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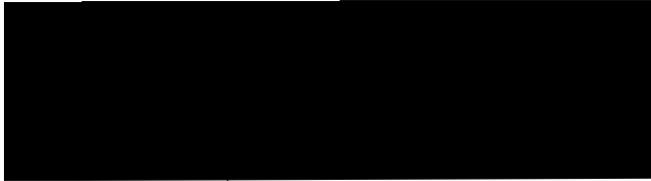
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:



SRC 06 186 53076

Office: TEXAS SERVICE CENTER

Date:

JUN 24 2008

IN RE:

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

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 Presbyterian church belonging to the Evangelism Synod of 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 an associate minister. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as an associate minister immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established its ability to pay the beneficiary's salary.

On appeal, the petitioner submits new exhibits and arguments 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 first issue concerns the petitioner's ability to pay the beneficiary's proffered salary. In a letter accompanying the initial filing, [REDACTED], Senior Pastor of the petitioning church, stated: "The church will compensate [the beneficiary] at the rate of \$36,000 per year." 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 petitioner submitted a copy of its "Church Budget for 2006." This document amounts to an estimate of anticipated income and expenses (rounded to multiples of \$10, \$500 or \$1,000), rather than evidence of actual income and expenses. The petitioner also submitted copies of monthly bank statements from the first four months of 2006, representing two accounts with Comerica Bank, one of which is labeled "Payroll Account." The "Payroll Account," however, shows only deposits, no withdrawals, and therefore it is not clear whose "payroll" the account represents. The bank statements were addressed to the petitioner at [REDACTED] Houston, Texas. The Form I-360 and the petitioner's letterhead, however, state the petitioner's address as [REDACTED] Houston. A photograph shows that the [REDACTED] address is the site of the Greater Houston Adventist School, from which the petitioner apparently leased space.

On December 11, 2006, the director issued a request for evidence (RFE), instructing the petitioner to demonstrate its ability to pay the beneficiary "in the form of copies of annual reports, federal tax returns (with appropriate signature(s)), or audited financial statements." In response, counsel stated: "The petitioner previously submitted a copy of its 2006 budget that showed \$36,000 set aside to pay the beneficiary's salary." The budget, however, is not documentary evidence that the petitioner possessed the funds; it is merely a claim that the petitioner intended to pay that amount in the future.

The petitioner submitted copies of processed checks, showing monthly \$2,500 payments to the beneficiary from April 2006 through January 2007. The payer shown on the checks is the petitioner, at [REDACTED]. The April 2006 check is numbered 4379. A previously submitted bank statement shows that check number [REDACTED], in the amount of \$2,500, was presented for payment on April 19, 2006. All but two of the checks were drawn from the petitioner's Comerica Bank account that was *not* deemed the petitioner's "Payroll Account." The two most recent checks, from December 2006 and January 2007, were drawn from a Bank of America account that the petitioner had not mentioned previously. All of the checks show the Campbell Road address, not the Crawford Street address shown on the bank statements.

On April 4, 2007, the director issued another RFE, instructing the petitioner to submit "**audited** financial statements or **IRS-certified** federal tax returns" to demonstrate the petitioner's ability to pay the beneficiary's proffered salary (emphasis in original).

In response, counsel stated that, as a church, the petitioner "does not file federal tax returns." Counsel did not address the director's request for audited financial statements. Counsel added that the petitioner had already established that it has paid the beneficiary the proffered wage since the beneficiary began working for the petitioner in 2006. The petitioner submitted copies of three further \$2,500 paychecks issued to the beneficiary, along with three \$450 checks issued to the beneficiary for an unexplained purpose. Each \$450 check was issued on the same day as one of the monthly paychecks.

The director denied the petition on July 26, 2007, stating:

The petitioner's response to the request for evidence did not contain the required tax returns, audited financial statements, or annual reports from their organization. The petitioner's counsel points to the submitted copy of the beneficiary's form W-2, showing that the petitioner paid him \$27,000 in 2006, as evidence of the petitioner's ability to pay the proffered wage. However, the amount paid to the beneficiary in 2006 is less than the current proffered salary [of] \$36,000/year.

On appeal, counsel correctly asserts that the beneficiary did not begin working for the petitioner until April 2006, at which point he "was thus paid for nine months of work in 2006 at the promised rate of \$3,000/month, which comes to \$27,000." We will return to the issue of the checks presently, but will note here that even if the petitioner had demonstrated that it was able to pay the beneficiary in 2006 and early 2007, but the petitioner did not submit the required evidence to show that it would *continue* to be able to pay that wage until the beneficiary becomes a lawful permanent resident. Counsel, on appeal, does not address this crucial element of the director's finding.

The above-cited 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. **On that basis alone, the petition may not be approved.** Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Furthermore, the non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

We have explained how the financial documents in the record are facially inadequate to establish the petitioner's ability to pay the beneficiary's proffered salary. Close consideration of those documents serves only to raise additional questions. The petitioner initially claimed to be located at [REDACTED], Houston. Materials included with the RFE response indicate that the petitioning church had relocated to Memorial Hall School at 3721 Dacoma Road, Houston, effective January 6, 2007. Although the term of the lease was said to be six months, the expiration date, June 6, 2007, is only five months after the commencement date.

The petitioner submitted a document entitled "Previous and Current Addresses" which reads:

Here are [*sic*] a list of previous and current church addresses during the last 10 years:

Current Address:

[REDACTED]
Houston, TX 77092
(January, 2007 – present)

(The mailing address for 501(c)(3) has been changed to
to correctly represent the church address.)

in June, 2007

Previous Addresses:

[REDACTED]

(May, 2004 – December, 2006)

[REDACTED]

(a mailing address used for filing for 501(c)(3) in January, 2001 due to frequent mail
delivery problem with [REDACTED])

[REDACTED]

(May, 1997 – April, 2004)

The petitioner also submitted a copy of a 2006 IRS Form W-2 Wage and Tax Statement, to be discussed in greater detail elsewhere in this decision. The Form W-2, which would have been issued during the term of the lease for the Dacoma property, stated the petitioner's address as [REDACTED], Houston. As shown above, the petitioner claimed that the [REDACTED] address was "a mailing address used . . . due to frequent mail delivery problem with [REDACTED]." The petitioner also claimed to have left the Hollister address in 2004, nearly three years before it would have issued the 2006 Form W-2. It is not clear why the petitioner continued to use the [REDACTED] address several years after the justification for using that address ended. It is also not clear what is actually located at the [REDACTED] address.

One address not shown on the list is [REDACTED] the address shown on the Comerica bank statements from early 2006. A list of church members indicates that [REDACTED] is the address of the [REDACTED] family, including [REDACTED]. The record also contains a copy of a Certificate of Deposit from American First National Bank, purportedly issued in the name of the petitioning church at [REDACTED]. [REDACTED] M. [REDACTED] was one of three persons (all identified church members) to sign the documentation for the certificate. Under "Taxpayer I.D. Number," the certificate does not show the petitioner's number. Instead, it shows [REDACTED]'s Social Security number. Under "Ownership," the document reads: "Corporation (for profit)." While the certificate of deposit and bank accounts are *said* to be in the petitioner's name and under the petitioner's control, the record raises unanswered questions about the extent of control and access that the petitioner actually has in relation to those assets. The checks paid to the beneficiary were from an account linked to an address that the church did not include on its list of addresses, and the individual residing at that address purchased a certificate of deposit ostensibly in the petitioner's name, but on behalf of a "for-profit" corporation. It is not entirely clear who has actually been paying the beneficiary.

Pursuant to the above, the AAO affirms the director's finding that the petitioner has failed to meet the evidentiary standards at 8 C.F.R. § 204.5(g)(2) to establish its ability to pay the beneficiary's proffered wage.

The remaining issue concerns 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 May 30, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an assistant minister throughout the two years immediately prior to that date.

Rev. Lee, in his initial letter, described the beneficiary's claimed experience: "From July 2000 through March 2006, he was the vicar of Presbyterian Youngguang Church in Goyang, Kyunggi-do, South Korea. In April 2006, he entered the U.S. on an R-1 visa for the purpose of serving as an associate minister at our church. This is the position he holds now and the position for which we are petitioning for him."

The petitioner submitted a translated copy of an "Employment Certificate" from Rev. [REDACTED] of Presbyterian Youngguang Church, dated January 5, 2006, indicating that the church had employed the beneficiary as a vicar since July 30, 2000. The petitioner submitted no other documentary evidence of the beneficiary's employment, either in South Korea or in the United States, that originated during the two-year qualifying period.

In the December 2006 RFE, the director instructed the petitioner to submit "evidence of the beneficiary's work history for the years 2004, 2005 and 2006," along with "evidence that shows monetary payment, such as pay stubs or other items showing the beneficiary received payment." The director also requested copies of the beneficiary's federal income tax returns and Internal Revenue Service (IRS) Form W-2 Wage and Tax Statements for the years encompassing the qualifying period.

In response, the petitioner submitted a copy of an IRS Form W-2 that the petitioner issued to the beneficiary, purporting to show that the petitioner paid the beneficiary \$27,000 in 2006, from which \$4,500 was withheld in taxes.¹ This leaves a net total of \$22,500, which matches the nine \$2,500 checks from 2006 reproduced in the record. Counsel indicated that the beneficiary had not yet filed his 2006 income tax return. The lack of the tax return is not remarkable, given that the petitioner responded to the RFE in late February 2007, more than six weeks before the filing deadline for 2006 income tax returns. Counsel noted that the beneficiary did not reside or work in the United States in 2004 or 2005, and therefore would not have filed income tax returns with the IRS for those years.

Regarding the beneficiary's work in South Korea, the petitioner submitted two further translated certificates from Rev. [REDACTED]. An "Employment Certificate" indicated that the beneficiary had served as the church's associate pastor from January 1, 2002 through March 26, 2006, at which time the beneficiary resigned to

¹ As noted previously, the Form W-2 shows an address that, supposedly, the petitioner ceased to use in 2004.

accept the position at the petitioning church. An accompanying "Payroll Certificate" indicates that the South Korean church paid the beneficiary 19,800,000 won in 2004, 22,200,000 won in 2005 and 5,600,000 won during the first three months of 2006.

In the April 2007 RFE, the director requested detailed letters describing the beneficiary's specific work schedule during the qualifying period, as well as "evidence that shows monetary payment, such as pay stubs or other items showing the beneficiary received payment." In response, the petitioner resubmitted the beneficiary's 2006 IRS Form W-2, along with a copy of the beneficiary's 2006 income tax return. On the tax return, the beneficiary reported \$27,000 in salary from the petitioning church, and \$5,940 in "Wages received in South K[orea]" (\$5,940 being the approximate dollar value of the 5,600,000 won the beneficiary earned in the first quarter of 2006).

Counsel also stated: "We attach a list of the beneficiary's schedule and duties at Young Kwang [*sic*] Church. The beneficiary typed up his former work schedule and faxed it from his current workplace . . . to his previous employer in Korea. The pastor of Younggang [*sic*] Church signified his verification by signing the schedule and faxing it back to the beneficiary." The record contains a document matching this description; at the bottom of the facsimile are the words "Theological Seminary" and a telephone number that does not match the format of United States telephone numbers. The document appears to be the second page of a two-page document; the hourly schedule begins "c. Tuesday" and continues "d. Wednesday" through the end of the week, but "a. Sunday" and "b. Monday" are absent. Following the schedule is a section headed "C. Monthly Ministry and Plan," implying that "B." is the hourly schedule, as well as the existence of an unidentified "A." section. Also, while the printed insignia at the bottom of the facsimile identifies the document as page 1, the earlier insignia at the top of the document (from when the petitioner sent the facsimile to South Korea) indicates it is the second page. It appears that the petitioner sent both pages to Rev. [REDACTED], but Rev. [REDACTED] returned only the second page (bearing his signature). The partial copy indicates that the beneficiary worked 26 hours from Tuesday to Saturday. Because the schedule is missing two days (including, crucially, Sunday), the partial schedule is not sufficient to establish that the beneficiary worked full-time in South Korea. We shall discuss this schedule further in the context of the appeal.

In denying the petition, the director stated: "The petitioner has provided evidence of the beneficiary's employment with their church since April of 2006. However, the petitioner has not provided sufficient evidence of the beneficiary's work experience in South Korea." The director also noted that the documentation from South Korea referred to the beneficiary as an "Associate Pastor" and a "Vicar" rather than as an associate minister.

On appeal, counsel argues that the terms "pastor," "minister" and "vicar" all refer to the same basic position, encompassed by the statutory and regulatory term "minister." Counsel also observes that, because the beneficiary's documents from South Korea have been translated from Korean, variations in translation are to be expected. The AAO agrees with counsel that these changes in wording do not show that the beneficiary's work in South Korea was substantially different from what he now performs for the petitioner. That being said, however, the AAO has serious concerns with materials submitted on appeal.

The petitioner submits two new “Certificates of Employment,” signed, like the others, by Rev. [REDACTED]. One new certificate lists eighteen duties, with the weekly hours devoted to each, totaling 43½ hours per week. The other certificate breaks down the duties by day. This schedule does not match the partial schedule submitted previously. For example, the first version of the schedule showed this information for Wednesdays:

6:00 a.m. – 7:00 a.m.	Early Prayer Service
8:00 p.m. – 9:30 p.m.	Wednesday Service

The new schedule submitted on appeal shows this information for Wednesdays:

5:00 a.m. – 6:00 a.m.	Early Prayer Service
7:30 a.m. – 9:00 a.m.	Wednesday Service
9:30 a.m. – 10:30 a.m.	Prayer Service for the Church Workers
2:00 p.m. – 3:30 p.m.	Geum-Chon Regional Church Ministry

The first version of the Friday schedule reads as follows:

6:00 a.m. – 7:00 a.m.	Early Prayer Service
4:00 p.m. – 6:00 p.m.	Disciple Training for Gessner Region
8:00 p.m. – 9:30 p.m.	Friday Prayer Service

The Friday schedule submitted on appeal contains this information:

5:00 a.m. – 6:00 a.m.	Early Prayer Service
10:00 a.m. – 12:00 a.m. ²	Evangelism Institute
2:00 p.m. – 6:00 p.m.	Hospital Visit and Ministry
8:00 p.m. – 10:00 p.m.	Friday Prayer Service

In all, while the older schedule showed 26 hours worked from Tuesday through Saturday, the new schedule shows 31 hours during those same five days. Rev. [REDACTED] does not explain why he signed two very different versions of the schedule.

The new schedule plainly and unambiguously refers to the beneficiary’s work in South Korea; the church is named in the document. The older schedule contains references to several Houston vicinities, such as the “Gessner Region” (the beneficiary currently resides on [REDACTED] in Houston). Similarly, the older schedule refers to a “Summer Texas Remnant Retreat,” “Winter Texas Remnant Retreat,” and the “Remnant Conference in North America,” all of which make more sense in the context of the beneficiary’s work in Texas rather than his earlier work in South Korea. Nevertheless, this document, with its references to “Gessner,” “Texas” and “North America,” was submitted above Rev. [REDACTED] signature, and described by counsel as the beneficiary’s “former work schedule.”

² *Sic.* In context, it is clear that the intended time is 12:00 p.m., *i.e.*, noon.

If the older document is not the beneficiary's South Korean work schedule, then the petitioner failed to submit that schedule after the director had specifically requested it. If that is the case, then the South Korean schedule submitted on appeal cannot be considered on appeal for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). Pursuant to those decisions, if the director specifically requested a particular, identifiable document in the RFE, and the director correctly concludes that the petitioner failed to submit that document, then the director's decision was justified based on the available evidence. The petitioner cannot overcome that finding by submitting, on appeal, documents that should have accompanied the RFE response.

Section 204(b) of the Act, 8 U.S.C. § 1154(b), provides for the approval of immigrant petitions only upon a determination that "the facts stated in the petition are true." False, contradictory, or unverifiable claims inherently prevent a finding that the petitioner's claims are true. *See Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Systronics Corp. v. I.N.S.*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988). Either the petitioner has submitted two very different versions of the beneficiary's South Korean schedule, or the petitioner submitted a copy of his Texas schedule, falsely identified as his South Korean schedule. Because either of these scenarios leads us to the same conclusion, we need not speculate at length as to which one more accurately describes the actual situation.

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). 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. *Id.* at 582, 591-92.

Because the petitioner has provided two versions of the beneficiary's work schedule in South Korea, which conflict to such an extent that they cannot both be accurate, the AAO must conclude that there is doubt regarding those schedules and, by extension, anything else submitted under Rev. [REDACTED] signature (such as the certificate purporting to show the beneficiary's annual earnings) that is not supported by firm, contemporaneous evidence. In the face of the conflicting claims regarding the beneficiary's activities throughout most of the 2004-2006 qualifying period, the AAO must affirm the director's finding that the petitioner has not met its burden of proof with regard to the beneficiary's past work experience.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.