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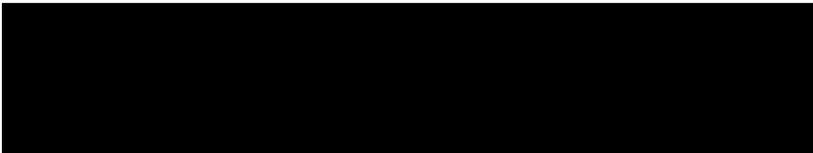
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FILE: LIN 05 178 53753 Office: NEBRASKA SERVICE CENTER Date: **SEP 12 2007**

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:



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.

  
for Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska 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 Assemblies of God 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 assistant pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous membership in the intending employer's religious denomination immediately preceding the filing date of the petition.

On appeal, the petitioner submits a brief from counsel and copies of various 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)(1) states, in part:

An alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination[.]

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 membership in the denomination. The petition was filed on May 23, 2005. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an assistant pastor of the Assemblies of God denomination throughout the two years immediately prior to that date.

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.

In a letter accompanying the initial filing, [REDACTED] Senior Pastor of the petitioning church, stated: “for the last 2½ years (since September 1, 2002) [the beneficiary] has been serving as the Assistant to the Senior Pastor at [REDACTED] in Skokie, IL.” [REDACTED] claimed: “Both churches are evangelical Christian in their doctrine.” [REDACTED] listed “our common theological convictions,” which mainly concern the divinity of Jesus, the nature of the Trinity, and the inspiration of Christian scripture.

[REDACTED] indicated that [REDACTED] holds “Shabbat” (Sabbath) services on Saturdays and offers Hebrew classes, both traits typically associated with Jewish synagogues. From the description of the beneficiary’s duties and the congregation’s religious tenets, it appears that [REDACTED] is more closely aligned with Messianic Judaism (a movement which preserves the traditions, practices and identity of Judaism while embracing the Christian view of Jesus as messiah) than with the Assemblies of God.

On September 19, 2005, the director issued a request for evidence, instructing the petitioner to submit evidence that [REDACTED] and the petitioner belong to the same religious denomination. The director added: “It is not sufficient to claim that both are evangelical Christian, as many different denominations are included under that title.” The director also requested evidence of the petitioner’s status as a tax-exempt non-profit organization.

In response, the petitioner submitted documentation of the group exemption that the Internal Revenue Service granted to the Assemblies of God, and that the petitioning church is covered by that group exemption. The petitioner did not submit any evidence that [REDACTED] is also covered by that group exemption. The documentation shows that the Assemblies of God has a central governing body (the General Council) and other indicia of a religious denomination, but the record does not show that the General Council of the Assemblies of God has any authority over [REDACTED]

[REDACTED], a Congregational Elder at [REDACTED], stated:

The connection between [REDACTED] and [the petitioning church] is doctrinal in nature, both religious bodies affirming . . . biblical tenets that are the foundational

cardinal truths of our common Christian faith. I have personally attended worship services at [the petitioning church] on more than one occasion and I would feel comfortable taking communion there, whereas I do not in many other churches. Also, a believer who has been immersed in accordance with the requirements of [the petitioning church] would qualify for membership in [redacted] on this point. . . .

Furthermore, [the beneficiary] has held ministerial credentials with the Assemblies of God since September 14, 1998. . . . He held these credentials all throughout the time he was serving as the Assistant to the Senior Pastor at [redacted]

[redacted], in his letter, never identified the religious denomination (if any) with which [redacted] Congregation is affiliated. [redacted] repeated the assertion that [redacted] holds weekly "Shabbat" services on Saturdays, and offers "Biblical Hebrew classes."

The director denied the petition on February 27, 2006, stating that the petitioner failed to establish that the beneficiary belonged to the petitioner's religious denomination throughout the two-year qualifying period.

On appeal, counsel repeats the argument that the Assemblies of God certified the beneficiary as a minister in 1998, and that the petitioning church is an Assembly of God church, and therefore "they should be the same denomination." The beneficiary's 1998 certification by the Assemblies of God does not demonstrate that the beneficiary belonged to the Assemblies of God denomination during the 2003-2005 qualifying period. Counsel never attempts to show that [redacted] also belongs to the Assemblies of God denomination. Indeed, counsel never even mentions [redacted] in reference to the denomination issue.

Counsel does mention [redacted] in another context, stating that the beneficiary's employment there satisfies the statutory and regulatory requirement of two years of continuous experience immediately preceding the petition's filing date. Counsel thus attempts to separate the denomination and experience requirements, stating that the beneficiary satisfies the former through his certification by the Assemblies of God, and the latter through [redacted]. We do not accept that the denomination and experience requirements can be separated in this way. An alien cannot qualify for special immigrant religious worker classification by working for one denomination while, on paper, nominally a member of another denomination. We note that, when Congress revised the special immigrant religious worker legislation in 1990, Congress added the two-year denominational membership requirement as one of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (Sept. 19, 1990).

The petitioner's appellate submission includes a copy of the petitioner's constitution, which indicates at Article IV, Tenets of Faith, that the petitioning church "adopts the Statement of Fundamental Truths of the General Council of the Assemblies of God." The "Statement" consists of sixteen articles of faith, some of which, regarding such matters as speaking in tongues and the imminent rapture of the faithful, are not found in the general list of shared theological similarities between the petitioner and [redacted]. The theological convictions of the petitioning church and [redacted] clearly overlap to some extent, but this is not sufficient to establish common denominational membership or affiliation.

The petitioner has submitted evidence to show that the General Council of the Assemblies of God maintains a roster of member churches, but the petitioner has not shown or even claimed that [REDACTED] is among those churches. Rather, all of the available evidence of record is consistent with a finding that [REDACTED] Congregation is a Messianic Jewish congregation. The record contains no evidence that the beneficiary was active in any Assemblies of God church during the two-year qualifying period. [REDACTED] recognition of the beneficiary's ministerial credentials from the Assemblies of God cannot suffice to establish the beneficiary's eligibility for the immigration benefit sought, and counsel's avoidance of the issue on appeal cannot distract us from the only reasonable finding that the record allows.

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.