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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAR 09 2007
WAC 02 210 53309

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, Chief
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa petition. The matter 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 associate pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as an associate pastor immediately preceding the filing date of the petition.

On appeal, the petitioner submits copies of financial documents and a statement in which the beneficiary asserts that the high cost of living in the Los Angeles area has compelled him to work a second job.

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 June 17, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an associate pastor throughout the two years immediately prior to that date.

In an introductory letter, [redacted] Pastor of the petitioning church, stated:

> At this time, we are in desperate need for the services of an Associate Pastor for our local ministry in California on a full time permanent basis. [The beneficiary] has been serving our Church in the Philippines continuously since March 1996 until 2001. He is currently working for our Church since the approval of his R-1 visa [in] January 2002. . . .
>
> He will be receiving a remuneration of $1,600.00 a month which is more than sufficient to ensure that he will not seek employment outside the ministry.

We note that, although the letter refers to the approval of the beneficiary's R-1 nonimmigrant visa in January 2002, the date of the letter is April 15, 2001. As we shall explain in due course, the petitioner has offered inconsistent claims and evidence as to when the beneficiary stopped working in the Philippines and began working for the petitioner in the United States.

Regarding the assertion that the beneficiary worked "in the Philippines . . . until 2001," the Form I-360 petition indicates that the beneficiary entered the United States on September 4, 2000, sixteen months before the beneficiary's R-1 visa was approved in January 2002. The initial submission contained no first-hand evidence to show when the beneficiary entered the United States.

Pastor [redacted], Administrative Pastor of [redacted], Manila, states that the beneficiary "has been an Associate Pastor with the [redacted] Church in the Philippines since March, 1996 up to the present time." The letter is dated January 5, 2001, some four months after the beneficiary supposedly left the Philippines.

On October 30, 2002, the director issued a request for evidence, instructing the petitioner to "[p]rovide evidence of the beneficiary's work history beginning June 17, 2000 and ending June 17, 2002," including "evidence . . . that shows monetary payment." In response, the petitioner has submitted two documents, each entitled "Religious Work History." Together, the documents indicate that the beneficiary worked for [redacted] Church from 1996 to January 2002, and at the petitioning church thereafter. As far as work hours, the materials state that the beneficiary worked between nine and thirteen hours each week at [redacted] Baptist Church from June 2000 to December 2000, and between eight and thirteen hours per week in 2001. From January to June 2002, according to these documents, the beneficiary worked nine to fifteen hours per week at the petitioning church. These times are approximate, because some duties are shown as variable in length, and other duties were undertaken only once per month or per year.

The petitioner submits copies of canceled checks showing that the petitioner paid the beneficiary $670.40 in January 2002, and $1,342.80 per month from February 2002 to June 2002. A handwritten Form W-2 Wage and Tax Statement indicates that the petitioner paid the beneficiary $18,400 in 2002. Rev. [redacted] states that the beneficiary's schedule includes the following:

> 20 Hrs. actual church work hours per week

10 Hrs. study and preparation work hours per week
10 Hrs. reserved work hours as need arises
40 Hrs. work per week

Regarding the beneficiary's prior work, copies of "Cash Vouchers" indicate that [redacted] Baptist Church paid the beneficiary 5,000 Philippine Pesos each month from June 2000 to January 2002. The beneficiary's signature appears on the vouchers, indicating that he was in Manila as late as January 13, 2002.

The petitioner has submitted photocopied pages from the beneficiary's passport, including a Form I-94 Departure Record showing that the beneficiary entered the United States on September 4, 2000. The continued presence of the I-94 in the beneficiary's passport suggests that he never left the United States after that date. Certainly the partial copy of the passport shows no subsequent exit or re-entry stamps.

In a subsequent submission, the petitioner has provided a letter dated January 13, 2002, in which Rev. [redacted], Administrative Pastor of [redacted] Church, states that the beneficiary "has filed a leave of absence on September, 2000 for an emergency calling in the United States of America." The letter does not specify when, if ever, the beneficiary returned to the Philippines.

On September 22, 2005, an adjudicator at the Los Angeles District Office interviewed Rev. [redacted] and the beneficiary in order to determine further details of the beneficiary's work. At the interview, Rev. [redacted] and the beneficiary provided copies of recent paychecks issued to the beneficiary; Forms W-2 showing that the petitioner paid the beneficiary $19,200 per year in 2003 and 2004; and the beneficiary's 2004 income tax return, showing $36,602 in wages and identifying the beneficiary's occupation as "clerk." The beneficiary's spouse is identified as a "housewife," indicating that the beneficiary was the sole wage-earner.

A memorandum prepared on the day of the interview contains the following information:

> During the interview, the beneficiary stated that he had not been consecutively working for the petitioning church. He added, that in order to support himself, he has had to seek outside employment. As such, the beneficiary has been employed with Burger King for the past three months; prior to Burger King, he was employed with a Care Home Provider. The beneficiary's 2004 income tax returns confirm that he was employed as a "Clerk."

On November 7, 2005, the director issued a notice of intent to deny, based on the information obtained during the interview. In the notice of intent to deny, the director stated that, during the interview, "the petitioner indicated that the beneficiary was only employed on a part time volunteer basis with the petitioning church." The record contains nothing to support this claim regarding the petitioner's statements during the interview. The petitioner's submission of copies of paychecks and Forms W-2 contradicts the assertion that the beneficiary was a "volunteer." While the weekly schedules submitted earlier indicate part-time employment, there is no evidence that the petitioner labeled the employment "part-time" during the interview itself.

In response to the notice, the petitioner submitted a new weekly schedule, prepared by the beneficiary himself, describing a 52-hour work week from 2000 to 2002. Counsel claimed that the previously submitted

schedule "neglected to include the . . . hours [the beneficiary] spends preparing, studying and counseling. According to Beneficiary, it is understood that ministers have a 24-hour job because 'we are always on call; we never know when our counseling and guidance will be needed.'" The assertion that "ministers . . . are always on call" fails to distinguish between actually performing qualifying religious work, and merely being prepared to perform it. One could hypothetically argue that an alien who offered no actual counseling or guidance for a two-year period should be considered a full-time employee because the alien was ready and willing to provide such services, even though he or she was never actually called upon to do so. Therefore, the rationalization that the beneficiary was "always on call" does not establish the beneficiary's full-time employment in the position. We note that, although counsel claimed to be quoting the beneficiary, counsel identified no source document in the record to show the quotation in its original context.

Furthermore, the unsupported assertion that the beneficiary works a 52-hour week, and is "always on call," contradicts Rev. [redacted] earlier (equally unsupported) assertion that the beneficiary works a 40-hour week, including "10 Hrs. reserved work hours as need arises." If the beneficiary is "always" available "as need arises," there is no justification for arbitrarily limiting this time to ten hours per week. As a result of these inconsistencies, the various figures provided for the beneficiary's work schedule appear to be contrived.

Counsel stated:

> [W]hile many of his duties are not contractually specified as part of his salaried position, Beneficiary is expected by his petitioner to fulfill all tasks in additional areas of ministry as the Lord directs. For example, as an extension of his position, Beneficiary provided spiritual guidance to the residents of Lakewood Gardens, a facility for Alzheimer's and dementia patients. To strengthen his Church service and train in all aspects of his job, Beneficiary provided a few hours of spirituality to the facility's residents and staff. Because they appreciated his service, they offered to pay for his time. This was not the nature of the original relationship.

The beneficiary himself, in a later statement submitted on appeal, expands on this explanation in greater detail. We will discuss that statement in the context of the appeal.

Counsel's reference to the beneficiary's "contractually specified" duties implies the existence of a contract. Because no such document is contained in the record, we cannot determine what it does or does not say. Any argument regarding the beneficiary's "contractually specified" duties has negligible weight if it is not accompanied by a copy of the contract itself, for reference. Furthermore, an arrangement in which the beneficiary "is expected" to perform duties not "contractually specified" calls into question the value of that contract, a chief purpose of which, ostensibly, is to clarify which duties are "expected."

More significant, here, is counsel's stipulation that the beneficiary is a "minister." This is consistent with the beneficiary's March 17, 1996 Certificate of Ordination. Counsel further discusses the possibility that the beneficiary will "one day be appointed Pastor of his petitioning Church." The requirements for an alien seeking classification as a minister are more stringent than those for an alien in a religious occupation. The alien must seek to enter the United States *solely* as a minister. In such an instance, any outside secular

employment is inherently disqualifying. Because the petitioner has never contested the finding that "the beneficiary has been employed at Burger King" because "in order to support himself, he has had to seek outside employment," we must conclude that the beneficiary is unable to support his family (including three children) on his $19,200 annual salary as an assistant pastor.

The director denied the petition on March 2, 2006, essentially repeating the grounds first cited in the notice of intent to deny. The director stated: "the petitioner has failed to provide any corroborating evidence of the beneficiary working as an Associate Pastor." On appeal, counsel states: "Petitioner has submitted sufficient documentation to establish the two-year continuous religious work requirement," and asserts that the director "failed to provide a reasoned analysis on why the submitted evidence did not meet the burden of proof."

In a supplement to the appeal, the petitioner submits a copy of a letter to the beneficiary, jointly signed by three officials of the petitioning church. The letter, dated January 14, 2001, states, in part: "We . . . would like to inform you of your appointment as Associate Pastor effective January 15, 2001, with a salary of $1,600 per month." Minutes of church council meetings, dated January 7, 2001 and March 18, 2001 respectively, both refer to the beneficiary's January 15, 2001 starting date.

The above documents, indicating that the beneficiary became a paid employee of the petitioning church in January 2001, contradict numerous previous submissions that indicated that the beneficiary worked in the Philippines throughout 2001 and began working at the petitioning church in 2002. Reinforcing this contradiction is the submission, on appeal, of a February 5, 2001 letter from Rev. [redacted], indicating that the beneficiary "has been serving our Church in the Philippines . . . up to the present time," and describing the duties that the beneficiary "will" assume at the petitioning church in California. In this same letter, Rev. [redacted] stated that the beneficiary "will be receiving a remuneration of $1,600.00 a month which is more than sufficient to ensure that he will not seek employment outside the ministry."

In a new statement, the beneficiary states that [redacted]s was one of several "hospitals and residential care facilities" that he visited in the course of his work for the petitioner. He states: "Since what I was doing [at [redacted] was not in any way in conflict with my pastoral duty but rather is an extension of our church program, the facility took me in to work with them." If the beneficiary was visiting [redacted] as part of his job with the petitioning church, then he was already paid for those visits as part of his church salary. Therefore, if [redacted]s paid the beneficiary a salary on top of his church salary, then his work at [redacted]s became not "an extension of [the] church program," but outside employment over and above the beneficiary's church work. We note that the record contains nothing from [redacted] to establish the extent or nature of the beneficiary's work there. The beneficiary implies that his efforts there consisted of counseling and visitation, but this assertion is unsubstantiated.

Regarding his other secular work, the beneficiary states:

> I found out that there are necessary evils to survive in the U.S. of A. Necessary evils like credit cards, computers, tools of communications or "cell phones" and a car. . . . These are necessary evils that I cannot do without. Being the sole breadwinner in a family of five, I have to find ways and means to make all ends meet . . . my bills are piling up faster than the

> blink of an eye. . . . I have to find a second job, a necessary evil, hoping that it will not affect my religious work. I worked the night shift at a Burger King store.

The beneficiary asks for "mercy" and "a compassionate spirit" with regard to his financial circumstances. Nevertheless, the law is clear on the point that an alien minister must be "solely" engaged as a minister in order to qualify for classification as a special immigrant religious worker. There is no humanitarian exception to this requirement, and the AAO has no discretion to disregard the law.

The petitioner promised remuneration "which is more than sufficient to ensure that he will not seek employment outside the ministry." Clearly that compensation was not sufficient for the purpose. Forms W-2 and tax returns, some previously submitted and some offered on appeal, show that the beneficiary has consistently relied, to a significant extent, on additional earnings over and above his church salary. Clearly, the beneficiary has not been engaged solely in the vocation of a minister.

The appellate submission includes new materials indicating that the church intends to file a new petition on the beneficiary's behalf. Any such petition would entail its own preceding two-year period, during which the beneficiary must have been solely engaged as a minister. Thus, any new petition would be subject to denial if the beneficiary continued his secular employment at any time in the two years leading up to the new filing.

Apart from the disqualifying circumstance of the beneficiary's secular employment, we note serious credibility issues arising from the petitioner's repeated submission of contradictory claims regarding the beneficiary's past work, especially in 2001. The beneficiary's immigration documents suggest that he has been in the United States since September 2000, and the petitioner has submitted documents alleging that the petitioning church first employed him in January 2001. On the other hand, the petitioner has also asserted that the beneficiary worked in the Philippines throughout 2001, and submitted signed "Cash Voucher" pay receipts from the church in Manila, acknowledging payment in pesos rather than dollars, dated as recently as January 2002. These contradictory submissions compromise the credibility of the petitioner's claims, and the beneficiary's claims as well. 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. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988). 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. *Id.* at 582, 592. Here, neither the petitioner nor the beneficiary has even acknowledged the contradiction, much less attempted to explain how the various documents can be reconciled into a single, credible and coherent narrative. We note that, if the beneficiary left the Philippines in early September 2000, and began working for the petitioner in mid-January 2001, there would remain several intervening months in which the beneficiary would not have been engaged as a minister at either church. Thus, this version of events would entail a disqualifying interruption in the beneficiary's religious work.

The petitioner has disputed the director's finding that the beneficiary's work was part-time, but once again the record contains conflicting versions of the beneficiary's work schedule. Absent credible, first hand documentation from a reliable source (after-the-fact statements from officials of the petitioning church cannot, at this juncture, qualify as reliable), there is no way to determine what the beneficiary's schedule

actually was during the qualifying period. If the beneficiary works only part-time for the church, this would explain why he receives what he acknowledges is not a living wage from the petitioner. An alien who works part-time as a minister, while also pursuing outside secular employment, does not meet the continuous employment requirement. *See Matter of Faith Assembly Church*, 19 I&N Dec. 391, 393 (BIA 1986).

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.