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**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**

FILE:

SRC 04 022 51065

Office: TEXAS SERVICE CENTER Date: APR 07 2006

IN RE:

Petitioner:

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:**

**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 Blumsohn*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition and certified the decision to the Administrative Appeals Office for review. The director's decision will be affirmed.

The petitioner is a nondenominational Protestant 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 Bible school and education director. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a Bible school and education director immediately preceding the filing date of the petition, or that the position constitutes a qualifying religious occupation.

In the certified denial notice, the director allowed the petitioner 30 days to submit a response. The petitioner did not respond during the allotted period, and therefore we consider the record of proceeding to be complete as it now stands.

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).

First, we shall address the question of whether the position offered to the beneficiary amounts to a religious occupation. The regulation at 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.

[REDACTED], senior pastor of the petitioning church, states:

The [beneficiary's] duties and responsibilities include . . . the following:

- a. Conduct bible studies [for] the young adult members;
- b. Provide counseling according to the wisdom and teaching of the Bible;
- c. Spread the words of God through visitation and conversation to nonmembers;
- d. Help and implement Christian educational programs;
- e. Provide leadership in developing and advising the committee of Christian education;
- f. Assist senior pastor in administrative matter[s] concerning educational programs;
- g. Contribute the educational objectives focus in church programs;
- h. Research and explore in the field of Christian doctrines, theories, and education.

The work schedule of [the beneficiary] is as follows:

Tuesday:	8 am – 12 pm
Wednesday:	8 am – 12 pm
Thursday:	8 am – 2 pm
Friday:	12 pm – 9 pm
Saturday:	9 am – 4 pm
Sunday:	9 am – 7 pm

A list of church members names 109 individuals, of whom 26 appear to be children (assuming that, in households of three or more, all but two of the individuals are children). John Kwak indicates that the petitioning church employs three full-time Bible instructors (including the beneficiary).

On March 28, 2005, the director issued a request for evidence (RFE), in which the director instructed the petitioner to provide information about the beneficiary's credentials, "the requirements for this position in this religious entity" and "the normal amount of hours needed to complete this position's requirements [on] a weekly basis." In response, the petitioner has submitted copies of teaching materials, a teacher's attendance sheet with one space per week (indicative of weekly rather than daily attendance), a "Schedule for Bible School" that, for most weeks, lists "Bible study" without elaboration, and other documents.

Programs distributed at Sunday worship services include a "Notice of Services and Meetings." Here is the listing from an example of these notices:

Sunday Service:	11:00 am
Wednesday Teacher Training:	8:00 pm
Friday Prayer:	8:15 pm [one notice lists the time as 8:00 pm]

Sunday School:	11:00 am
Dawn Prayer:	6:00 am

The "Teacher Training" and "Dawn Prayer" fall outside of the beneficiary's stated work hours.

The petitioner also submitted a "Certificate of Completion," indicating that the petitioner "completed all teacher's educational curriculum in teacher's educational program" from March 7, 2001 to June 12, 2002. The certificate is signed by [REDACTED], identified as director of Teacher Education at the petitioning church.

On July 18, 2005, the director issued a second RFE, requesting additional information regarding the beneficiary's experience. The petitioner's response includes a "2004 Teacher Work Schedule," containing what purports to be a day-by-day breakdown of the beneficiary's duties. The schedule generally shows the following work hours:

Tuesday:	9 am – 3 pm
Wednesday:	9 am – 4 pm
Friday:	2 pm – 10 pm
Saturday:	9 am – 4 pm
Sunday:	9 am – 5 pm

This schedule conflicts with the schedule provided previously. For instance, the petitioner had previously claimed that the beneficiary worked from 8:00 a.m. to 2:00 p.m. on Thursdays, but the newly submitted schedule does not indicate that the beneficiary ever worked on Thursdays at all. Thus, the newly provided schedule, purporting to describe the beneficiary's hours during October 2004, does not match the schedule that the petitioner provided *during* October 2004.

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 director denied the petition, in part because the petitioner had not credibly demonstrated that the beneficiary's position is a *bona fide* full-time occupation. We concur that the petitioner's submission of conflicting claims raises questions of credibility that the petitioner has not addressed. Because the petitioner has offered no rebuttal to this finding, the director's decision stands.

The director also found that the position is not a religious occupation because it supposedly requires no specific religious training. While a "training" requirement is problematic in various respects, this finding is inapplicable given the petitioner's submission of what purports to be a "certificate of completion" from the petitioner's own "teacher's educational program." Thus, the position, on its face, involves religious training. (Credibility issues regarding the petitioner's evidence are separate from an analysis of the proffered position.)

Thus, while we do not agree with all of the director's findings, we concur with the finding that the petitioner has not submitted credible and consistent evidence regarding the nature of the beneficiary's work, and therefore the petitioner has not met its burden to show that the position is a qualifying religious occupation.

We turn now to the issue of experience. 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 November 1, 2004. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of the proffered position throughout the two years immediately prior to that date.

[REDACTED] in his October 27, 2004 letter submitted with the initial filing, states that the beneficiary "is currently working in our church under R-1 visa status since February 2001. [The beneficiary] has more than two years of experience and membership in our denomination." He also states:

Our church currently has four full time employees as follows:

[REDACTED] Pastor, \$1,000 per month  
[The beneficiary], Bible School Teacher and Director, \$1,300 per month  
[REDACTED] Bible School Teacher, \$1,200 per month  
[REDACTED] Bible School Teacher, \$1,200 per month.

The initial submission includes copies of checks payable to the beneficiary, dated between June 2001 and September 2004, and copies of bank statements from December 2003 through May 2004. The numbers and amounts on these checks correspond to the bank statements. Form W-2 Wage and Tax Statements indicate that the petitioner paid the beneficiary \$15,600 in 2002 and the same amount in 2003, consistent with monthly \$1,300 payments. There is no indication that any taxes were withheld.

In the July 18, 2005 RFE, the director requested copies of payroll and tax records, as well as information regarding every job that the petitioner has held since he entered the United States. The director specifically requested "certified copies of the church's IRS forms 941 showing quarterly taxes paid for all the salaried employees for the two years prior to the filing of this petition."

In response, the petitioner submits copies of Form 941 Employer's Quarterly Federal Tax Returns, showing the following information:

Quarter ending	Number of employees	Total wages paid
3/31/2003	1	\$3,900.00
6/1/2003	1	3,900.00
9/30/2003	1	3,900.00

12/31/2003	2	6,300.00
3/31/2004	2	7,500.00
6/30/2004	2	7,500.00
9/30/2004	2	7,500.00
12/31/2004	3	6,100.00

Despite the director's request, the Forms 941 are not certified copies. Most of them, in fact, bear [REDACTED] original (not copied) signature. Also, all of the forms are dated December 14, 2004, except for the return for the last quarter of 2004, which is dated January 17, 2005.

[REDACTED] in his first letter, had stated that the petitioner had four employees as of October 2004 and was paying \$4,700 in salaries per month, which is \$14,100 per quarter. The Form 941 for that quarter shows less than half that amount, and only three paid employees. None of the Forms 941 show four paid employees, or wages approaching \$14,100 per quarter.

The copies of bank statements submitted previously show that, each month between December 2003 and May 2004 the petitioner issued two checks for \$1,200 each, and one check for \$1,300. This is consistent with [REDACTED] letter. The statements do not show regular monthly payments of \$1,000, but five of the six statements do show monthly payments of \$1,500. Thus, the bank documents and [REDACTED] original letter indicate that the petitioner had four paid employees during the first two quarters of 2004, but the Form 941 returns show only two employees, with total payments of only \$2,500 per month.

For the reasons described above, the Forms 941 are in obvious conflict with the bank statements and with own prior assertions. This casts further doubt on the credibility of the petition, pursuant to *Matter of Ho.*

[REDACTED] states that the beneficiary "is not employed outside the church. He does own a business known as FM Tailor . . . as [an] investor." The petitioner submits certified copies of the Form 1040 Individual Income Tax Returns that the beneficiary filed jointly with his spouse for 2002, 2003 and 2004. On the returns, the beneficiary identified his occupation as "Bible School Director"; his spouse listed "NONE" or left the spaces blank, indicating that all the reported income was the beneficiary's.

The beneficiary's tax preparer indicates that the beneficiary has filed an amended return for 2003, but that a certified copy of the amended return was not available in time for submission in response to the RFE. The record shows that, on his original returns in 2002 and 2003, the beneficiary reported his church income as business income rather than as wages or salaries.

The returns (as amended) and accompanying schedules show the following information:

	2002	2003	2004
Wages, salaries, tips, etc.	\$18,200	\$15,600	\$13,000
Gross income [from business]	73,532	70,900	68,984
Business income or (loss)	8,263	2,517	7,973

We note that, on all the tax returns, the beneficiary claimed his daughter [REDACTED] as a dependent. The beneficiary could only claim her as a dependent if he was responsible for at least half of her support. See <http://www.irs.gov/taxtopics/tc354.html> (visited March 13, 2006). [REDACTED] however, had indicated that [REDACTED] was a paid church employee as of October 2004, earning \$1,200 per month. Therefore, pursuant to IRS Publication 501, it does not appear that [REDACTED] could have qualified as the beneficiary's dependent if she was employed as claimed. See <http://www.irs.gov/publications/p501/index.html> (visited March 13, 2006). Certainly, the tax returns do not reflect the beneficiary's daughter's claimed income from the petitioning church.

The beneficiary's tax return and Form W-2 both show that he earned only \$13,000 in 2004, a significant drop from his reported earnings in 2002 and 2003. The petitioner does not explain why the beneficiary received the equivalent of only ten months' pay in 2004. The petitioner also does not explain why the \$15,600 shown on the beneficiary's 2002 Form W-2 does not match the \$18,200 listed as the beneficiary's church income on the 2002 tax return. The tax returns indicate that the beneficiary's church income has declined by \$2,600 each year.

As noted above, the petitioner's initial submission includes copies of checks issued to the beneficiary. Nine of the checks were issued in 2004, the last one dated September 5, 2004, accounting for \$11,700 of the \$13,000 that the beneficiary subsequently reported as income for that year. Thus, according to the beneficiary's tax return and the W-2 that the petitioner issued to the beneficiary, the beneficiary received only one more \$1,300 paycheck during the last 16½ weeks of 2004. The record contains no evidence that the petitioner has paid the beneficiary anything after the petition's November 2004 filing date.

Each tax return includes Schedule C, Profit or Loss from Business (Sole Proprietorship). Thus, the beneficiary has indicated to the Internal Revenue Service that he is the sole proprietor of FM Tailoring Company. Line G of Schedule C consists of the question: "Did you 'materially participate' in the operation of this business during [the tax year]?" The beneficiary answered "yes" on all three tax returns in the record. By affirming that he had materially participated in running the tailor shop, the beneficiary indicated that he was not simply a passive investor in the business. Thus, the beneficiary's own tax returns contradict [REDACTED] claim regarding the extent of the beneficiary's involvement with the tailor shop. This further compounds the credibility issues discussed elsewhere in this decision.

The canceled checks and tax returns in the record are consistent with the beneficiary working for the petitioner to some extent, but the documented inconsistencies and contradictions in the record cast doubt on the claim that this employment was full-time and exclusive. Because the petitioner had plainly stated that the beneficiary performed no work outside the church, any evidence of such outside work raises legitimate questions of credibility that the petitioner has not addressed. Section 204(b) of the Act, 8 U.S.C. § 1154(b), indicates that a petition can be approved if the facts claimed in that petition are found to be true. Here, we cannot, with any confidence, find some of the petitioner's key claims to be true.

The beneficiary indicated that he materially participated in the operation of a tailor shop of which he is the sole proprietor. The petitioner has provided conflicting work schedules for the same period of time, and

payment of the beneficiary's salary appears to have ceased with the filing of the petition. As noted above, there are other discrepancies as well. All in all, the inconsistencies and contradictions in the record outweigh any favorable factors arising from the petitioner's claims and evidence. The petitioner has not established the beneficiary's eligibility by a preponderance of evidence.

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 director's decision will not be disturbed.

**ORDER:** The denial of the petition is affirmed.