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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: TEXAS SERVICE CENTER Date: OCT 01 2004

IN RE: Petitioner: [redacted]
Beneficiar

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

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office 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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.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 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 missions coordinator. The director determined that the petitioner had not established (1) that the beneficiary had the requisite two years of continuous work experience as a missions coordinator immediately preceding the filing date of the petition; (2) that it had made a qualifying job offer to the beneficiary; (3) its ability to pay the beneficiary; or (4) that the beneficiary had entered the United States with the intention of performing qualifying religious work.

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).

In a letter submitted with the petition, Pastor Guillermo Maldonado discusses the job offer and the beneficiary's background:

> The job being offered is that of Missions Coordinator.
>
> As a ministry dedicated to expanding the gospel, the position calls for the coordination of all missions projects and outreach with the ultimate goal of bringing people to Christ and opening new churches through cell groups in homes. Targeting communities in need of social programs, civic and cultural as well.
>
> We have programmed many outreach mission project for the next two years. . . . We believe that [the beneficiary] is the right person with the right training and experience, since he has

> been involved in our ministry for more than two years and his work has been excellent in the field.
>
> [The beneficiary] is a registered student at our theological university, El Rey Jesus International University. He is currently taking his third year of Discipleship courses and working towards his Bachelor's Degree in Theology.
>
> The base salary offered for this position is a minimum of $300.00 per week, and upon the integration of [the beneficiary] to our ministry, our director of Human Resources would provide all pertinent information regarding room and board also being offered. After serving in this position for six months he would qualify for medical and dental insurance.

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 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 19, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a missions coordinator throughout the two years immediately prior to that date.

In an attempt to establish the beneficiary's work during this two-year period, the petitioner has submitted copies of checks, payable to the beneficiary, issued by Gloria Exchange Corporation between 1998 and 2001. Gloria Exchange Corporation appears to be a currency exchange outfit, receiving wire transfers and converting Colombian funds into United States currency. Documentation with each transfer identifies its source. The sources are identified as various individuals in Colombia, rather than any church or religious organization.

The director denied the petition, stating that the petitioner has not established the beneficiary's past experience because "[t]he money transfer receipts do not indicate the reason for the transfers." On appeal, counsel observes that the petitioner has submitted letters from church officials in Colombia, such as Edgardo Peña Arenas, general director of the *Asociacion Comunidad Cristiana de Santa Fe de Bogotá*, who stated that the beneficiary "has been receiving funds from Colombia in different ways, in compensation for his missionary work."

Given this information, it is reasonable to infer that the transfers originated from individuals associated with the Colombian organization. Therefore, the director's finding that the transfer documents themselves are insufficient does not appear to be a strong basis for denial.

Another issue arises, however, with regard to the two-year experience requirement. In the initial submission, as noted above [redacted] states "upon the integration of [the beneficiary] to our ministry, our director of Human Resources would provide all pertinent information regarding room and board also being offered. After serving in this position for six months he would qualify for medical and dental insurance." In another letter, [redacted] states that the beneficiary "has been an active member of our congregation for approximately two years," and that "he has been involved in the evangelism/missions department as well as cell group ministries for church growth, mission planting and intercession." Other materials in the record confirm that, as of April 2001, the beneficiary was studying at El Rey Jesus International University.

Nowhere in the original submission did the petitioner indicate that the beneficiary was already a missions coordinator for the petitioner.

Subsequently, however, has claimed that the beneficiary "has been a Leader with our church working as a missionary since April 1999. . . . Since April 1999, [the beneficiary] has been receiving compensation from [the petitioning church] for missionary work performed for our church." Pastor Maldonado further indicates that the beneficiary will continue to adhere to the same schedule and duties that he has already undertaken since 1999.

The information in the above letters appears to be contradictory. The wording of the initial letter indicated that the petitioner did not yet employ the beneficiary as its missions director, referring to future events that will take place "upon the integration of [the beneficiary] to our ministry" or after the beneficiary has been "serving in this position for six months." If the beneficiary had worked for the petitioner since 1999, then presumably the beneficiary would already have been integrated into the ministry for considerably more than six months. Another letter accompanying the initial filing indicated that the beneficiary had been "active" in the church's mission, but it omitted any assertion that the beneficiary has been a paid employee of the church, performing the duties of the offered position.

These apparent conflicts could simply be the result of poor wording in the original letters, or else they may indicate a deliberate alteration of the claim in order to create the appearance of conformity with the regulations. By focusing the denial solely on the purpose of the fund transfers, the director denied the petitioner the opportunity to resolve the ambiguities in the evidence. The director must inform the petitioner that the above letters appear to contain contradictory information, and allow the petitioner the opportunity to provide a definitive resolution. 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. 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, 586 (BIA 1988). If the petitioner, granted the opportunity, fails to provide documentary evidence to resolve the conflicting statements, then the director would be justified in citing these credibility concerns as a basis for denial of the petition.

The next issue concerns the job offered to the beneficiary. The regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to demonstrate how the alien will be paid or remunerated if the alien will work in a professional religious capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support.

The petitioner indicated that the beneficiary would receive $300 per week, plus room, board, and other consideration. In denying the petition, the director stated that the petitioner's description of the position offered "is not clear as to what is being proffered to the beneficiary," although, in the same paragraph, the director acknowledges the offer of "a minimum of $300.00 per week." The director also stated that the petitioner's "letter does not state that the beneficiary will not be dependent on supplemental employment or solicitation of funds for support." We note that the above regulation requires only that the beneficiary will not be *solely* dependent on supplemental employment or solicitation of funds for support. By asserting that the beneficiary would receive a salary, room, and board, the petitioner effectively asserted that the beneficiary would not be solely dependent on income from other sources.

Pursuant to the above facts, the director's finding regarding the job offer cannot stand.

The next issue concerns the petitioner's ability to pay the beneficiary's salary. 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.

In finding that the petitioner had not established its ability to pay the beneficiary's wage, the director noted that the petitioner has not documented the salaries of all of its employees. This finding appears to be somewhat off-point. The director's wording does not plainly indicate the basis by which the director found the petitioner's financial documentation to be insufficient. The director, prior to rendering a new decision, should offer the beneficiary the opportunity to submit evidence of the type described at 8 C.F.R. § 204.5(g)(2) and in the Memorandum from William R. Yates, Associate Director of Operations, *Determination of Ability to Pay under 8 CFR 204.5(g)(2)* (May 4, 2004).

The final issue raised in the director's decision concerns the beneficiary's entry into the United States. Section 101(a)(27)(C)(ii)(III) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(III), requires that the alien seeking classification "seeks to enter the United States" for the purpose of carrying on a religious vocation or religious occupation. In this instance, the beneficiary entered the United States as a B-2 nonimmigrant visitor. Thus, the director concluded, the beneficiary did not enter the United States solely for the purpose of working as a missions coordinator.

This finding is not defensible. The AAO interprets the language of the statute, when it refers to "entry" into the United States, to refer to the alien's intended *future* entry *as an immigrant*, either by crossing the border with an immigrant visa, or by adjusting status within the United States. This is consistent with the phrase "*seeks* to enter," which describes the entry as a future act. We therefore withdraw this particular finding by the director.

As detailed above, the director's grounds for denial are either irrelevant or unacceptably vague. While the record, at this point, does not fully support a finding of eligibility, the director's decision did not adequately provide the petitioner with an opportunity to remedy the deficiencies in the record. 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.