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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAY 20 2008

WAC 07 182 54813

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 (AAO) 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 assistant pastor of the petitioner's Spanish-language congregation. The director determined that the petitioner had not established that the beneficiary had the requisite 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 from counsel and several new letters and other exhibits.

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).

The first issue we will consider 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 May 31, 2007. 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.

In an undated job offer letter accompanying the initial submission, [redacted], Senior Pastor of the petitioning church, stated that the beneficiary's "duties will include preaching, pastoral ministry, teaching Sunday School, visiting the sick, performing marriage ceremonies and leading funeral services." A similar list of duties appears in a May 25, 2007 letter from [redacted], the petitioner's Director of Administration.

[redacted] also stated that the beneficiary "was ordained as a Pastor by the [petitioner] on April 22, 2007." A Certificate of Ordination reproduced in the record confirms this ordination date. The record indicates that the beneficiary has been a member of the petitioning church since January 2003. There is no evidence that any church authority ordained the beneficiary prior to 2007.

The beneficiary's résumé, submitted with the initial filing, listed various religious and secular positions the petitioner has held since 1990. The following entries pertain to the 2005-2007 qualifying period:

> **Discipleship and Faith Formation Director** since 2005
> Material writing. Discipleship and Faith Formation ministry restructuring. Engaged Couples and Young Couples Class. Preaching and Prayer meeting leader.
>
> **Church Planting Leader** since Nov 2005
> Visiting, prayer meeting leader, preaching in Sunday Services
>
> **Pastor – Hispanic Ministry** since Jan 2007
> Planning and organization, visiting, counseling, prayer meeting leader, preaching in Sunday Services

(Emphasis in original.) All the entries shown above relate to work performed at the petitioning church. The résumé also indicated that the beneficiary had served as a "Local Coordinator for the Latin Outreach of the DC-Festival with [redacted]," "Admissions Director" and "Biblical Subjects Professor" at the CanZion Institute, and "President and Founder of the NorthStar Hispanic Youth Association." The beneficiary did not specify when he performed these duties, whether he was still performing them, or how much time these duties occupied on a weekly basis. Subsequent submissions indicate that the beneficiary worked with the NorthStar Hispanic Youth Association as an unpaid volunteer. Because the beneficiary's work with the association was not employment as such, we cannot give it further consideration with respect to his employment experience. *See Matter of Varughese*, 17 I&N Dec. 399, 402 (BIA 1980), in which the Board of Immigration Appeals found that an alien's "voluntary" work, "without compensation," did not amount to qualifying experience.

The petitioner has stated that it pays the beneficiary $15,600 per year. Photocopied pay stubs from 2007 are consistent with this amount, showing that the petitioner pays the beneficiary $650.00 (net, before taxes) twice a month. For previous years, the petitioner submitted copies of Internal Revenue Service (IRS) Form W-2 Wage and Tax Statements, showing that the petitioner paid the beneficiary $25,400 in 2004, $2,772.00 in 2005 and $12,272.50 in 2006.

On September 26, 2007, the director issued a request for evidence (RFE), instructing the petitioner to submit copies of the beneficiary's federal income tax returns for 2004, 2005 and 2006; an explanation for the significant variations in the beneficiary's annual pay during those years; and documented evidence of the beneficiary's work history during the 2005-2007 qualifying period. The director asked "how the beneficiary was able to support himself and his family without relying on supplemental income in the year 2005," when the petitioner paid him less than $3,000 that year.

In response, the petitioner submitted an unsigned document, indicating that the petitioner worked an estimated 25 hours per week for the petitioner throughout the two-year qualifying period; "approximately 35-40 hours a week" for the [redacted] Festival from May 2005 to October 2005; and an estimated 10 hours per week, divided evenly between "Bible Teaching" and work in the "Admission Office," at CanZion Institute from May 2005 to 2006. The beneficiary's claimed duties with the [redacted] Festival included "Communication with all the Hispanic Churches in the DC, MD [and] VA [area]," "Hispanic Churches Data Base Manufacture," and "Orientation to churches in how to follow up and educate new believers."

The petitioner submitted copies of the beneficiary's pay stubs from the petitioner dated between June 15, 2005 and May 31, 2007. The first three pay stubs from 2005 contain the following information:

Date	Hours	This period	Year to date
06/15/2005	56.00	$462.00	$462.00
06/30/2005	40.00	330.00	792.00
10/15/2005	125.00	1,031.25	1,823.25

The year-to-date figures indicate that the petitioner did not pay the beneficiary at all in July, August or September of 2005. Pay statements from early 2006 indicate that the beneficiary worked 45 hours for the petitioner in January; 25 hours in February; and 60 hours in March. These figures contradict the claim that the beneficiary consistently worked at least 25 hours per week for the petitioner.

Beginning in April 2006, the petitioner switched from paying the beneficiary an $8.25 hourly wage to a semimonthly salary of $650.00. Because the beneficiary's pay was no longer calculated on an hourly basis, subsequent pay stubs do not show hours worked. For the last 13 months of the qualifying period, the record shows an uninterrupted series of payments from the petitioner to the beneficiary. The year-to-date totals shown on the last pay stub of each year match the amounts shown on the corresponding IRS Forms W-2.

Monthly pay receipts from [redacted] Evangelistic Association indicate that the beneficiary earned $8,336 there between May and October 2005, working between 45.5 and 131.5 hours per month for a total of 517.5 hours over six months. Dividing that total by 26 yields an average of less than 20 hours per week. If we assume, for the sake of argument, that the beneficiary worked there from the last week of May to the first week of October, about 19 weeks instead of 26, the hours worked average to about 27 hours per week. Either way, this total does not approach the "approximately 35-40 hours a week" claimed by the petitioner. An IRS Form W-2 indicates that CanZion Institute of Music paid the beneficiary $15,514.01 in 2006, although pay stubs from "Instituto CanZion," account for only $14,480 of that total. Those pay stubs do not show the beneficiary's hours worked.

Copies of the beneficiary's tax returns, with IRS Forms W-2, largely agree with the pay stubs described above (except where noted above). An IRS Form 1099-MISC Miscellaneous Income statement indicates that CanZion Institute of Music paid the beneficiary $5,050 in "Nonemployee Compensation" in 2005; there are no corresponding pay stubs or other documentation to clarify the basis for this compensation. From all sources, the beneficiary's total individual income was $25,400.00 in 2004, $16,158.00 in 2005 and $28,286.51 in 2006. Supplementing the beneficiary's income, IRS Forms W-2 also indicate that the Baptist

World Alliance paid the beneficiary's spouse $4,500 in 2004, $28,080 in 2005 and $31,203.14 in 2006 (although, for reasons unexplained, her occupation is stated as "Homemaker" on the 2004-2006 tax returns).

The director denied the petition on January 25, 2008, based in part on the finding that the petitioner had not shown that the beneficiary continuously performed the duties of a minister throughout the qualifying period. The director found that the beneficiary worked for the petitioner only part-time, and that his duties for other employers were not those of a minister. The director also observed that the beneficiary was ordained on April 22, 2007, less than six weeks before the petition was filed, and concluded that the beneficiary was not qualified to work as a minister during most of the 2005-2007 qualifying period.

On appeal, counsel argues that "beneficiary performed ministerial duties on a full-time basis" and "was authorized and qualified to serve as an Assistant Pastor in the employ of Petitioner and that he in fact did perform ministerial service during the period in question."

Counsel, on appeal, observes that "the governing regulations themselves do not require a certificate of ordination." The regulation at 8 C.F.R. § 204.5(m)(3)(ii)(B), which counsel quotes on appeal, requires a showing 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. In appropriate cases, the certificate of ordination or authorization may be requested." The regulations require proof of "authorization"; the regulation stops short of requiring "ordination" because not all religious denominations require their clergy to be ordained. The question, then, is what the petitioner requires as the minimum qualification to be authorized to perform the duties of clergy.

asserts on appeal: "In Baptist churches, ordination is a local church matter offering a pastor no special designation in the congregation whatever. Any layperson can serve as pastor. . . . Ordination is merely the congregation's recognition of special giftedness for ministry, not a prerequisite for pastoral duties." [redacted] Director of Language Ministries at the NorthStar Church Network affirms that "ordination is not a prerequisite for service as pastor in any of our member churches." [redacted], President of the John Leland Center for Theological Studies (where the beneficiary has been a student), agrees that "it is possible to begin serving as a minister before one is ordained" in the petitioner's denomination.

The available information supports the finding that the beneficiary, while not an ordained minister at the time, was authorized to perform the functions of clergy at the outset of the two-year qualifying period. The AAO withdraws the director's finding that the beneficiary was not an authorized minister throughout the qualifying period. There remain, however, other obstacles to approval of the petition.

The director's finding regarding the beneficiary's past work did not revolve solely around the issue of authorization. The director also found that the beneficiary's ministerial experience was not full-time.

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 (Sept. 19, 1990).

In a 1980 decision, the Board of Immigration Appeals held that part-time ministerial work is not continuous for the purposes of special immigrant classification. *See Matter of Varughese* at 402. 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).

In line with case law 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. We note that the Ninth Circuit Court of Appeals, within whose jurisdiction the director rendered the denial decision, has upheld the AAO's interpretation of the two-year experience requirement. *See Hawaii Saeronam Presbyterian Church v. Ziglar*, 2007 WL 1747133 (9th Cir., June 14, 2007).

While the petitioner has issued differing estimates regarding the beneficiary's daily schedule, the petitioner has consistently stated that the beneficiary worked part-time for the petitioner throughout the qualifying period, and the petitioner did not pay the beneficiary at all between July and September 2005.

The beneficiary worked for other employers during the qualifying period, but qualifying experience must be in the capacity of a minister. The AAO has found that "special immigrant classification . . . requires the minister to have been and intend to be engaged solely as a minister of a religious denomination." *Matter of Faith Assembly Church* at 393. If any of the beneficiary's employment was not in the capacity of a minister, then he was not engaged solely as a minister and the experience is non-qualifying.

The regulation at 8 C.F.R. § 204.5(m)(2) provides this definition of the term "minister":

> *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.

In keeping with the regulatory definition of the term, it cannot suffice simply for the beneficiary to have worked for a religious organization at a time when his denomination considered him to be a minister. Such work does not necessarily have a reasonable connection to the religious calling of the minister. The beneficiary must have been engaged continuously not just in religious duties, but in ministerial functions.

The beneficiary stated that his duties at the CanZion Institute were those of an "Admissions Director" and a "Biblical Subjects Professor." The petitioner stated that the beneficiary "was employed to teach Biblical Subjects and perform some office duties on a weekly basis," spending five hours per week "Bible Teaching" and another five hours per week at the "Admission Office." On appeal, [redacted], Director of the Washington, D.C. area CanZion Institute of Music, states that the beneficiary "performed several roles, such

as, Mentoring, Preaching on our weekly chapel service, Counseling, Organizing events, Logistics and Teaching. **[The beneficiary] volunteered on all of the mentioned activities except for teaching."** Mr. [redacted] does not mention the "Admissions Office" where, according to the petitioner, the beneficiary spent roughly half of his time at the institute.

The discrepancies in the various descriptions of the beneficiary's duties at CanZion Institute interfere with the AAO's ability to make a finding in this regard. 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. The petitioner has not met its burden of proof with respect to a showing that the beneficiary's work at the institute was ministerial in nature.

Regarding the beneficiary's 2005 employment with the Luis Palau Evangelistic Association, the only source in the record for information about that work is the beneficiary's own résumé, in which he enumerated his duties as a "Local Coordinator" thusly:

- Communication with all the Hispanic Churches in DC, MD [and] VA.
- Hispanic Churches Data Base Manufacture
- Information Material Planning and Edition, Contact Training and follow up.
- Counselor Training Material Planning and Edition
- Orientation to churches in how to follow up and educate new believers
- General Coordination of the Latin Outreach with [redacted] (Sponsors, Publicity, Artists, Reception, etc.)
- General Coordination of Hispanic Counselors for the DC-Festival, Collection, record and distribution of decision cards

Many of the above functions appear to be administrative or logistical in nature, and the petitioner has not shown any of them to be the usual province of a minister in the petitioner's denomination.

The beneficiary's employment experience during the two-year qualifying period involved three different jobs with three different employers. The AAO affirms the director's finding that the petitioner has not established that the beneficiary worked solely and continuously (*i.e.*, full-time, without interruption) as a minister throughout the qualifying period.

We now turn from the beneficiary's past work to his intended future work. 8 C.F.R. § 204.5(m)(4) requires that the petition include a letter from an authorized official of the religious organization in the United States that intends to employ the alien, stating how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration).

in her May 25, 2007 letter, described the terms of the beneficiary's compensation:

> [The beneficiary] is paid $15,600.00 per year (salary and housing allowance) for his services to [the petitioner], paid directly from [the petitioner's] operating checking account. . . . [The beneficiary] will also serve as a staff assistant at Hillendale Baptist Church, a church that is denominationally affiliated with [the petitioner], at a compensation of $20,000 per year, paid out of the Hillendale Baptist Church account.

stated that the beneficiary "will spend at least 25 hours per week to perform his duties" at the petitioning church. A "Break down Schedule" submitted with the petition takes the form of a chart showing 21 hours at the petitioning church and 15 hours at Hillendale Baptist Church (HBC). A subsequent letter from [redacted], dated December 5, 2007, indicates that the beneficiary "spends at least 20 hours per week in the performance of his duties for" the petitioner.

The director's RFE of September 2007 did not mention the job offer as an area of concern, and therefore the petitioner's response to that notice did not address the issue.

In denying the petition, the director found that the petitioner had not set forth "a credible job offer," because the petitioner paid the beneficiary at a rate "well below the U.S. Department of Health and Human Services minimum poverty guideline. . . . As such, the petitioner has not provided clear evidence to show how the beneficiary would be able to support himself and his family with sole income received from [the petitioner]." The director also concluded that the beneficiary's work with CanZion Institute of Music and the [redacted] Evangelistic Association "is his primary employment and his occupation with the petitioner was secondary," and that "the beneficiary's proffered position with the petitioning organization does not appear to be full-time. Without the substantial income derived from other employments, the beneficiary would not be able to support himself and his family."

On appeal, counsel states that the petitioner "has raised the Beneficiary's salary to $21,528.00 annually. This evidence is corroborated by the Beneficiary's wage statements for 2008. In addition, the Director of CanZion Institute has stated that the Beneficiary's responsibilities with the Petitioner have reduced his time with CanZion, clearly establishing the Petitioner as the Beneficiary's primary employer." [redacted] confirms that the petitioner "increased [the beneficiary's] monthly wage from $1,300 to $1,733 in September 2007," and that the beneficiary "received an additional increase in pay as of January 2008. His current monthly salary is $1,794, which amounts to 21,528 on an annualized basis." As counsel claims, pay receipts reproduced on appeal verify the salary increases. We note that, ever since September 2007, the petitioner has classified virtually all of the beneficiary's compensation as "housing"; during this time, the beneficiary's designated "earnings" have amounted to one dollar per semimonthly pay period. Because tax withholding is calculated based on "earnings," a total of thirty-eight cents was withheld from the beneficiary's pay between January 1 and March 15, 2008.

[redacted], Pastoral Team Leader at the petitioning church, states that the beneficiary's "involvement and responsibilities with our congregation had grown significantly in the past six months since former congregational pastor [redacted] resigned in July 2007." This increase in duties may explain the pay increases, but this development did not occur until after the petition's May 2007 filing date.

An immigrant visa petition must be amenable to approval at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). 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). At the time of filing, the job offer specified that the beneficiary would work for the petitioner for roughly 25 hours per week, and receive $15,600 per year. Subsequent changes to that job offer do not retroactively establish that the original job offer was sufficient to qualify the petition for approval.

Furthermore, the record does not establish that the beneficiary is to be engaged solely as a minister. As we have already discussed elsewhere in this decision, the petitioner has not shown that the beneficiary's duties outside of the petitioning church are ministerial.

Another issue relating to the job offer demands attention here. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

We repeat, here, May 25, 2007 assertion that the beneficiary "will also serve as a staff assistant at Hillendale Baptist Church . . . at a compensation of $20,000 per year." Mention of this employment at Hillendale Baptist Church has reappeared at various stages in this proceeding. This claimed employment was a major and integral part of the job offer as initially described. At no time, however, has the petitioner submitted any evidence from Hillendale Baptist Church, or letters from its officials, to verify those terms or to confirm that the job offer even exists. The record does not indicate that the petitioning church has authority to make such an offer on behalf of Hillendale Baptist Church, and 8 C.F.R. § 204.5(m)(4) requires that the job offer must originate from an authorized official of the entity intending to employ the beneficiary.

Furthermore, 8 C.F.R. § 204.5(g)(2) requires each prospective employer to establish its ability to pay the proffered wage from the filing date through to the date the alien becomes a lawful permanent resident. Absent documentation of Hillendale Baptist Church's finances, we cannot conclude that the petitioner has shown that Hillendale Baptist Church is able to pay the stated salary of $20,000 per year.

For the above reasons, the AAO affirms the director's finding that the petitioner has not consistently documented a coherent, valid job offer.

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.