactly the same figures as the “2004-2005” report submitted previously, even including a “Proposed for 05-06” column. The “2005-2006” report is, therefore, nothing more than the “2004-2005” report with a new heading. Regardless of whether the submission of the same year’s financial data for two different years was intentional or accidental, it is clear that we can place no credence in the “2005-2006” report in the record.

Monthly reports for May 2006 through August 2006 show, in the aggregate, \$27,734.99 in additions to the petitioner’s general fund, against \$34,696.29 in expenses. There is no indication that these documents resulted from an audit, and the submission of identical reports for two different years demonstrates that we cannot presume the financial documents to be accurate.

Senior Pastor of the petitioning church, stated that the beneficiary’s “job entails a forty hour week” with a salary of “\$400.00 per month paid by” the petitioning church. letter does not mention the Baker family or any other supplementary source of support for the beneficiary. A salary of \$400 per month, with a 40-hour week, would equal approximately \$2.30 per hour, well below the legal minimum wage.

On February 26, 2007, the director issued a second RFE, instructing the petitioner to submit “evidence to establish how the beneficiary has been supporting himself,” including financial documents. In response, the petitioner submitted a new letter from , indicating that the petitioner pays the beneficiary “\$400.00 per week.” This appears to be an error. There is no evidence that the petitioner has ever paid the beneficiary \$400 per week; previous submissions, including tax documents and checks, fixed the beneficiary’s compensation at \$400 per month.

In a separate letter, stated that the beneficiary’s “housing, transportation . . . phone, food and health care are provided by . . . ? This conflicts with previous assertion that the petitioning church, not the paid \$360 per month for the beneficiary’s transportation. The monthly and yearly financial breakdowns submitted previously do not show expenses that readily correlate to the beneficiary’s claimed transportation expenses.

The petitioner submitted a copy of the petitioner’s *Church Directory*, showing that resided at the same address listed for the beneficiary. A separate “Membership Roll,” however, does not list the

provided a new breakdown of the beneficiary’s sources of support, dated March 14, 2007. This 2007 letter contains the same figures as earlier letters. The only substantive deviation from the previous letters is that, in the 2007 letter, lists \$360 in transportation costs in the “Provided by” section rather than the “Provided by Church” section. The petitioner submitted nothing from the

to show that they had been supporting the beneficiary in this way, or that they had assumed the beneficiary's transportation costs at some point between June 2006 and March 2007.

Copies of the beneficiary's bank statements from November 2006 through March 2007 show that the beneficiary deposited \$2,460 into his account in the space of four months, depositing as much as \$1,000 at a time, even though he was supposedly receiving only \$400 per month from the church and \$90 per month from the [REDACTED]. The record does not reveal the source of this surplus income, even though the director had specifically requested evidence to show the beneficiary's means of support.

The director denied the petition on June 18, 2007, stating that the beneficiary's \$400 monthly salary "appears to be quite low," less than "a living wage, commensurate with full-time employment." The director also noted that the record contained no evidence establishing that the [REDACTED] were, and would continue to be, able to contribute their stated share of the beneficiary's support. The director concluded: "the evidence is insufficient to establish that the prospective employer can pay the beneficiary's proffered wage and that the beneficiary will not be solely dependent on supplemental employment or solicitation of funds for support." The director also asserted that, if the [REDACTED] provided the beneficiary's support, then the [REDACTED] were the beneficiary's *de facto* "employers."

On appeal, counsel states that the petitioner's "financial records clearly indicate that [the petitioner] was able and did pay the proffered wage for a period of two years." Counsel does not address the regulatory requirements that restrict the forms that evidence of ability to pay may take. The regulation at 8 C.F.R. § 204.5(g)(2) states that evidence of ability to pay "shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements." The petitioner is free to submit other kinds of documentation, but only *in addition to*, rather than *in place of*, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of evidence. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Counsel stated that the director, in the denial notice, did "not point to one inconsistency" in the record. The record, nevertheless, is not free of inconsistencies, one major example of which being the purported "2005-2006" financial statement that is merely a copy of the "2004-2005" statement with the date changed. In the face of this submission, we cannot concur with counsel's assertion that the petitioner has submitted credible, consistent and adequate documentation. There are other questions as well, such as [REDACTED] conflicting assertions as to whether the church or the [REDACTED] are responsible for the beneficiary's transportation expenses. Furthermore, as we have already noted, the beneficiary's bank statements show deposits that appear to exceed, by a considerable margin, the stated amount of his compensation.

The petitioner submits affidavits from [REDACTED]. [REDACTED] states that the beneficiary first moved in with the [REDACTED] before the beneficiary had begun working at the petitioning church. [REDACTED] states: "we have never had any arrangement with the Church or [REDACTED] to provide anything to [the beneficiary] as part of his salary." He also states: "We consider him to be a part of our family. He has a calling to minister but we would help him even if we didn't participate at the same church." [REDACTED] echoes the assertion that she and [REDACTED] offered to house the beneficiary because of their friendship with him, and that this support is neither contingent on, nor related to his work at the petitioning church.

Assuming that the [REDACTED] are largely responsible for the beneficiary's material support, the status of that support is uncertain if the [REDACTED] become unable to continue to house and support him. The petitioner has not explained what contingencies are in place in the event of such circumstances. As of the present date, [REDACTED] years old and [REDACTED] years old, whereas the beneficiary is 36 years old. The record contains no evidence to show that the [REDACTED] will be able to continue supporting the beneficiary indefinitely, or that they have made firm arrangements for the beneficiary's continued support in their absence.

Because the petitioner asserts that the beneficiary is an ordained minister working in a pastoral capacity, the petitioner must establish that the beneficiary will be *solely* carrying on the vocation of a minister. Section 101(a)(27)(C)(ii)(I) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(I); 8 C.F.R. § 204.5(m)(4). A special immigrant minister is not permitted to engage in any supplemental employment. If the [REDACTED] become unable to continue to support the beneficiary, his church salary of \$400 per month would appear to be insufficient to meet the beneficiary's basic needs for housing, food, and other necessary expenses. The validity of the petitioner's job offer to the beneficiary as the beneficiary's *sole* employment appears to be contingent on the continuation of this informal agreement with the [REDACTED].

As we have already observed, the beneficiary's bank statements seem to suggest some alternative source of income, making it possible for him to deposit considerably more than \$400 per month into his account. The petitioner, on whom the burden of proof rests, has not shown that this excess income is from a permissible source rather than from impermissible outside employment.

The director, more than once, spelled out the documentary requirements necessary to show that the source of the beneficiary's compensation is able to provide that compensation, and will remain able to do so for the foreseeable future. The director noted the petitioner's failure to provide any such documentation regarding the [REDACTED] finances. The petitioner, on appeal, does not remedy this deficiency. 8 C.F.R. § 204.5(g)(2) lists specific documentary requirements, and the petitioner cannot evade or nullify those requirements simply by passing on financial responsibility for the beneficiary to a family of parishioners. The burden of proof relating to ability to pay the beneficiary's proffered wage goes beyond simply naming a third party who has agreed to support the beneficiary.

The petitioner has not submitted the documentation required by 8 C.F.R. § 204.5(g)(2). The documentation that the petitioner *has* submitted contains inconsistencies that diminish their evidentiary value and, by implication, the petitioner's overall credibility. 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, 591 (BIA 1988). We affirm the director's decision of denial.

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.