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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

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: MAY 02 2007

EAC 05 037 52018

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:

[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.

Maura Deadrick
for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont 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 of the Assemblies of God denomination. 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 evangelist minister. The director determined that the petitioner had not established: (1) its tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986; (2) that the beneficiary's position qualifies as a religious occupation; (3) that the beneficiary had the requisite two years of continuous work experience as an evangelist minister immediately preceding the filing date of the petition; or (4) its ability to compensate the beneficiary.

On appeal, the petitioner submits a brief from counsel and copies of bank statements.

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).

We shall first address the petitioner's tax-exempt status. 8 C.F.R. § 204.5(m)(3)(i)(A) requires the petitioner to submit documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 (the Code) as it relates to religious organizations.

According to documentation from the Internal Revenue Service (IRS), the petitioner's tax-exempt status derives from classification under section 170(b)(1)(A)(i) of the Code. The director concluded, based on this information, that the petitioner's tax-exempt status derives from a section of the Code other than 501(c)(3).

This finding, however, fails to take into account the structure of the Code. The reference to section 170(b)(1)(A)(i) simply means that the IRS considers the petitioner to be a church – and, therefore, an organization exempt from taxation under section 501(c)(3) of the Code. Confirming this is a copy of an IRS determination letter, submitted on appeal. We hereby withdraw the director's finding regarding the petitioner's tax-exempt status.

The next issue is whether the petitioner seeks to employ the beneficiary in a qualifying capacity. 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.

The petitioner's initial submission included several documents regarding the beneficiary's religious work, but no coherent description of the beneficiary's church duties. The initial submission included copies of these documents:

- A letter from the petitioner's Senior Pastor, [redacted] identifying the beneficiary as "an elder of our Church and volunteer Chaplain."
- A certificate issued by the petitioning church in October 1996, certifying the beneficiary's ordination as a deacon.
- Certificates indicating that the beneficiary completed numerous courses (such as "Heresies and Cults" and "Bible Eschatology") at the petitioning church during the late 1990s.
- An undated certificate from the State of New Jersey Christian Life International Prison Ministries, identifying the beneficiary as an ordained chaplain.
- A March 12, 2003 certificate indicating that the beneficiary completed a three-day course at the Morris Cerullo World Prayer Center School of Prayer and Intercession.
- A "Chaplain" card, with expiration date December 2005, issued by United Chaplains International.

Beyond the above, the petitioner also submitted several untranslated certificates in the Portuguese language. Because the petitioner failed to submit certified translations of these documents, the AAO cannot determine

their content. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, we can afford these materials any documentary weight in this proceeding.

On June 9, 2005, the director issued a request for evidence (RFE), requesting "a daily schedule of the duties performed by the beneficiary" and evidence that such duties relate to traditional religious functions within the petitioner's religious denomination. In response, the petitioner submitted a lengthy list of the beneficiary's duties, including "Baptize all the new members," "Take full responsibilities of the Church when the Senior Pastor [is] traveling," and "Prepare the biblical messages for Thursday and Sunday service." These duties were said to occupy 30½ hours per week. We note that the petitioner did not explain why a thirty-hour work week should be considered "full-time," a term the petitioner has frequently used.

The petitioner submitted copies of several additional certificates, such as a "Certificate of Ordination" from [redacted] indicating that the beneficiary "has accepted God's commission . . . as a member of [the] Board of Governors." The certificate is dated 2003. Pastor [redacted], in several letters, described the beneficiary as an ordained minister in "full-time vocational ministry," and sometimes referred to the beneficiary with the title "Reverend." The beneficiary himself provided a description of his duties, and identified himself as "Reverend" on that document.

A November 2000 diploma from the College of Theological Education of the State of Rio de Janeiro indicates that the beneficiary completed a basic theology course of study between 1998 and 2000. An accompanying transcript indicates that all of the beneficiary's courses were taught by either [redacted] or [redacted] Although the diploma indicates that the college is located in Brazil, other materials indicate that [redacted] and the beneficiary were both in the United States in 1998-2000.

The director denied the petition on March 13, 2006, in part because the petitioner had submitted no evidence to show that the petitioning church had ever employed a paid individual in the beneficiary's position. The director asserted that uncompensated volunteer positions are not religious occupations.

On appeal, counsel does not contest the director's finding, above. Rather, counsel effectively deems that finding to be incomplete because, in finding that the beneficiary does not work in a religious occupation, the director failed to address the petitioner's previously stated claim that the beneficiary is a minister. Counsel asserts on appeal that the petitioner need not establish that the beneficiary's duties constitute a religious occupation, because the beneficiary "will be serving his church as a minister." This is consistent with Pastor [redacted]'s previous characterization of the beneficiary as a "minister," and the use by both Pastor [redacted] and the beneficiary himself of the title "Reverend" before the beneficiary's name.

We agree with counsel that the director erred by failing to consider the petitioner's claim that the beneficiary is a minister. We also find that the petitioner does not contest the director's finding that the beneficiary does not engage, or seek to engage, in a religious occupation. Several of counsel's arguments, such as the assertion that the petitioner need not establish any salary, hinge on the assumption that the beneficiary does not work in a religious occupation. (We do not necessarily endorse the merits of these arguments – here, it will suffice to point out that, by counsel's own logic, the arguments do not operate if the beneficiary is, in fact, in a religious occupation.) We shall therefore proceed based on the petitioner's assertion that the beneficiary is a minister.

The lack of a finding by the director in this regard is not fatal to the director's decision because, as we shall show, other factors prevent the approval of the petition, and it would serve no useful purpose to return this matter to the director for a formal finding on the issue of whether or not the beneficiary is a minister.

The next issue relates to the beneficiary's past 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 19, 2004. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an evangelist minister throughout the two years immediately prior to that date.

The petitioner's initial submission included copies of various documents (discussed in greater depth elsewhere in this decision), but nothing to specifically indicate that the beneficiary was a full-time, paid church employee, rather than an unpaid, part-time volunteer, during the two-year qualifying period.

The petitioner's initial submission also included a copy of the beneficiary's 2003 IRS Form 1040 income tax return. The beneficiary's only reported income that year was $12,477 in "Business income." On Schedule C, Profit or Loss From Business, the beneficiary indicated that he earned this $12,477 from a "home repairs" business. The home repairs company's IRS Form 1120 corporate income tax return identifies the beneficiary as the company's sole officer. Under "Percent of time devoted to business," the beneficiary wrote "100.0%." The company did not report any salaries or wages, and the only recipient of officer compensation was the beneficiary himself. The tax return did not mention religious work or any earnings therefrom.

In the RFE, the director instructed the petitioner to submit additional evidence regarding the beneficiary's religious work during the two-year qualifying period. Among other things, the director requested copies of IRS Form W-2 Wage and Tax Statements issued to the beneficiary for 2002 through 2004.

The petitioner's response includes several new letters from Pastor [redacted], all dated within days of each other in late August, 2005. In one letter, Pastor [redacted] asserted that the beneficiary "has been a full-time vocational evangelist and minister at [the petitioning] church since 1994." In a second letter, Pastor [redacted] stated that the beneficiary has worked at the petitioning church "as an [*sic*] volunteer since 1997." In a third letter, Pastor [redacted] stated that the beneficiary "has been employed as full-time since August of 2002," and referred to the beneficiary's salary in the future tense, with no reference to past payments. Pastor [redacted] does not explain these seemingly contradictory assertions.

The petitioner submitted a copy of the beneficiary's 2004 income tax return. Like the 2003 return, the 2004 return identifies the beneficiary's home repair business as the sole source of all of the beneficiary's reported income for the year. On both the 2003 and 2004 returns, under "Occupation," the beneficiary is listed as "Self-employed." The beneficiary's spouse (who holds many of the same religious training certificates that the beneficiary holds) is listed as a "Housewife."

Pastor [redacted] stated that the beneficiary "did not receive a salary during his years of service as an Evangelist Minister at [the petitioning church], therefore no W-2's were issued. [The beneficiary] receives offerings from the congregation when he preaches, teaches or conducts seminars." The record contains no documentary evidence to establish the amount of these offerings, or to confirm that he received them at all.

The director, in denying the petition, stated:

> [Given t]he inconsistencies in the filing regarding the beneficiary's work experience, evidence the beneficiary is engaged in other secular employment, and no form W-2's were provided for 2003 and 2004, the Service is unable to determine that the beneficiary has been engaged in any particular vocation or occupation, religious or otherwise, for the two year period and has failed to establish that the beneficiary had at least two years of qualifying experience in a religious occupation from November 19, 2002 to November 19, 2004.

On appeal, counsel does not deny the "'inconsistencies' in the letters submitted by Rev. [redacted] [sic]," but counsel argues that these discrepancies are unimportant because "[t]he beneficiary's exact job title and role with the church in the years prior to 2002 is clearly not relevant to this petition, as it is outside of the 2-year period" immediately preceding the filing date. This is not a satisfactory answer. 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, Pastor [redacted] has cast doubt by stating, in turn, that that the beneficiary has worked for the petitioner "since 1994," "since 1997" and "since August of 2002." Also, the beneficiary supposedly earned academic credit, under Pastor [redacted]'s instruction, in Rio de Janeiro in 1998-2000, while both individuals were working at the petitioning church in New Jersey. Without firm documentary evidence that Pastor [redacted] is on the faculty of the institution in Brazil, authorized to teach courses while based in New Jersey, the academic documents raise further questions. Because many of the petitioner's key claims rest largely or solely on Pastor [redacted]'s unsupported assertions, obvious discrepancies in those assertions are of major concern because they cast doubt on the reliability and accuracy of the claims of the petitioner's key witness.

Counsel asserts that the lack of past salary payments is irrelevant because "8 C.F.R. § 204.5(m)(4) merely requires documentation which 'indicate[s] that the alien will not be *solely* dependent on supplemental employment or solicitation of funds for support" (emphasis added)." We cannot agree with this assessment. As we have already observed, Pastor [redacted] – who is essentially the only witness in this proceeding – has repeatedly called the beneficiary a "minister" who is ordained and holds the title "Reverend." Counsel, too, emphasizes that the beneficiary "will be serving his church as a minister." The statute and regulations, including 8 C.F.R. § 204.5(m)(4) cited by counsel, require that an alien minister must be *solely* engaged as a minister. Case law supports and reinforces this position. *See*, for instance, *Matter of Faith Assembly Church*, 19 I&N Dec. 391, 393 (BIA 1986), in which the Board of Immigration Appeals found that an alien's secular job disqualified him for classification as a special immigrant minister. In the present proceeding, the

petitioner readily admits that the beneficiary has supported himself through his construction business. While there is much that is vague and ambiguous in the record of proceedings, one of the few conclusions we can draw with utter certainty is that the beneficiary was not *continuously* engaged in the vocation of a minister throughout the two-year qualifying period.

Because the statute and regulations plainly indicate that a special immigrant minister must be engaged solely as a minister, the present petition cannot be approved, and no future petition on the beneficiary's behalf can be properly approved until such time as the beneficiary's religious work has been his sole source of earned income for at least two years.

ABILITY TO PAY

8 C.F.R. § 204.5(m)(4) requires the petitioner to state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration). 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's initial submission did not establish the terms of the job offer (including compensation) or establish the petitioner's ability to meet those terms. The initial submission also indicated that the beneficiary supported himself through a home repair business. In the RFE, the director instructed the petitioner to submit evidence of its ability to pay the beneficiary, and documentation to show that the beneficiary would not be solely dependent on supplemental employment or solicitation of funds for support.

In response to the RFE, Pastor [redacted] stated that the beneficiary's "salary will be comprised of a church stipend and offerings received for his ministry. [The beneficiary] also owns a small independent construction company that will afford his family financial support." Pastor [redacted] did not specify the amount of the claimed salary. Also, judging from the beneficiary's tax filings, the beneficiary does not merely *own* the "small independent construction company" as a passive investor; he appears to be the only person who draws any income from that activity. The beneficiary's tax returns indicate that he devotes "100.0%" of his time to his construction business

In other letters, Pastor [redacted] identified himself as "the only paid staff minister" and stated that the petitioning church "has many volunteers that serve our church," but he did not specify whether the church employs any paid religious workers in non-ministerial capacities.

The petitioner submitted copies of bank statements, which do not afford a complete picture of the petitioner's income, expenses, assets or liabilities. Pastor [redacted] indicated that the beneficiary receives "offerings" of unspecified size. He did not indicate that this ill-defined arrangement would change if the petition were to be approved. Pastor [redacted] did not state that the church would ever pay the beneficiary a salary, let alone specify the amount thereof. In another letter, Pastor [redacted] indicated that the beneficiary "is not solely dependent on these offerings for support" because he "is self-employed and the owner of a small construction company that acts as the primary support of the family."

In the denial notice, the director concluded: "The record does not establish that the religious organization had the ability to pay the offered wage at the time of filing or that the beneficiary is not dependent on supplemental employment for support." The only readily evident weakness in the wording of this finding is that the petitioner never specified any "offered wage" in the first place, which is an additional deficiency beyond failure to establish the petitioner's ability to pay that wage.

Counsel, on appeal, argues that the director erred in the above finding, because "the record reflects that the beneficiary will receive a stipend and offerings from the congregation rather than a salary." 8 C.F.R. §§ 204.5(g)(2) and (m)(4) require the prospective employer to establish the means of the beneficiary's support. The petitioning church cannot meet or evade this responsibility simply by making the vague and unsupported claim that the congregation will provide offerings to the beneficiary.

Counsel states: "the religious organization has not offered to pay a wage to the beneficiary beyond a stipend. Therefore, it is illogical to deny the instant petition on the ground that the record does not establish that the religious organization has the ability to pay 'the offered wage.'" Counsel, here, seems to argue that because the "stipend" is so insignificant, the petitioner need not establish its ability to pay that stipend. This argument is considerably more "illogical" than the director's finding that the petitioner must adhere to published regulations to establish eligibility.

Counsel alleges that there is "uncontested evidence in this case . . . that the beneficiary receives a stipend from the church." There is nothing of the sort. The "uncontested evidence" consists of uncorroborated claims from a witness who cannot decide whether the beneficiary started working for the church in 1994 or 2002. Furthermore, credibility issues aside, Pastor [redacted] did not state that "the beneficiary receives a stipend from the church." He stated that the church itself pays only Pastor [redacted] and that the congregation contributes offerings directly to the beneficiary.

Counsel argues that 8 C.F.R. § 204.5(m)(4) "does not *require* that payment or remuneration be provided to a minister" (counsel's emphasis). The regulation is worded flexibly for the benefit of religious denominations that provide their clergy with direct material support, such as room and board, in lieu of a cash wage or salary. It does not exempt religious organizations from having to fully support their clergy. The exact wording of the cited regulation requires the petitioner to "state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration)." Here, the beneficiary will clearly not "be solely carrying on the vocation of a minister." Counsel, in the same paragraph, admits as much by stating that "the beneficiary has an additional source of income – a business in which he can engage outside of his full-time religious responsibilities." In the very next sentence, counsel states "there is no legal

basis for denying this petition," when in fact counsel has stipulated to disqualifying circumstances. Counsel later goes on to concede that "the petitioning religious organization in this case does not have the resources to pay a full salary to more than one pastor"; previous submissions identify that one fully-paid pastor as [redacted]

Counsel states that, were we to require that the petitioner pay a salary to all its ministers, "[t]he imposition of such a requirement in this case would constitute an infringement on the First Amendment rights of" the petitioning church. While the AAO lacks jurisdiction to render definitive findings on constitutional law, we observe here that no government agency has sought to force the petitioner to pay its workers. Rather, the question is whether or not the petitioner's freely chosen personnel practices are compatible with eligibility for a secular, government benefit. The determination as to eligibility for benefits under the immigration laws of the United States rests within Citizenship and Immigration Services. Authority over such determinations lies not with any ecclesiastical body but with the secular authorities of the United States. *See Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978). In short, the church dictates church policy, and secular government authorities dictate immigration policy.

We concur with the director's finding that the petitioner has not established its ability to compensate the beneficiary. Furthermore, the petitioner has clearly not presented a qualifying job offer under 8 C.F.R. § 204.5(m)(4), because the beneficiary has not and will not be solely carrying on the vocation of a minister.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely 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.