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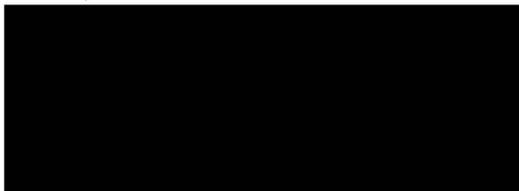
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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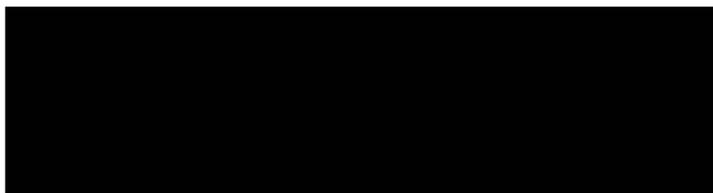
Petitioner:

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 (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is a member congregation of the Presbyterian Church of Korea-America. 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 children's minister/assistant pastor. The director determined that the petitioner had not established that the beneficiary's position qualifies as a full-time religious occupation.

On appeal, the petitioner submits a brief from counsel and additional 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 only issue articulated in the director's decision is whether the petitioner seeks to employ the beneficiary in a qualifying, full-time occupation. The regulation at 8 C.F.R. § 204.5(m)(2) defines "religious occupation" as an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

Citizenship and Immigration Services therefore interprets the term “traditional religious function” to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

In a declaration accompanying the initial filing of the petition, [REDACTED], Pastor of the petitioning church, stated:

The petitioner intends to provide permanent employment for the beneficiary in the religious occupation of Children’s Minister arranging Sunday School programs, serving as Sunday School Teacher, and counseling Korean immigrant families, especially the children.

The type of work to be done by the beneficiary relates to traditional religious functions. [The beneficiary] will not be engaged in any activity other than those religious functions enumerated.

The services of the beneficiary will be compensated at the rate of \$1,800 per month.

There is a critical need for the services of beneficiary in the religious occupation described on a permanent full-time basis.

(Paragraph numbers omitted.) A “Listing of Religious Services” contains the following information:

- Sunday, Noon and 1:00 p.m.
- Sunday, 11:00 a.m., Services for College University Aged Students
- Monday, 8:00 p.m., Teenager Youth Group Services
- Every Morning, Tuesday through Saturday, 6:00 a.m., Regular Church Services
- Tuesday and Friday, 2:00 p.m., Japanese Bible Study
- Wednesday, 8:00 p.m., Computer Studies for Youth Group
- Thursday, 7:30 a.m., English Bible Studies
- Friday, 7:00 p.m., Regular Church Service
- Saturday, 9:00 a.m. and Noon, Korean Language Studies and Youth Counseling

On July 12, 2007, the director issued a request for evidence, instructing the petitioner to provide additional information and documentation relating to the beneficiary’s duties, schedule, and other issues.

In response, the petitioner submitted a letter from [REDACTED] Stated Clerk of the Settle Presbytery of the Presbyterian Church (U.S.A.), who stated that the beneficiary “is eminently qualified to perform the duties assigned to her; and the position assigned to her as a Children’s Minister is a religious occupation relating to a traditional function in a Presbyterian religious denomination.” [REDACTED] emphasized that the presentation of “Sunday School programs . . . comprises a traditional function central to the fundamental mission of the Presbyterian Church in the United States.”

An excerpt from the *Book of Order*, a governing document of the petitioner's denomination, lists "Christian Educators" among the class of "Persons Called to Certified Ministry." The *Book of Order* refers to such educators as being "certified" and "accredited," qualifications that the beneficiary does not claim, but Rev. [REDACTED] asserted: "the Presbyterian Church encourages Christian educators to apply for certification, but that is not a requirement for the position of Christian educator including that of Children's Minister."

In a new declaration, [REDACTED] stated that the beneficiary's duties occupy "approximat[ely] 42-48 hours per week." An accompanying schedule included the following information:

	[Morning]	[Afternoon/Evening]
Sunday	Prepare for worship YM meeting	Sunday worship Sunday school Culture class Youth meeting Choir
Monday	Morning service	
Tuesday	Morning service Women class	Gospel preaching Counseling
Wednesday	Morning service Counseling	Hospital visiting Computer studies
Thursday	Morning service Bible study (EM)	Japanese class Youth Counseling
Friday	Morning service home visiting	Gospel preaching adult Bible class
Saturday	Morning service Korean class	Youth Bible class YM Bible class

The schedule overlaps, but does not entirely match, the "Listing of Religious Services" submitted previously. It is not clear to what extent the beneficiary participates in the morning services. Simple attendance, in the same manner as a member of the congregation, is not an occupation (*i.e.*, remunerative employment).

In a September 25, 2007 declaration, [REDACTED], Pastor of Christ Lutheran Church (from which the petitioning church rents space), stated:

I am acquainted with [the beneficiary], and have general knowledge of duties she performs as Children's Minister of [the petitioning] Church. . . .

Based upon my education and experience as a pastor, I can and do affirm . . . [that a] Protestant church the size of [the petitioner], with its many religious activities, requires the full-time services of a Children's Minister to perform the duties assigned to [the beneficiary].

The director denied the petition on November 27, 2007, stating:

The petitioner provided a general chart instead of a copy of the beneficiary's typical daily/weekly schedule. In effect, the amount of time spent with each activity is unclear . . . and therefore, the petitioner has not satisfactorily established that the beneficiary is engaging in full-time work.

The chart provided lists activities such as Culture class, Women class, Japanese class, Korean class, and Computer Studies that do not have religious significance. In effect, teaching these classes do[es] not appear to be the traditional religious function of a Children's Minister/Assistant Pastor.

. . . It is questionable why a significant amount of time is allocated [to] teaching secular-related classes and different types of visitations that do not appear to have a direct impact on the Sunday School programs that the beneficiary is supposedly in charge of. The petitioner has not shown that the beneficiary is responsible for creating religious content or that the beneficiary's essential job functions are inherently or predominantly religious. . . .

The size of the congregation [75 members], specifically the youth and children's department [10 in the youth group and 13 other children], does not justify a need for a full-time Children's Minister.

On December 28, 2007, the petitioner filed its appeal, in which counsel argued that the petitioner had presented "strong and uncontradicted evidence" of the beneficiary's eligibility. Counsel added that an Immigration Officer had conducted a site visit of the petitioning church on November 29, 2007, with the beneficiary present, and that the site visit had verified the beneficiary's employment, resulting in renewal of the beneficiary's R-1 nonimmigrant status.

The AAO notes that the Form I-129 petition (receipt number WAC 07 004 51373) by which the beneficiary's status was renewed describes "the alien's proposed duties" as: "Arrange Sunday school programs; serve as Sunday school teacher; and counsel Korean immigrant families, especially the children." The beneficiary's R-1 status, therefore, was renewed based solely on a description of duties which, according to the chart provided by Pastor Park, occupy a small minority of the beneficiary's time, one morning and three afternoons per week. This description was, therefore, incomplete at best, and the R-1 renewal was not based on the same information as the present immigrant petition.

That being said, the record consistently indicates a strong religious component to many of the beneficiary's duties, and the record also indicates that the petitioner has paid the beneficiary for her services. Fragments of her job description or work schedule, taken out of context, do not establish that the beneficiary's job is inherently secular. Also, recent paychecks reproduced in the record are consistent with the petitioner's assertion that the beneficiary is to be paid \$1,800 per month, the proffered wage for full-time work in the stated occupation.

To an outside observer, it may not be readily apparent that the petitioner's relatively small congregation would be able to provide full-time work for a children's minister/assistant pastor, but the petitioner has submitted witness testimony to that effect and, as counsel notes, the director has not rebutted that testimony. If the director continues to doubt the full-time nature of the beneficiary's work, the director must specifically demonstrate how and why the petitioner's evidence is insufficient in this regard; it cannot suffice for the director simply to express vague misgivings about the size of the congregation. (The outcome of the November 29, 2007 site visit bears consideration, as well.)

For the reasons stated above, the AAO withdraws the director's findings regarding the nature of the occupation and the petitioner's need for the beneficiary's full-time services. Because these findings provided the entire basis for the denial decision, the AAO also withdraws the denial of the petition.

Nevertheless, there remains an issue of concern which must be addressed before we can find that the petitioner has credibly and sufficiently met its burden of proof. The petitioner has not established that the beneficiary possesses the necessary experience to qualify under the statute. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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 May 12, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a children's minister/assistant pastor throughout the two years immediately prior to that date.

In the present proceeding and in related nonimmigrant proceedings, [REDACTED] has consistently indicated that the beneficiary is compensated at the rate of \$1,800 per month, which is equal to \$21,600 per year. In his September 23, 2007 declaration, [REDACTED] stated: "the beneficiary has been paid \$1,800 per month from May 2004 continuing to the present time. The petitioner has not paid the beneficiary, directly or indirectly, or provided any benefits, other than the basic salary." The phrase "May 2004" appears to refer not to the beneficiary's hiring date, but rather to the beginning of the two-year qualifying period

Any variations or anomalies in the beneficiary's past compensation would appear to falsify [REDACTED]'s assertion that "the beneficiary has been paid \$1,800 per month from May 2004 continuing to the present time." The record reveals such variations. Copies of processed checks show that the petitioner paid the beneficiary \$1,500 per month from May 2004 to November 2005, \$1,700 per month from December 2005 to April 2006, and \$1,800 per month thereafter (and an additional check for \$1,600 in January 2007).

In addition to copies of checks, the petitioner has submitted copies of church budget documents and the beneficiary's federal income tax returns. These documents disagree as to the amount of the beneficiary's compensation during the qualifying period, as shown by the figures below:

	Budget	Checks	Tax return
2004	\$19,200	\$12,000	\$18,000
2005	21,600	18,200	18,300
2006	21,600	21,200	21,600

Each of the available checks from 2004 is in the amount of \$1,500, which annualizes to \$18,000, although the record lacks checks from the first four months of 2004 (which fell outside the two-year qualifying period). The beneficiary's claimed earnings on her 2004 tax return are consistent with \$1,500 per month throughout the year. The 2004 budget does not indicate that the petitioner planned to pay the beneficiary \$1,800 per month that year. The \$19,200 in the budget allows for only \$1,600 per month, assuming equal payments over 12 months.

The beneficiary herself, in a September 28, 2007 statement, stated: "I have been paid by [the petitioner] each month from May 2004 continuing to the present time based on my R-1 status. Monthly payments were first at the rate of \$1,500 per month and thereafter at \$1,800 per month." This statement is generally consistent with the checks reproduced in the record, although it is not consistent with [REDACTED]'s claim that the petitioner consistently paid the beneficiary \$1,800 per month.

On May 5, 2008, the AAO advised the petitioner that the reduced amounts on the paychecks indicate that the petitioner did not consistently pay the beneficiary according to the stated terms of employment. In response, counsel states: "[REDACTED] stated in 2003 that the [beneficiary] would receive \$1800 per month. That is conceded and it was clearly intended that [the beneficiary] would be compensated at that rate, and she would have been had she not insisted in some months that she be paid less and the difference donated to the church." Counsel asserts: "There has never been any attempt to deceive," and repeats the observation that an application to extend the beneficiary's R-1 status was approved shortly after a site visit, implying that the Immigration Officer who conducted the site visit "was satisfied that [REDACTED] and [the beneficiary] are persons of credibility."

In his latest declaration, dated May 18, 2008, [REDACTED] states that all of his past statements regarding the beneficiary's employment and compensation "were true and accurate in their totality." He asserts:

I personally have responded to the beneficiary stating that she was entitled to be paid \$1,800 per month and the church was desirous of doing so. Her response each time was that she wanted to receive a lesser sum for that time period and contribute the difference . . . as a donation to the church, and we have honored that request.

The beneficiary, in her own May 18, 2008 declaration, asserts: "at times during my full-time employment by [the petitioning church] . . . I have requested that I be paid less than the \$1,800 per month, and that I wanted

to contribute the difference . . . to the church as a donation.” The beneficiary stated that any shortfall between the proffered salary and what she actually received “was solely because I requested I receive a lesser sum and the balance accepted by the church as a donation.”

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner and counsel were advised of this binding case law in the AAO’s May 5, 2008 notice. Personal, after-the-fact statements by [REDACTED] and the beneficiary, are not independent objective evidence, and therefore, under *Ho*, we cannot accept their explanations without reliable evidentiary support.

Prior statements from [REDACTED] and the beneficiary offer no support for their new claim that the beneficiary insisted upon a reduced salary, with the balance returned to the petitioner. [REDACTED] on September 23, 2007, did not state that the beneficiary was offered \$1,800 per month, or that the church attempted to pay her \$1,800 per month but the beneficiary refused the full amount. Rather, [REDACTED] stated plainly that the beneficiary “has been paid \$1,800 per month from May 2004 continuing to the present time,” a statement we know not to be true.

The beneficiary herself, in a September 28, 2007 statement before the denial decision and before the AAO’s notice, acknowledged that her “[m]onthly payments were first at the rate of \$1,500 per month and thereafter at \$1,800 per month.” We note that the beneficiary did not, at that time, claim that her reduced salary was at her own request.

The record prior to the AAO’s notice contains only one vague source of information regarding donations by the beneficiary. On her federal income tax returns, the beneficiary claimed deductions for monetary gifts to charity in the amounts of \$6,138 in 2004 and \$9,550 in 2006. The beneficiary did not itemize deductions on her 2005 tax return, instead claiming a standard deduction. The record does not contain receipts to identify the recipients of these claimed donations, and the amounts donated do not match the amounts purportedly withheld from her salary. For example, the beneficiary’s paychecks from 2006 fall only \$400 short of the proffered salary. The donations reported on the tax returns *may* include amounts withheld from the beneficiary’s salary, but there is no documentary evidence to confirm this possibility.

Furthermore, on a federal tax return, charitable deductions are subtracted from the taxpayer’s total income for the year. Therefore, in order to report the salary reduction as a “donation,” the beneficiary would first have had to report the full salary as income, and then she could deduct the amount donated. As noted above, however, the beneficiary did not claim to have earned the full annual salary of \$21,600 in either 2004 or 2005. Therefore, she did not report that she received the full salary and then donated some of it back. Assuming for the sake of argument that the beneficiary reported receiving a reduced salary in 2004, and *also* claimed the amount of the reduction as a tax deduction, the beneficiary did not report the information correctly on her tax returns. When considering whether the beneficiary’s tax returns were properly prepared, we note that all three tax returns are marked as having been prepared by a certified public accountant [REDACTED] of Lakewood, Washington).

One of the tax returns contains another apparent anomaly. The 2006 return indicates that the beneficiary's spouse is "unemployed," which is a troubling assertion given that both the beneficiary and Pastor Park have claimed that the beneficiary could afford to reduce her salary in 2004 and 2005 because her spouse contributed his own income to the family's support. The petitioner had submitted documentation identifying the beneficiary's spouse as a "Principal Researcher of Radio Astronomy" and "Head of Korean VLBI Network, Korean Astronomy and Space Science Institute," and as late as September 2007 the beneficiary indicated that her spouse was still employed in that capacity. This evidence appears to contradict the claim, on the 2006 tax return, that the beneficiary's spouse was "unemployed" in 2006 or in early 2007 (when the tax return was presumably prepared).

The above information requires further attention and investigation. The petitioner's claim that the beneficiary voluntarily reduced her salary, while plausible, is not supported by the record. As noted above, each tax return is marked as having been prepared by a paid preparer, but the preparer's signature does not appear on the copies of any of the returns. Therefore, the returns do not appear to comply with 26 C.F.R. § 1.6695-1(b)(1), which generally provides that an income tax return preparer must manually sign the return in the appropriate space provided on the return after it is completed and before it is presented to the taxpayer (or nontaxable entity) for signature.

In order to confirm that the beneficiary actually filed those tax returns, and did not simply prepare the returns for the purposes of this petition, the director should direct the beneficiary to obtain, free of charge, transcripts of her recent tax returns by filing Internal Revenue Service Form 4506-T, Request for Transcript of Tax Return, and having the transcripts mailed directly to the California Service Center, to the attention of the director or another recipient designated by the director. According to the form, "Return transcripts are available for the current year and returns processed during the prior 3 processing years." Therefore, if the request is made promptly, transcripts should be available for all, or most, of the years of concern in this proceeding.

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.