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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: APR 26 2005
EAC 03 008 50572

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: 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 (AAO) on appeal. The appeal will be dismissed.

The petitioner's "role is to plant growing and reproducing Christian churches throughout the metropolitan area of New York City, New Jersey and the Northeast." 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 it qualified as a bona fide nonprofit religious organization. The director further determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition, that the position qualifies as that of a religious occupation, or that it has extended a qualifying job offer to the beneficiary.

On appeal, counsel submits a brief and additional documentation.

The beneficiary stated that he entered the United States on July 21, 2003 pursuant to a B-2 temporary visitor for pleasure visa for the purpose of vacationing. The director determined that, as the beneficiary had not entered the United States for the sole purpose of working as a minister, the petition must be denied.

The regulation does not require that the alien's initial entry into the United States to be solely for the purpose of performing work as a religious worker. "Entry," for purposes of this classification, would include any entry under the immigrant visa granted under this category or would include the alien's adjustment of status to the immigrant visa. We withdraw this determination by the director.

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)(3)(i) states, in pertinent part:

(3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

According to the petitioner, the proffered position is that of pastor of the [redacted]h in Kearny, New Jersey, and that the [redacted] an "associate" of the petitioning organization, will pay the proffered salary. A contract dated June 30, 2002, entered into by the beneficiary, the petitioner, the[redacted] Church and the [redacted]Church, indicates that the proffered position is that of minister of the [redacted] Christian Church and that the "churches" would be responsible for the beneficiary's salary.

The evidence thus reflects that the employing organization in this case is the [redacted] The petitioner must therefore submit evidence that the [redacted] Church is a bona fide nonprofit religious organization, exempt from taxation under section 501(c)(3) of the Internal Revenue Code (IRC).

With the petition, the petitioner submitted a copy of a November 6, 1952 letter from the Internal Revenue Service (IRS) granting it tax-exempt status as an organization organized and operated exclusively for religious purposes. The letter does not indicate that this exemption is applicable to subordinate units of the petitioner. The petitioner also submitted a copy of its articles of incorporation.

In response to the director's request for evidence (RFE) dated April 28, 2003, in addition to resubmitting copies of previously submitted documentation, the petitioner also submitted a copy of a certificate from the Department of State for the State of New Jersey, indicating that the state's records reflect that the petitioner is recognized as a nonprofit organization within the state.

The petitioner must either provide verification of individual exemption from the IRS to the employing organization, proof of coverage under a group exemption granted by the IRS to the petitioner or its denomination, or such documentation as is required by the IRS to establish eligibility of the employing organization as a tax-exempt nonprofit religious organization. Such documentation to establish eligibility for exemption under section

501(c)(3) includes: a completed Form 1023, a completed Schedule A attachment, if applicable, and a copy of the articles of organization showing, *inter alia*, the disposition of assets in the event of dissolution.

On appeal, the petitioner submitted a copy of an October 15, 2003 letter from the IRS, verifying its status as an organization exempt from taxation under section 501(c)(3) of the IRC as an organization described in sections 509(a)(1) and 170(b)(1)(A)(i). The letter does not indicate that the petitioner was granted a group tax exemption that would be applicable to its subordinate units.

The petitioner has not submitted evidence that [redacted] Church, the prospective U.S. employer, is a bona fide tax-exempt nonprofit religious organization.

The director also determined that the petitioner had not established that the beneficiary had been continuously employed in a qualifying religious vocation or occupation for two full years preceding the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States." The regulation 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."

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

> (ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:
>
> > (A) 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 October 7, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as a pastor throughout the two-year period immediately preceding that date.

In its letter of September 13, 2002, the petitioner stated that the beneficiary had served as minister with the Antioch Christian Church from January 1999 until August 2001, and had worked as a minister for the petitioner since August 2001. According to the petitioner, the beneficiary would "continue to perform duties" such as preaching the Gospel, baptizing new converts, administering the ordinance/sacrament of the Holy Communion, conducting worship services, and conducting all spiritual ceremonies such as funerals, baptisms, holiday services and other events. The petitioner submitted an April 18, 2002 letter from the director of human resources for Palisades Medical Center, who stated that the beneficiary was affiliated with the [redacted] Church and

had participated in the medical center's pastoral care program since August 23, 1999. The petitioner submitted no documentary evidence to corroborate the beneficiary's employment from October 2000 to 2002. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In response to the director's RFE, the petitioner stated that the beneficiary had been a member of the petitioning organization since January 1999 and had worked as a full-time minister with the Bethesda Christian Church, one of its affiliates, since that date.

The petitioner submitted a June 13, 2003 letter from [redacted] senior minister and president of the [redacted] Church, certifying that the beneficiary had served as a full-time minister with the church from January 1999 to August 2001, working 40 hours per week. Reverend [redacted] further stated that the [redacted] Church was affiliated with the petitioning organization and was "also a member of a large denomination, Christian Churches and Churches of Christ." Reverend [redacted] did not specify any remuneration received by the beneficiary for his services. The petitioner submitted no evidence, such as canceled checks, pay vouchers, verified work schedules or other documentary to corroborate the beneficiary's employment with Antioch Christian Church. *See Id.*

The petitioner also submitted an "employment letter" from the [redacted] Christian Church signed by the treasurer and a "church official." The letter indicates that the beneficiary began his employment as senior minister with the [redacted] Christian Church on July 31, 2001 and received an annual salary of $26,400. The petitioner submitted a copy of the beneficiary's years 2002 and 2001 Form 1040, U.S. Individual Income Tax Return, that he filed jointly with his wife. The 2001 return lists the occupation of the beneficiary's spouse as "H/W," which we interpret to mean housewife. The return also reflects wages of $8,569 and self-employment income of $21,747.

The compensation reflected on the 2001 return is not consistent with the compensation allegedly received by the beneficiary. Compensation from the Antioch Christian Church would have been reported as either wages or self-employment income. It is highly unlikely that the petitioner's employers would report his compensation as both wages and nonemployee income during the same reporting period. If the beneficiary received an annual salary of $26,400 from [redacted] Christian Church, he should have reported either wages or self-employment of $11,000. The return is unclear as to the source of the beneficiary's compensation for the year 2001. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The beneficiary's 2002 Form 1040 reflects self-employment income of $25,500 from his services as a pastor. We note that this is $900 less than the contracted salary. The petitioner does not submit a copy of a Form W-2, Wage and Tax Statement, or a Form 1099 MISC that reflects any compensation paid to the beneficiary.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for

a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

On appeal, the petitioner submits no additional documentation that corroborates the beneficiary's employment during the qualifying two-year period.

The evidence submitted is insufficient to establish that the beneficiary was continuously employed as a pastor for two full years prior to the filing of the visa petition.

The director also determined that the petitioner had not established that the proffered position qualifies as that of a religious occupation.

The proffered position is that of a minister. The regulation at 8 C.F.R. § 204.5(m)(2) defines minister as:

> [A]n 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.

According to the petitioner, the duties of the proffered position includes preparing and presenting sermons and bible lessons, leading the congregation in worship and prayer, baptizing new converts and performing the sacraments, provide spiritual counseling, and performing weddings, funerals and other special services and

religious ceremonies. The petitioner stated that the position is with a relatively newly established congregation, and that the beneficiary will be expected to work approximately 40 hours per week with a yearly compensation of $26,400.

The evidence sufficiently establishes that the position is a minister within the meaning of the statute and regulations.

The director further determined that the petitioner had not established that the beneficiary is qualified for the proffered position within the organization.

The record contains a copy of a 1982 certificate from the Evangelic Faculty of Theology United Seminary reflecting that the beneficiary received a bachelor's degree in theology from that institution. The record also contains a copy of a 1983 certificate of ordination granted to the beneficiary by the [redacted] Church. The record also reflects that the beneficiary has served in the capacity as pastor with the [redacted] Christian Church. We find that the evidence sufficiently establishes that the beneficiary is qualified for the proffered position.

Beyond the decision of the director, the petitioner has not established that the prospective U.S. employer has the ability to pay the proffered wage. 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.

As discussed above, the evidence reflects that the beneficiary's prospective U.S. employer is the [redacted] Christian Church, and that the [redacted] Christian Church and the Antioch Christian Church contracted to pay his salary. The regulation specifically requires that the petitioner establish the ability of the prospective U.S. employer to pay the proffered wage.

The petitioner submitted evidence regarding its financial status and its ability to pay the beneficiary the proposed salary. However, the petitioner is not the beneficiary's prospective U.S. employer and is under no obligation to pay the beneficiary for his services. The record contains no evidence of the ability of [redacted] Christian Church, the prospective U.S. employer to pay the proffered wage. Although the beneficiary's Form 1040 indicates that he received compensation in 2002 for his services as a pastor, the petitioner submitted no evidence that these wages were paid by th[redacted] Christian Church.

The evidence does not establish that the beneficiary's prospective U.S. employer has the ability to pay the proffered wage. This deficiency constitutes an additional ground for denial of the petition and dismissal of the appeal.

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.