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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

JAN 25 2005

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:
EAC 03 038 52172

IN RE: Petitioner:
Beneficiary: [redacted]

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont 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 an assistant pastor and leader of the petitioner's Evangelist Department. The director determined that the petitioner had not established that the position offered to the beneficiary constitutes a qualifying religious occupation, or that the petitioner is able to pay the beneficiary's proffered salary.

On appeal, the petitioner submits a brief from counsel as well as several documents, some of them copies of previously submitted materials.

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 first issue is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

> *Minister* means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.
>
> *Religious occupation* means 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.

Citizenship and Immigration Services interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

While the determination of an individual's status or duties within a religious organization is not under the purview of Citizenship and Immigration Services (CIS), the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

Bishop Hector A. Chiesa, senior pastor of the petitioning church, states:

> As Assistant Pastor, [the beneficiary's] responsibilities are many. . . . [The beneficiary] is a family and religious counselor and is in charge of coordinating the Family Training Hour. This program . . . sets aside a time each week which provides personalized age-level training to reach members of the family. . . . [The beneficiary] also incorporates Bible study into his counseling programs and teachings, and aids people to live by the word of God. He spends 20 hours each week coordinating our Family Ministry and organizing Family Training Hours throughout the week.
>
> [The beneficiary] is also the Instructor of the Education Department. . . . [The beneficiary] spends at least 15-20 hours each week working to further communicate the Gospel to young people through instruction and involvement in a community of faith. [The beneficiary] prepares a weekly curriculum for our Family members which incorporates religious doctrine into advice about everyday problems. He also meets weekly with the members of the Ministry about various topics, dealing with subjects such as drug abuse, peer pressure, and homelessness. He has also been very successful in encouraging their involvement in other Church programs such as the choir and visitation of the sick and elderly. . . .
>
> He will be required to work a minimum of 40 hours each week performing the above described duties. . . .
>
> Also, he will be my assistant in the weekly Radio Program.

The director requested information regarding the degree of training required for the position offered, and evidence that the beneficiary possesses that level of training. In response, Bisho[redacted] has indicated that one "has to be an Ordained Minister" to qualify for the position. The petitioner had previously submitted a copy of the beneficiary's certificate of ordination, dated November 11, 1990. Bisho[redacted] states that the beneficiary "also preaches once a month, or in the absence of the Senior Pastor."

The director denied the petition, stating that the petitioner, in responding to the request for evidence, failed to address the issue of whether the position offered to the beneficiary requires a specific level of religious training. Therefore, the director concluded, the petitioner failed to show that the position of assistant pastor is

a qualifying religious occupation. The director did not address or acknowledge the petitioner's assertion that the position can only be filled by an ordained minister.

On appeal, counsel contends that the beneficiary has worked, and will work, as an ordained minister. The descriptions provided do not indicate that the beneficiary's main duties are typically those assigned to ordained clergy. His occasional role as a substitute preacher is not inherently limited to clergy, either, as such a role could also be filled by a lay preacher. The duties described fall more credibly into the classification of a religious occupation, specifically a religious instructor (specifically included in the regulatory list of qualifying religious occupations).

If there is any question about the nature of the position offered to the beneficiary, it arises from the fact that the petitioner never employed an assistant pastor prior to offering that position to the beneficiary. There is no evidence that churches in the petitioner's denomination routinely employ paid assistant pastors, but the director had never requested such evidence, which rather mitigates the adverse effect of its omission. When considering whether the petitioner has made a *bona fide* job offer, we must turn to the issue of whether the petitioner can afford to employ the beneficiary as claimed.

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 has stated that it intends to pay the beneficiary $350 per week, or $18,200 per year. At the time of filing, the petitioner was not yet paying the beneficiary, although the petitioner claims to have provided room and board to the beneficiary. The petitioner has also indicated that it has filed religious worker petitions for two other individuals. In separate correspondence dated July 24, 2003 [redacted], the petitioner's administrative secretary, indicated that "at the present time we have no employee with salary. The only one who is [on] the payroll as a Part-time employee was the Senior Pastor, but at this time, he is an employee [of] the New York State Department of Correctional Services at the Chaplancy [sic] Division."

The petitioner's initial submission includes copies of financial statements for the fiscal years ending May 31 of 2000 and 2001. The statements reflect cash assets in the hundreds of thousands of dollars. There is no indication that the statements are audited. Also, the financial statements are not from the individual church. Rather, they are for the Northeastern Region of the Church of God. There is nothing in the record from the Northeastern Region offices to indicate that the regional organization is responsible for paying the salaries of the petitioner's employees, or that the petitioner has access to the assets of the regional organization.

The director denied the petition, in part because unaudited financial statements are not acceptable documentation to establish ability to pay. On appeal, the petitioner submits the petitioner's audited financial report for calendar year 2002. We observe that it is not enough for the petitioner merely to submit an audited financial report; the information contained in that report must demonstrate that the petitioner has sufficient assets and/or income to pay the beneficiary's salary, and to pay it consistently.

The report submitted on appeal shows that, as of December 31, 2002, the petitioning church had $5,973.86 in the bank, including $2,717.80 in a "RESTRICTED BENEFICA FUND." The audited report also shows that, throughout the year, the petitioner's income exceeded its expenses by $1,050.80. The report shows other assets, including "building and grounds" and a bus, but these are not liquid assets readily convertible into cash to pay the beneficiary's salary. An entity that must sell its holdings to pay an employee's salary would not appear to be financially sound to a degree that makes continued future payments likely.

In the new, audited report, the only salary payment indicated is a $26,000 "pastoral salary." In a separate letter, Bishop, claims "[t]he expense entry titled 'Pastoral Salary' for the year 2002 . . . totaling $26,000, included payments to [the beneficiary] from November 2002, through the end of December, 2002, in the amount of $350 per week. The balance of the $26,000 was paid to me." The record contains no documentary evidence to confirm that the $26,000 pastoral salary included payments to the beneficiary, or that payments to two people would be consolidated in what is otherwise a meticulously itemized statement that differentiates, for instance, between "boiler and radiator repairs" and "boiler repair labor," and between "painting and labor front door" and "painting and labor (4th floor)." Thus, the petitioner's claim that the beneficiary received payment in 2002 is unsubstantiated, and appears to be inconsistent with the audited financial report. Also, even if the beneficiary did receive two months' payment in 2002, the petitioner's remaining liquid assets do not appear sufficient to pay the beneficiary's salary for the remainder of the year, and the accumulation of income after expenses is not sufficient to replenish those assets for the next year's payments.

The petitioner submits copies of check stubs, which, Bishop states, demonstrate that the petitioner has continued to pay the beneficiary. The two stubs show payment to the beneficiary from "Mission Account Mission Amsterdam." The stubs show payments of $300 each, three weeks apart (October 23 and November 12 of 2003). These documents cannot suffice to show that the beneficiary has paid, or is able to pay, the beneficiary's proffered wage of $350 per week.

For the reasons discussed above, the evidence submitted on appeal is not sufficient to establish the petitioner's ability to pay the beneficiary's proffered wage. The inadequacy of the petitioner's assets and earnings is only compounded when we consider that the petitioner, which heretofore had only one salaried employee, has filed petitions for two other workers as well as the petitioner.

In denying the petition, the director observed that, if the beneficiary's work does not constitute a qualifying religious occupation, then he could not have engaged in qualifying religious work throughout the two years immediately preceding the petition's filing date. While we do not agree with the director's finding about the current position, a related issue arises pertaining to the two-year experience requirement.

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 November 14, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing largely the same duties as those of the proffered position throughout the two years immediately prior to that date.

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 beneficiary entered the United States on September 6, 2002, only two months before the filing date. Therefore, he spent most of the qualifying period outside the United States. Rev. national supervisor of the True Grapevine Church of God in the Dominican Republic, indicates that the beneficiary served as the pastor of a specific church in Santiago from 1989 to 2002. Other documents indicate that the beneficiary was an itinerant evangelist, traveling from church to church. The petitioner asserts that the beneficiary was an assistant pastor in the Dominican Republic, but documentation from that country indicates that the beneficiary held the title "assistant pastor" only from 1982 to 1984, long before the qualifying period. Even if we assume that these accounts are somehow consistent with one another, there is no indication that the beneficiary's duties in the Dominican Republic from 2000 to 2002 were largely identical to the functions he has undertaken for the petitioner since late 2002. Thus, we cannot conclude from the available evidence that the beneficiary, continuously throughout the two-year qualifying period, carried out the religious work for which the petitioner seeks to employ him.

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.