identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

U.S. Citizenship and Immigration Services

PUBLIC COPY

C1

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 06 2007

WAC 06 096 52406

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.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center,[1] 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 Southern Baptist 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 minister. The director determined that the petitioner had not established that the beneficiary had the requisite credentials or two years of continuous work experience as a minister immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary.

On appeal, the petitioner submits a brief and new exhibits, including declarations and amended schedules.

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 . . .; 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).

8 C.F.R. § 204.5(m)(3)(ii)(B) requires the petitioner to show that, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties.

The beneficiary's résumé indicates that he received his "License to Minister" on October 26, 2003, and was ordained on June 27, 2004. The petitioner's initial submission did not contain any documentary evidence

---

[1] 8 C.F.R. § 103.2(a)(6) states that, except where otherwise specified, a petition should be filed with the Service Center with jurisdiction over the place of residence of the petitioner. 8 C.F.R. § 204.5(b) requires that Form I-360 must be filed with the Service Center having jurisdiction over the intended place of employment, unless otherwise designated. At the time this petition was filed in 2006, there was no alternative designation in effect. Pursuant to 8 C.F.R. § 103.2(a)(1), every petition must be filed in accordance with the instructions on the form, including where the petition should be filed. The petitioner has not identified any intended place of employment within the jurisdiction of the California Service Center. Rather, the record consistently places the intended place of employment in Texas, within the jurisdiction of the Texas Service Center. At the same time, we note that, effective July 30, 2007, all special immigrant religious worker petitions, regardless of the location of the intending employer, are to be filed with the California Service Center. *See* http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=2e39b6f2cae63110VgnVCM1000004718190aRCRD&vgnextchannel=fe529c7755cb9010VgnVCM10000045f3d6a1RCRD, visited August 14, 2007.

regarding the beneficiary's claimed 2003 licensure, but it did include a copy of a Certificate of Ordination, issued by the Ordaining Council at the petitioning church to the beneficiary on June 27, 2004.

An undated document on the petitioner's letterhead discusses the "Ordination Standards" and reads, in part: "A license to preach should be issued by the church to those who desire to prepare for the gospel ministry. . . . Similarly a church may license its pastor as a preliminary step to ordination at a later date. A license usually recognizes a man's call to preach and serves [as] a letter of recommendation." This document indicates that, by the petitioner's own standards, the holder of a license to preach is not a "minister" as such; at best, such an individual is seen as a candidate for the ministry.

The director denied the petition on January 11, 2007, in part because "the petitioner has failed to establish that the beneficiary is qualified as a minister of religion." The director cited *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978), in which the Board of Immigration Appeals ruled that the issuance of a "certification of ordination" is not necessarily conclusive proof that the bearer of that document qualifies as a minister for immigration purposes. *Id.* at 610. The director asserted that *Rhee* applies here because "[t]he petitioner has not shown that the beneficiary has any formal theological training or education."

On appeal, counsel argues that the petitioner had previously submitted "the ordination standards of the church." The ordination standards do not indicate that there is any specific requirement for seminary education or other special training. While *Rhee* cautions against the issuance of empty certificates of ordination that exist only to help aliens to obtain immigration benefits, we cannot and do not interpret *Rhee* to mean that every religious denomination *must* require "formal theological training or education." Absent evidence that the Southern Baptist Convention has imposed strict requirements for ordination, the director's general reliance on *Rhee* is not sufficient to undermine or discredit the beneficiary's ordination certificate.

For the reasons discussed above, we withdraw the director's finding regarding the beneficiary's ordination. We do not stipulate, thereby, that the beneficiary has actually been performing the duties of a minister. At the same time, because the petitioner has claimed, and reaffirmed on appeal, that the beneficiary is an ordained minister, the petitioner has stipulated to additional statutory and regulatory conditions that apply only to ministers, over and above the requirements applicable to all religious workers. These conditions will factor into the discussion that follows.

The remaining issues overlap to a certain extent. 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 February 6, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a minister throughout the two years immediately prior to that date. Pursuant to 8 C.F.R. § 204.5(m)(4), the intending employer must state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration).

In a letter accompanying the initial filing, [redacted], Senior Pastor of the petitioning church, stated that the beneficiary "has been involved with our church since 2003." [redacted] did not, at that time, elaborate upon the nature or extent of the beneficiary's involvement.

On his own résumé, the beneficiary listed "Ministry Experience" going back to 1992, most recently as "Outreach and Evangelism Minister" at the petitioning church since 2003. The beneficiary stated that he and his spouse "moved to [the petitioning] Church[,] w[h]ere we are presently working assisting the Senior Pastor as an Evangelistic and music minister." The résumé has a separate section, "Secular Employment," indicating that the beneficiary has worked as a "Special Education Paraprofessional" at the Socorro Independent School District since 2000.

A photocopied table, showing the petitioner's monthly expenses from January 2004 through July 2005, indicates that the petitioner paid $1,790 in salaries each month from January through October 2004, and no salaries in subsequent months. Other materials, however, show salary payments after October 2004. The petitioner does not explain this apparent discrepancy.

Documentation in the initial submission shows that the beneficiary is one of a small number of authorized church workers who have activated and deactivated the petitioner's security system. The earliest entry under the beneficiary's name is dated June 28, 2003.

Copies of canceled checks show that the petitioner generally paid the beneficiary $375 a month from June 2003 through September 2004; $430 in October 2004; and $550 per month thereafter. Some checks, such as June 2003 and January 2004, are marked "music."

Detailed work schedules for 2004 and 2005 show each day marked with a "P" or a "V"; a corresponding legend indicates that "P" stands for "Paid" while "V" stands for "Volunteered." In a typical month, the beneficiary was "Paid" for about the first half of the month, and "Volunteered" for the remainder of the month. Although the schedules contain a fair amount of detail, their accuracy is questionable. The February 2004 schedule, for instance, indicates that the first day of the month was a Tuesday; in fact, February 1, 2004 fell on a Sunday. That same month's schedule also describes the beneficiary's activities on Wednesday, February 30, but February never has a 30th day. In 2004, a leap year, the month ended on Sunday the 29th.

A notation at the bottom of each month's schedule identifies the amount and check number of each payment made to the beneficiary. The notation on the schedule for March 2005 (which shows 30 days instead of 31) reads: "Checks # [redacted] $700.00." The check from March 2005 is actually check # [redacted], for $550. The notation for April 2005 (which shows 31 days instead of 30) reads: "Checks # [redacted] $550." Check # [redacted] is, in fact, dated April 2005, in the amount of $550. In March 2005, the petitioner had not yet issued check # [redacted] and therefore the petitioner cannot possibly have had a reliable record of having issued that check to the beneficiary during that month. Because of these discrepancies, it is highly unlikely that the petitioner compiled these schedules one month at a time during the qualifying period. It appears, instead, that the schedules were prepared at some later time.

The petitioner submitted copies of the beneficiary's income tax returns for 2003 and 2004. The 2003 income tax return was stamped "Received" by the Internal Revenue Service (IRS) on October 8, 2004. Accompanying these forms are various schedules, Form 1099-MISC Miscellaneous Income statements, and Form W-2 Wage and Tax Statements.

The tax documents show that, in 2003, the petitioning church paid the beneficiary $2,625.00 in nonemployee compensation, and [redacted] (obviously the Socorro Independent School District mentioned on the beneficiary's résumé) paid the beneficiary $15,448.02 in wages. The beneficiary reported the $2,625 as "business income" and, on Schedule C-EZ, identified his "Principal business or profession" as "Musician."

In 2004, [redacted] paid the beneficiary $14,122.63, and the petitioner paid the beneficiary $5,055.00. The beneficiary again stated that he earned the $5,055 as a "Musician" on Schedule C-EZ, and on the main tax return itself, the beneficiary identified his occupation as "Paraprofessional/Musician."

In denying the petition, the director noted the inaccuracies on the work schedules, such as references to nonexistent dates such as February 30 and April 31. The director also observed that, according to these schedules, the beneficiary supposedly performed a substantial amount of work for the petitioner as an unpaid volunteer rather than as a paid employee. The director asserted that unpaid volunteer work is not qualifying employment experience. The director also observed that the beneficiary, during the two-year qualifying period, derived most of his income from secular employment, and identified himself as a "musician" in relation to his income from the petitioning church. The director concluded that the beneficiary did not work as a minister during the qualifying period, and "is and will be dependent on supplemental employment for support."

On appeal, counsel states: "the Beneficiary has worked continuously for at least two-years immediately pr[e]ceding the filing of the petition, namely for the years 2004 and 2005, as set forth in the enclosed amended work schedule." The "amended work schedule" has been modified from the version submitted previously. On the "amended" version, the dates in 2004 fall on the correct days of the week, and each month now contains the proper number of days. These revisions do not explain why the original schedules contained those errors. 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, 591 (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, 591-92. "Amended" versions of clearly flawed documents are not independent objective evidence.

Also, the petitioner has "amended" the number of hours the beneficiary purportedly worked. For example, the first version of the February 2004 schedule indicated that the beneficiary worked 148 hours during the 30-day month. The "amended" schedule for the same month shortens the month to 29 days and shows the month beginning on a Sunday rather than on a Tuesday, but it also now shows that the beneficiary worked 161 hours. Clearly, the first version of the schedule cannot possibly be accurate, but this does not compel the conclusion that the second version is, therefore, more accurate than the first.

The petitioner submits a new declaration from [redacted] who states:

> I wish to confirm that due to an administrative oversight on our part, there were some errors on the schedule submitted on behalf of [the beneficiary]. Specifically, while creating the timeline to depict his volunteer work and paid work, we inadvertently used a wrong calendar and did not pay close attention to the assignment of hours to specific days of the year.

While any calendar that showed 30 days in February would indeed be "a wrong calendar," Pastor Lopez's affidavit raises more questions than it answers. He appears to confirm that the original schedules were prepared so long after the fact that the unnamed preparer had to rely on a "calendar." The petitioner has never specified what day-by-day records actually exist of the beneficiary's claimed work. Without such records, any attempt to make two years' worth of daily listings of tasks performed and hours worked is suspect.

With respect to the revision of the schedules, we note that the "amended" schedules still show that the beneficiary received check #[redacted] in the amount of $700 in March 2005, and check #[redacted] in the amount of $550 the next month. Therefore, demonstrable error still persists even in the "amended" schedules. We note that the director, in denying the petition, did not mention the duplication of check #[redacted] It therefore appears that the petitioner has "amended" the schedules for the express purpose of addressing the director's stated objections. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Commr. 1998). The net effect of the petitioner's submission of the "amended" schedules is to diminish, rather than reinforce, the credibility of the petitioner's claims in this proceeding.

The paychecks issued to the beneficiary are not consistent with full-time employment at the legal minimum wage. The petitioner has attempted to address this by claiming that the beneficiary worked full-time, but often as an unpaid volunteer. The only evidence of this arrangement, however, consists of the schedules which, as we have shown, are demonstrably unreliable. Considering the beneficiary's documented secular employment with a public school district, the simplest explanation for the beneficiary's low compensation from the church is that he worked for the church only part-time.

We note that the petitioner's own "ordination standards" (which counsel, on appeal, has asked us to consult) draw significant distinctions between a "license to preach" and ordination. The record shows that the petitioner ordained the beneficiary less than two years before the petition's filing date. Even if the beneficiary began performing exclusively ministerial duties on the day of his ordination, therefore, he cannot have been performing the duties of ordained clergy throughout the two-year qualifying period.

Regarding the "musician" annotation on the beneficiary's tax returns, the petitioner submits a sworn declaration from the beneficiary, who states:

> On October 8, 2004, I went to the local IRS office. . . . There, I sought assistance, in order to complete the tax forms to file my income tax return for 2003. . . . I wanted to make sure I did not make any mistakes or have any problems in the future.

> The IRS employee asked me what type of work I did. I explained that I was a Baptist Minister and gave her a detailed explanation of my religious duties as a minister. . . .
>
> The IRS employee looked through a book, searching for a classification of my job. She instructed me to fill out the 1040 form and the Net Profit Business (Schedule C), using the classification of Musician in Line A. . . .
>
> The following year, I completed the forms on my own, since the circumstances were the same, I just followed the format of the previous year.

Counsel, in the appellate brief, repeats the beneficiary's claims and states: "The copy of Beneficiary's 2003 tax returns . . . shows a date stamp of October 8, 2004, confirming the Beneficiary's statement." The date stamp confirms nothing except the date the beneficiary filed the tax return. It does not confirm that an unidentified IRS employee arbitrarily assigned the title "musician" to the beneficiary's occupation. Even if an IRS employee did instruct the beneficiary to call himself a "musician," the date stamp does not confirm that the beneficiary described himself as a minister to the IRS employee. The beneficiary's declaration, sworn or otherwise, does not meet the *Ho* test of independent, objective evidence showing where the truth lies.

Furthermore, the beneficiary's claimed encounter with an IRS employee can only account for the annotations on the tax return. It cannot explain or account for the notations on the beneficiary's paychecks from the petitioner. A number of these checks are marked "music"; none are marked "minister," "pastor," or comparable terms. The most reliable *contemporaneous* evidence consistently indicates that both the petitioner and the beneficiary considered the beneficiary to be a "musician" during the qualifying period, notwithstanding rationalizations and explanations that surfaced only after the beneficiary sought immigration benefits.

Whatever the nature of the beneficiary's work for the petitioning church, the record shows that the beneficiary engaged in secular employment as a paraprofessional for a public school district during the two-year qualifying period. An alien seeking classification as a special immigrant minister must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought, and must intend to be engaged solely in the work of a minister of religion in the United States. *See Matter of Faith Assembly Church*, 19 I&N 391, 393 (Commr. 1986). Even if this were the only issue, the beneficiary's documented secular employment suffices to disqualify him, and compels denial of the petition. The record contains no indication that the beneficiary will cease to rely on this supplemental employment, and therefore the petitioner has not set forth a qualifying job offer in conformity with 8 C.F.R. § 204.5(m)(4). The beneficiary has not been, and apparently will not be, solely engaged in 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.

ORDER: The appeal is dismissed.