

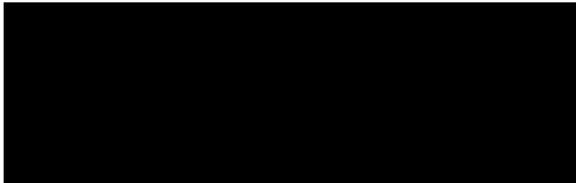


U.S. Citizenship
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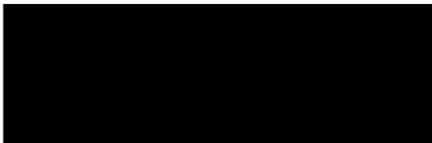
Petitioner:

Beneficiary:



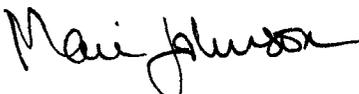
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

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.


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 identified as a church of the Seventh-day Adventist (SDA) 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 minister. The director determined that the petitioner had not established: (1) its status as a tax-exempt nonprofit organization; (2) its ability to compensate the beneficiary; or (3) that the beneficiary had the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition.

On appeal, the petitioner submits several letters and copies of 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 . . . ; 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 first issue under discussion concerns the petitioner's status as a tax-exempt nonprofit organization. 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization seeking to employ the beneficiary qualifies as a non-profit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

The petitioner initially submitted copies of Internal Revenue Service (IRS) determination letters, establishing a group exemption for member churches of the Seventh-day Adventist denomination. These letters do not show that the petitioner is covered by the group exemption.

On March 6, 2007, the director issued a request for evidence (RFE). The RFE concerned various facets of the petition, but did not touch on the issue of the petitioner's tax status, except obliquely with the question "What do you consider your religious denomination?"

The director denied the petition on June 19, 2007, based in part on the finding that the petitioner had not established that it is among the subordinate entities covered the group exemption granted to the SDA Church. On appeal, the petitioner submits a letter from [REDACTED] identified as the Pastor of the petitioning church, who states:

Please be advised that [the petitioner] at 4623 Avenue J and Schenectady is a Mission of EBENEZER Seventh Day Adventist Church, which means that the Mission is covered under the umbrella of our organization and, therefore, qualifies as a non-profit organization of the Internal Revenue Code of 1986 as it relates to religious organizations.

Since [the petitioner] is an affiliate and subordinate of EBENEZER SEVENTH DAY ADVENTIST CHURCH located at the address above [1234 East New York, Brooklyn, New York], it is under the umbrella of our 501(c)(3) religious organization.

The petitioner submits copies of group exemption letters from the IRS which do not mention any specific SDA congregations. The petitioner also submits a copy of an IRS letter issued to Ebenezer SDA Church on March 26, 1990. This letter indicates that the IRS assigned an Employer Identification Number to Ebenezer SDA Church. The letter, which does not mention the petitioner at all, states "the assignment of this number does not grant tax-exempt status to nonprofit organizations." Therefore, the 1990 IRS letter cannot be construed in any way as evidence of the petitioner's tax-exempt status. Furthermore, the petitioner offers no documentary evidence to support Pastor Baldwin's claim of a connection between the petitioner and Ebenezer SDA Church.

A number of IRS determination letters reproduced in the record, including a March 5, 2003 letter submitted on appeal, require the SDA denomination to submit a "roster of subordinates included in [the SDA Church's] group exemption letter," and to update this roster regularly. The 2003 letter mentions "the list your organization supplied." Therefore, documentation should exist – legally, *must* exist – to answer the question of whether the group exemption covers the petitioning entity. The petitioner, however, did not submit the roster of SDA subordinates, or any documentary evidence to show that the petitioning church has ever appeared on that roster. If the petitioner is not on the roster, then the petitioner is not covered by the SDA Church's group exemption.

The AAO does not contest the SDA Church's standing as a legitimate religious denomination, whose subordinate churches are covered by a group exemption recognized by the IRS. We find, however, that the petitioner has produced no credible documentary evidence that the petitioner is covered by that exemption; its self-identification as an SDA church cannot suffice in this regard. We affirm the director's finding that the petitioner has not established its tax-exempt status as required by 8 C.F.R. § 204.5(m)(3)(i).

The next issue concerns the petitioner's ability to compensate the beneficiary. Pursuant to 8 C.F.R. § 204.5(m)(2), the prospective employer must establish terms of payment for services or other remuneration that

will allow the beneficiary to work solely as a minister without reliance on supplemental employment. 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.

The only financial evidence in the petitioner's initial submission was a letter on North Fork Bank letterhead, indicating that the petitioning church had a bank balance of \$32,168.85 as of June 27, 2006. The petitioner did not initially specify the level of compensation offered to the beneficiary.

In the RFE, the petitioner instructed the petitioner to set forth the beneficiary's proposed terms of remuneration, and to submit evidence of ability to pay that conforms to the regulatory requirements of 8 C.F.R. § 204.5(g)(2). In response, [REDACTED] stated that the church members tithe faithfully, thus guaranteeing sufficient church income to cover the costs of the beneficiary's compensation. [REDACTED] claimed that beneficiary "has been remunerated as follows:"

Housing (in our Church premises)	\$7,200.00
Food (from our Soup Kitchen)	3,800.00
Cash	<u>7,000.00</u>
TOTAL:	\$18,000.00

The only documentation offered relating to this remuneration consisted of copies of the beneficiary's income tax returns (more about which later). The petitioner also submitted a second letter on North Fork Bank letterhead, showing that the beneficiary carried an account balance of \$53,410.88 as of May 25, 2007.

In the denial notice, the director stated that letters from the pastor and North Fork Bank are "not sufficient documentary evidence of the petitioner's ability to pay the proffered wage" because they do not conform to the documentary requirements set forth at 8 C.F.R. § 204.5(g)(2). On appeal, the petitioner submits none of the documentation required by the cited regulation, nor does the petitioner explain its failure to submit such documentation. The petitioner submits a copy of the "Greater New York Conference of SDA / Local Church Financial Review Check Sheet" for Ebenezer SDA Church, dated December 18, 2001, covering the period from October 1999 to September 2001. This document does not conform to the regulatory requirements. Furthermore, it contains no indication that the petitioning church is a mission operated by Ebenezer SDA Church; the presence of the name [REDACTED] on page 3 of the document does not suffice to warrant such an inference. [REDACTED] did not explain why the petitioner was unable to obtain more relevant, or more recent, documentation.

We affirm the director's finding that the petitioner has not established its ability to pay the beneficiary pursuant to 8 C.F.R. § 204.5(g)(2).

Finally, we turn to the beneficiary's past experience. 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 December 5, 2006. 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.

In a letter submitted with the initial filing, [REDACTED] stated that the beneficiary "has been a member and a full-time working ordained Pastor of our denomination from April 17, 1993 to the present time," and that the beneficiary had worked 52 hours a week "at Beulah Temple S.D.A. Church . . . from May 2004 to the present time." [REDACTED] claimed that beneficiary, during the two-year qualifying period, received compensation worth \$18,000 per year, in the form of housing \$7,200, food worth \$3,800, and \$7,000 in cash. [REDACTED] would later claim that the petitioner provided identical compensation, as noted earlier in this decision.)

The petitioner established that the beneficiary held an R-1 nonimmigrant religious worker visa to work at Beulah Temple SDA Church in Richmond Hill, New York, valid from May 2004 to May 2007. Documentation of the beneficiary's R-1 status is consistent with activity as a pastor, but it does not by itself prove that the beneficiary worked as claimed. The visa was issued before the work was to have taken place, and therefore cannot show that the work did, in fact, take place. The petitioner's initial submission included no documentation from Beulah Temple or from any other source (such as the IRS) to confirm that the beneficiary performed the work for which he had been granted an R-1 visa.

In the RFE, the director requested specific details of the beneficiary's work history, corroborated by documentary evidence. In response, [REDACTED] stated: "from December 5, 2004 to December 5, 2006, [the beneficiary] worked at Beulah S.D.A. Church." In a separate letter, [REDACTED] provided a breakdown of what the petitioner claims was the beneficiary's typical weekly schedule at Beulah Temple. As before, the petitioner submitted no documentation from Beulah Temple to corroborate these claims.

The petitioner submitted copies of the beneficiary's income tax returns for 2005 and 2006.¹ We will discuss these returns in the context of the appeal. The director, in denying the petition, found that the petitioner had not submitted documentary evidence of the beneficiary's employment in late 2004. On appeal, Pastor Baldwin states that the beneficiary "received remuneration [in the amount of] \$950.00 during the month of December 2004." The petitioner submits no documentary evidence to support this claim.

The AAO affirms the director's finding that the petitioner did not adequately establish that the beneficiary continuously carried on the vocation of a minister throughout the two-year period immediately preceding the petition's filing date. We elaborate on those findings here.

¹ We note that the beneficiary listed his marital status as "Single" on both returns, although the Form I-360 petition identifies a spouse and two children.

The director appears to have given credence to the beneficiary's 2005 and 2006 tax returns. Closer inspection, however, undermines the evidentiary weight of these documents. On the returns, the beneficiary indicated that he worked as a "Minister of Religion" at "Beulah Temples SDA Church" at "4623 Avenue J and Schenectady" in Brooklyn, New York. The beneficiary gave this same address as his home address. The address listed, however, is not the Richmond Hill address of Beulah Temple. Rather, it is the petitioner's Brooklyn address.

The petitioner did not submit IRS Forms W-2 or other evidence that the beneficiary actually received the compensation claimed on the returns. This omission is particularly telling when we consider that the beneficiary did not file these tax returns when they were due (no later than April 15 of 2006 and 2007, respectively). Rather, the tax returns were both prepared (apparently by a travel agent) on May 25, 2007, months after the director issued the RFE requesting evidence of past compensation. The timing suggests that the beneficiary prepared these tax returns specifically in response to the RFE. The purpose of an RFE is to solicit existing evidence to support the petitioner's claims, not to spur the petitioner or the beneficiary to create new documents after the fact.

The record of proceeding shows a consistent overall pattern. The record contains documentary evidence that is tangential to the petition, such as documentation of Ebenezer SDA Church's finances in 1999-2001 and the beneficiary's employment many years in the past. When it comes to the core issues upon which eligibility rests, however, the petitioner has relied almost entirely upon newly-written letters from [REDACTED], with little or no credible corroborative evidence.

Given the record as it now stands, the AAO cannot conclude with any confidence that the petitioner is, in fact, a *bona fide* SDA subsidiary church, let alone one that is able to pay the beneficiary. The beneficiary's claimed employment at Beulah Temple SDA Church is not corroborated by any evidence from Beulah Temple itself, or by any statements from Beulah Temple officials.

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.