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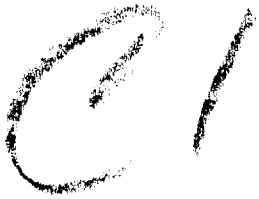
U.S. Citizenship and Immigration Services



[redacted]

FILE: WAC 01 218 51517 Office: CALIFORNIA SERVICE CENTER Date: FEB 28 2005

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

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 missionary evangelist. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a missionary evangelist immediately preceding the filing date of the petition. The AAO affirmed the director's decision and dismissed the appeal, offering the additional findings that the beneficiary's position is not a qualifying religious occupation; that the beneficiary would rely on supplemental income; and that the petitioner has not adequately established its ability to pay the beneficiary's salary.

We note that counsel refers to the motion as a motion to reopen. Pursuant to 8 C.F.R. § 103.5(a)(2), however, a motion to reopen must include new evidence. The documents submitted on motion appear to be copies of previously submitted documents. Therefore, the substantive portion of the motion consists of arguments regarding the prior decision, which relates to a motion to reconsider as defined at 8 C.F.R. § 103.5(a)(3).

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) 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 April 30, 2001. Therefore, the petitioner must establish that the beneficiary was

continuously performing the duties of a missionary evangelist throughout the two years immediately prior to that date.

In denying the petition, the director concluded that the beneficiary's past experience appears to have been as a volunteer rather than as a paid worker in a true occupation. The AAO found that "the beneficiary's 2000 and 2001 individual income tax returns . . . revealed secular employment as a self-employed consultant," and noted that a canceled check in the record was payable "to someone other than the beneficiary," specifically "Ming Management." The AAO further asserted that the beneficiary's claimed religious work in Korea was insufficiently corroborated.

Counsel, on motion, contends that "the amounts specified [on the beneficiary's income tax returns], i.e., $2,053.00 in 2000 and $5,014.00 in 2001 are the salary from the church in the form of transportation allowance." We now discuss these tax returns, in greater detail than in the previous appellate decision.

The beneficiary's tax returns from 2000 and 2001 both list the beneficiary as "self-employed" and her spouse as "unemployed," and their only claimed income is listed as "business income." In both years, the beneficiary identified her "Principal Business or Profession" as "consulting." In 2000, the beneficiary claimed $3,150 in "Gross receipts or sales," offset by $1,097 in expenses (not itemized), leaving $2,053 in "Net profit." In 2001, the beneficiary claimed $7,800 in "Gross receipts or sales," reduced to $5,014 by $2,786 in expenses. The gross amounts are consistent with the beneficiary's claimed payments of $150 per week from August 2000 through December 2001. Nevertheless, the beneficiary's 2001 expenses, as itemized on Schedule C, Profit or Loss From Business, do not appear to be consistent with a "transportation allowance." These expenses consisted of $1,254 in "Car or truck expenses," $1,157 in "Office expense" and $375 in "Meals and entertainment." We note that the beneficiary filed Short Schedule SE, although the instructions to that form indicate that Long Schedule SE is required for taxpayers who "receive church employee income." By filing the short version of the form, therefore, the beneficiary effectively implied that she did not "receive church employee income."

Given the information on the above returns, counsel's claim that the beneficiary's reported income represents a "transportation allowance" from the petitioner is simply not credible. Counsel never explains why the beneficiary claimed to be a self-employed consultant on both tax returns, claiming thousands of dollars in "business expenses" for which she would not have been responsible if, in fact, she had actually been a church employee. There is no contemporaneous evidence to show that the petitioner was the source of the beneficiary's "Gross receipts or sales," and the beneficiary's repeated references to "consulting" imply some other source for this income. If the petitioner had hired the beneficiary as a "consultant," then it would seem that the petitioner should have reported these payments on Form 1099.

We note that bank statements, submitted on motion, do not reflect weekly checks or withdrawals in the amount of $150, as would be expected if the petitioner were in fact the source of the beneficiary's reported income. For instance, the bank statement for November 2001 shows only three checks and no other withdrawals. While one of these checks matches the amount of the beneficiary's rent (about which below), the other checks amounted, respectively, to $113.97 and $42.06. Counsel indicates that the beneficiary's rent and salary payments are separate, and therefore the rent payment does not establish the claimed $150 weekly payments.

Regarding the check mentioned above, counsel asserts "the church paid for her apartment rent <u>directly to the landlord</u> in the amount of $1,000.00 a month." Counsel asserts that the canceled checks in the record are, in fact, the beneficiary's rent payments. There is only one such check (number 1084, dated April 1, 2001) dated

during the 1999-2001 qualifying period. Three other checks fall later in 2001, after the filing date: 1118, dated June 30; 1067, dated December 1; and 1068, dated December 31. Given the other inconsistencies in the record, we are not obliged to infer a pattern in which the petitioner *consistently* paid the beneficiary's rent. Furthermore, there are additional inconsistencies.

Notations on the canceled checks refer to 1001 Camino Real, #17, Redondo Beach, which is the address claimed for the beneficiary on the April 20, 2001 petition form. The petitioner has also, however, submitted documents associating the beneficiary with two other Redondo Beach addresses. Bank documents, dated both before and after the filing date, list the beneficiary's address as "135 N PCH" (Pacific Coast Highway).

The PCH address is listed as *the petitioner's* mailing address on the petitioner's articles of incorporation, and on a Statement by Domestic Nonprofit Corporation filed with the California Department of State in September 2000. This document shows the Camino Real address for the beneficiary, but it also identifies the beneficiary as both the secretary and the chief financial officer of the petitioning entity. When the petitioner applied for recognition of tax-exempt status in October 2000, the check for the filing fee shows the beneficiary's name and the Pacific Coast Highway address. The application itself (IRS Form 1023) indicates that 135 N. PCH is the address for [redacted] president and pastor of the petitioning church, and tha[redacted] is the address of the beneficiary (identified here as secretary). The Form 1023 also indicates that the officers (including the beneficiary) receive no annual compensation.

Meanwhile, the beneficiary's tax returns from both 2000 and 2001 state her address as [redacted] The attribution of three different addresses to the beneficiary raises still more questions regarding the credibility and reliability of the petitioner's claims. 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).

The record proves that the petitioner has made contradictory claims. For instance, on the Form I-360 petition, the petitioner claimed that the beneficiary has never worked in the United States without authorization and that the beneficiary is a B-2 nonimmigrant visitor, a classification which does not permit employment. The petitioner also claims, however, that it has paid the beneficiary $150 per week, and paid her rent, since her arrival in the United States. These claims contradict one another and cannot both be true. 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.

Regarding the beneficiary's prior work in Korea, counsel claims that "in Korea, the church workers are not reporting their income to the government. Therefore, it is impossible to come up with foreign tax documents. The Certificate of Work Experience, the Work History and the Salary Statement are enclosed in its place." Counsel offers no documentation to show that church workers in Korea do not report their income. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Given the many inconsistencies documented elsewhere in this decision, we do not find after-the-fact statements from purported church officials to be sufficient or persuasive evidence of past work.

We note one other point relating to the beneficiary's past experience. The "Work History" cited by counsel indicates that the beneficiary has worked for the petitioner since August 1, 2000. Other documents, however, indicate that the petitioner was not incorporated until September 8, 2000. Before that date, the petitioner did not exist as a corporation, and therefore could not have qualified for tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986. Furthermore, contemporaneous evidence in the record identifies the beneficiary not as a missionary evangelist, but as a corporate officer of the then newly formed church corporation. Descriptions of the beneficiary's job duties do not indicate that the beneficiary has acted, or will act, in this manner. Thus, while the record shows that the beneficiary has been involved with the petitioning church in some way since its founding, the available evidence does not corroborate the petitioner's claims regarding the nature of such work.

Beyond the decision of the director, the AAO found that "the petitioner has not shown that the position of 'missionary evangelist' is a qualifying religious vocation or occupation . . . [or] that the proposed position is credible as a full-time permanent position." 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.

On motion, counsel asserts "the office of 'missionary evangelist' is one of the first religious position[s] mentioned in the Bible. It is essentially the position of apostle at the beginning of Christianity." Counsel does not show that "missionary evangelist" is essentially the same as an "apostle," or that "apostles" have traditionally received payment for such work. Counsel, therefore, has not shown grounds for reconsideration of this point.

8 C.F.R. § 204.5(m)(4) requires the petitioner to show 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. 8 C.F.R. § 204.5(g)(2) requires the petitioner to show that the prospective employer has the ability to pay the wage offered to the beneficiary, and states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only *in addition to*, rather than *in place of*, these types of documentation.

The AAO quoted the above regulations in its dismissal notice. On motion, counsel cites the petitioner's annual budget, and the petitioner submits bank statements, but the petitioner does not submit the documents that are *required* by 8 C.F.R. § 204.5(g)(2). Counsel, on motion, does not even mention this regulatory requirement, let alone explain why it should not apply in this instance. Counsel simply states that the petitioner has a sufficient budget to employ the beneficiary full-time. The finding that the petitioner has failed to meet the requirements of 8 C.F.R. § 204.5(g)(2) stands unrebutted.

The AAO found that "the record is not persuasive in demonstrating that the beneficiary [and spouse and two children] would subsist on the wage of $350 per week without resorting to supplemental employment." Counsel states "it is submitted that the beneficiary can sustain with $350.00 a week. Moreover, the beneficiary and her family members often benefits from overseas donation from believers in Korea" (sic).

The petitioner submits documentation of five sizable wire transfers from a bank in Korea:

Date	Amount	Originator
September 5, 2000	$4,995	[redacted]
July 27, 2000	3,975	
March 8, 2001	9,979	
March 26, 2001	5,005	
July 12, 2001	4,979	[redacted] ossibly the same as [redacted]

All of these wire transfers are addressed to the beneficiary at [redacted] the address that the beneficiary has used when identified as a church official (and which, more than once, has been listed as the pastor's address). The funds were transferred into the same account that was used to pay the application fee submitted with the petitioner's Form 1023. This indicates that the account is not the beneficiary's personal account, but a church account to which the beneficiary has access by virtue of her office as a corporate officer. The latter explanation seems to be the more reasonable one, considering the substantial size of these transfers. The petitioner has not shown that these wire transfers contribute to the beneficiary's personal support.

In the alternative, if the bank account is in fact the beneficiary's own personal account, then it is significant that bank statements from that account do not show deposits to reflect the weekly $150 payments that the petitioner has supposedly made to the beneficiary. Furthermore, if the wire transfers represent income flowing directly to the beneficiary in 2000 and 2001, then it appears that she seriously underreported her income on her tax returns for those years. Either way, there are issues regarding the credibility and consistency of the evidence submitted.

We note that the wording of 8 C.F.R § 204.5(m)(4) does not entirely prohibit outside employment, provided that such employment is not the beneficiary's sole means of support. While the proffered salary of $350 per week is not a tremendous sum of money, it does not appear to be below subsistence levels, particularly given the claim that the beneficiary does not have to pay for lodging out of this amount. We therefore withdraw the finding that the beneficiary's compensation, *as described*, is inadequate.

That being said, we have been unable, for reasons already explained, to determine the beneficiary's *actual* means of support. The beneficiary has represented herself as a consultant, and the petitioner has referred to the beneficiary as an unpaid officer of the corporation that runs the petitioning church.

On motion, the petitioner has not overcome the grounds for dismissal cited by the AAO. Rather, further review of the record has served only to uncover serious inconsistencies (such as the beneficiary's purported maintenance of as many as three separate addresses while supposedly on a subsistence wage of $150 per week) and raise questions about the true nature of the relationship between the beneficiary and the petitioner.

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 September 30, 2003 is affirmed. The petition is denied.