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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

C1

[redacted]

FILE: LIN 03 098 50884 Office: NEBRASKA SERVICE CENTER Date: JAN 04 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:

SELF-REPRESENTED

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, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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 pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous membership in the petitioner's religious denomination immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary.

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 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)(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. The petition was filed on February 3, 2003. Therefore, the petitioner must establish that the beneficiary was a member of the petitioner's religious 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 beneficiary was still outside the United States as of the petition's filing date, and he had spent the entire qualifying period abroad. Because the beneficiary had not been a member of the petitioning church, the petitioner must show that the beneficiary was a member of another church within the same denomination during the two-year qualifying period.

The petitioner has submitted copies of certificates of ordination and other documents from Christ Church Chapel of Nigeria, where the beneficiary worked during the qualifying period. The director requested evidence to establish that Christ Church Chapel and the petitioner belong to the same religious denomination. In response, pastor Bonnie Larkins of the petitioning church states:

> Both ministries worship the Lord God, and Jesus Christ. Both ministries are the same denomination and we all believe in the Body of Christ. We believe the Holy Bible is the Word of God. We believe in consulting the Bible for our daily living. We believe in ordination of preachers to go out and preach the word of our Lord Jesus Christ, and for all to come into repentance.

In a separate letter, [redacted] states "[o]ur churches work as one body. The relationship between the churches grew continuously. . . . We were so impressed one of our ministers went to there [sic] church overseas and ended up staying a month. He brought us glowing reports concerning his ministry."

The director denied the petition, stating that the similarities described by the petitioner, above, are very vague and general and "cannot be considered sufficient to demonstrate a shared denomination." The director also asserted that the minister exchange program through which the Nigerian church contacted the petitioning church is not evidence of a shared religious denomination.

On appeal, the petitioner submits a description of its own church doctrines, as well as a statement of doctrine prepared by Christ Church Chapel of Nigeria. Officials of both churches state that they belong to no organized denomination, but that they are linked by their shared doctrine. [redacted] program coordinator for the petitioner's Foreign Mission Department, asserts that "[t]hese beliefs would be shared by all fundamental denominations [of] Christianity," and she claims that "[t]he Pentecostal branch of Protestantism is characterized by non-denominationalism." This last assertion fails to account for large, well-known, organized Pentecostal denominations such as the United Pentecostal Church, the Assemblies of God, and the International Church of the Foursquare Gospel. The existence of these established denominations disproves the claim that Pentecostalism is, by nature, non-denominational. Once that claim is disproved, the petitioner's argument on appeal has little factual foundation.

For the reasons discussed above, we find that the petitioner has not adequately demonstrated that the beneficiary has, throughout the two-year qualifying period, belonged to the same religious denomination as the petitioning church.

The other issue in the director's decision concerned the nature of the petitioner's job offer. The petitioner's initial submission did not establish that the beneficiary will work solely as a minister, nor did it contain any description of the proposed terms of the beneficiary's compensation, as required by 8 C.F.R. § 204.5(m)(4). The director, therefore, requested evidence to meet those requirements. In response, Pastor Larkins stated:

> All our clergy conduct the services voluntarily, because all of them have there [sic] professional work outside the church.
>
> Due to the new programs we are starting to orchestrate, we want to emulate some of the programs Christ Church Chapel of Nigeria has spearheaded in Nigeria.
>
> Our church needs there [sic] experience . . . this is the reason we're inviting [the beneficiary] from our foreign sister church. . . .

> [The beneficiary] has agreed to our missionary evangelical work terms of payment, which states that our ministries will provide him an accommodation, transportation, and food and also allowance or offerings contribution, due to this agreement, we have an outreach center that has eight separate apartments. This building has been donated by one of our members to be an accommodation for any of our foreign ministers . . . and there is a church van for his day to day activities, and a 1994 Hyundai Sonata car was also donated by one of our members for any foreign pastor that will participate in the outreach ministry.

The director stated:

> [T]he petitioner [has agreed to] provide for the beneficiary's "accommodation, transportation, and food," and it appears that the beneficiary might not be dependent on supplemental employment or would have to solicit funds for support. However, given that the petitioning church's clergy are traditionally volunteers who seek outside employment, it still calls into question the sort of work expected of the beneficiary.

On appeal, [redacted] states that the church utilizes the services of three volunteer ministers, but also employs "two full time pastors [who] have received full time salaries since August 1999 and March 2001 respectively." The appeal includes no documentary evidence (such as payroll or tax records) to show that the petitioner has, in the past, employed paid pastors. [redacted] statement directly contradicts Pastor [redacted] assertion that "[a]ll our clergy conduct the services voluntarily, because all of them have there [sic] professional work outside the church." [redacted] referred to "clergy," rather than drawing a distinction between "pastors" and "ministers."

Because [redacted] statement has no evidentiary support, and contradicts the petitioner's prior claims, we cannot consider this statement to be credible. 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).

A related issue, mentioned by the director in the request for evidence but not in the subsequent denial, concerns the petitioner's ability to pay the beneficiary's salary or other compensation. The regulation at 8 C.F.R. § 204.5(g)(2) states:

> *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 a case where the prospective employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by the Service.

The director requested evidence that the petitioner "has the financial capability to pay the beneficiary's wage." The petitioner did not submit any of the evidence required by the above regulation. The assurance that unidentified parishioners will donate housing and transportation cannot suffice as evidence of the petitioner's ability to pay. The petitioner also submitted bank documents, indicating that the petitioner had roughly $16,000 on deposit as of May 2003. This does not present a complete financial picture to demonstrate that the petitioner consistently has cash reserves and/or income sufficient to pay the beneficiary's proffered wage.

On appeal, [redacted] asserts "[o]ur organization has the financial ability and stability to support" the beneficiary. This statement has no documentary support. The statement of a corporate official, as evidence of ability to pay, is acceptable only when the corporation employs 100 or more workers. The petitioner initially claimed no paid employees, and then changed that figure to two paid employees. Because the petitioner does not employ 100 or more workers, [redacted] assurance is facially inadequate as evidence of ability to pay, even without considering the credibility issues surrounding her appeal statement.

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 appeal will be dismissed.

ORDER: The appeal is dismissed.