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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: NOV 0 9 2004

IN RE: Petitioner: [redacted]
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:

[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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted, the AAO's previous decision will be affirmed and the petition will be denied.

The petitioner is a Korean Southern Baptist church. 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 missionary minister. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous membership in the religious denomination that seeks to employ him. The AAO affirmed the director's decision and dismissed the appeal.

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).

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 and the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on April 27, 2001. Therefore, the petitioner must establish that the beneficiary was a member of the petitioner's 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.

The director requested additional information regarding the beneficiary's work and church membership during the qualifying period. In response, Rev. [redacted] of the petitioning church states "between April 27, 1999, and June 30, 2000, [the beneficiary] worked as the Missionary Pastor at [redacted] Baptist

Church of the . Then, between July 1, 2000 and April 27, 2001, [the beneficiary] worked as the Missionary of the Community of China Mission." A letter from chairman of the board of directors of the Community of China Mission, verifies the latter dates.

With regard to the beneficiary's religious denomination, Rev states that the beneficiary "was and still is [a] member of [the] Korean Baptist Church." A letter from the president of the Baptis affirms the beneficiary's work "as pastor at Baptist Church of the from April 1999 to June 2000, but the letter does not mention the Community of China Mission or the petitioning church.

Another letter from states that the petitioner, the Community of and Baptist Church "are interconnected together in that they are sharing information and cooperating with each other." Rev. moderator of the Conference of Korean Southern Baptist Churches in Southern California, states that the petitioning church is a member of that conference. Rev. does not discuss what ecclesiastical ties, if any, exist between that conference and the Korea Baptist Convention.

The director denied the petition, stating that the petitioner had not shown that the beneficiary was a member of the same denomination throughout the qualifying period. On appeal, counsel argued "all three church groups are of the same denomination, i.e., Baptist Church." states that the Community of China Mission has "its root in the Baptist Denomination and was founded by a group of mostly Baptist Ministers." The assertion that "most" of the founders were Baptists indicates that not all of them were, and there is no evidence of formal denominational affiliation.

The AAO dismissed the petitioner's appeal, stating that the assertion that each of the above organizations is "Baptist" is insufficient to establish qualifying denominational ties.

On motion, counsel repeats the assertion that all of the organizations are "Baptist," and therefore the same denomination. in yet another letter, states that the beneficiary "has always been affiliated with the Baptist organization." The record contains nothing to show that there is one single "Baptist organization" with oversight over all Baptist churches.

The AAO takes notice that there are a substantial number of Baptist denominations. The Korea Baptist Convention is one of hundreds of member bodies of the Baptist World Alliance (web site http://www.bwanet.org). The was once a member as well, but it broke away from the Alliance over doctrinal differences.[1] This appears to draw a sharp line between th and th (The petitioning church has been identified This also supports the prior finding that "Baptist" is not a single, monolithic denomination.

The above information, by itself, is sufficient to warrant the denial of the petition. Beyond the above determination, a factor heretofore not discussed in this proceeding is that the beneficiary has not performed the same duties throughout the qualifying period. According to materials submitted by the petitioner, the beneficiary was essentially a minister until June 30, 2000, at which point he began working as a missionary. The beneficiary must have continuously performed the duties of the proffered position during the two-year qualifying period. The term "continuously" has been interpreted to mean that one did not take up any other

[1] The split is discussed in a news article available at http://www.msnbc.msn.com/id/5216146/. The article refers to the Southern Baptist Convention as "the world's largest Baptist denomination," and indicates that the Baptist World Alliance "is a federation of 46 million Baptists in 211 denominations."

occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948). The beneficiary's duties as a minister (i.e., conducting church services) differ, very substantially, from his described duties as a missionary, and therefore we cannot conclude that he worked continuously as a minister or missionary throughout the two-year qualifying period.

The regulations at 8 C.F.R. § 204.5(m)(1) and (3)(ii)(A) require that the beneficiary must have carried on *the* vocation or occupation, rather than *a* vocation or occupation, indicating that the work performed during the qualifying period should be substantially similar to the intended future religious work. The underlying statute, at section 101(a)(27)(C)(iii), requires that the alien "has been carrying on such . . . work" throughout the qualifying period. An alien who seeks to work in occupation A has not been carrying on "such work" if employed in occupation B for the past two years.

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 previous decision of the AAO will be affirmed, and the petition will be denied.

ORDER: The AAO's decision of July 16, 2003 is affirmed. The petition is denied.