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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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

C1

[Redacted]

DATE: JUL 06 2012 Office: CALIFORNIA SERVICE CENTER [Redacted]

IN RE: Petitioner: [Redacted]
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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition and it is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

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 a senior pastor and overseer. The director determined that the petitioner had not established it operates as a bona fide nonprofit religious organization as claimed in its petition.

Counsel asserts on appeal that “the evidence submitted by Petitioner establishes that it is a full-time religious organization” that is capable of paying the beneficiary’s salary. Counsel submits a brief and additional documentation in support of the appeal.¹

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 September 30, 2012, 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 September 30, 2012, 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).

¹ Different counsel represents the petitioner on appeal. Previous counsel is referred to as prior counsel in this decision.

In its November 19, 2009 Form I-360, Petition for [REDACTED] Widow(er), or Special Immigrant, the petitioner stated that it had a membership of 20, that the beneficiary would maintain his office at [REDACTED] and that worship would be held at [REDACTED] in Dallas. The petitioner also stated that the beneficiary would receive a compensation package valued at \$42,000. With the petition, the petitioner submitted a November 7, 2009 letter from the Reverend [REDACTED] Arusha, Tanzania, who stated that the beneficiary was a founder and leader of the church in Tanzania, and that he "was led to establish a mission in the United States of America." Reverend [REDACTED] stated that the beneficiary and the petitioner "are members in good standing of the Pentecostal Council of Tanzania." The petitioner submitted no other documentation regarding its organization or operations.

In a March 1, 2010 request for evidence (RFE), the director sought additional evidence of the religious activity at the addresses at which the petitioner stated that the beneficiary would work, instructing the petitioner to:

Submit evidence such as the petitioner's lease agreements, rental agreements, and/or mortgage payments; a copy of the city or county fire department occupancy permit for the petitioner's location; copies of utility bills and telephone bills; advertising; color photographs of the petitioner's location, both inside and outside of the building.

The director also instructed the petitioner to submit documentation that included the size of its congregation and how it intended to compensate the beneficiary. In his March 27, 2010 letter accompanying the petitioner's response, prior counsel stated:

The Petitioner's rented premises at [REDACTED] has [sic] functioned as the operational and administrative offices of the Ministry since inception in Dallas. It has also served as a venue for weekly bible studies. Due to growing need, the administrative offices will be relocating. The Petitioner will be sharing office space with a company called Innovative Sales Group at [REDACTED] in April 2010.

The Monthly Worship Service Programs will continue at St. Paul's Evangelical and Reformed Church at [REDACTED]. The Petitioner has been granted the privilege of using the facilities at [REDACTED] for Worship Programs until such a time as the ministry can acquire a worship sanctuary of its own.

The petitioner submitted a copy of a 2008 residential lease that it had with Re-Rents for the property located on [REDACTED]. The lease expired on December 31, 2008. The petitioner also submitted a copy of a March 22, 2010 letter from the Reverend [REDACTED], pastor of the St. Paul's Evangelical and Reformed Church located at [REDACTED] Dallas, who stated: "To support the work and growth of [the petitioning organization], St. Paul's Church has

made its Fellowship Hall available to conduct its worship services until such times as the mission can afford a worship sanctuary of its own.” The letter did not specify any terms or conditions associated with the petitioner’s use of St. Paul’s fellowship hall or when the use of the hall by the petitioner began. The petitioner submitted photographs of the buildings located on [REDACTED]. The petitioner submitted several flyers dated in 2008, 2009, and 2010, that advertised monthly services at the [REDACTED] address, a copy of a February 2010 water bill for the [REDACTED] location that is addressed to [REDACTED], who is identified in the flyers as the petitioner’s ministry coordinator, and a copy of a December 2009 phone bill for the same address.

The petitioner also submitted a copy of its unaudited income statement for 2009, which indicated total income of \$148,468.89, total expense of \$140,759.55, and net income of \$7,709.34. The income statement does not contain a line item expense for salary. The petitioner also submitted a copy of its 2010 budget, which projects total income of \$296,000 and total expenses of \$282,000. The budget contains a line item for “proposed pastor salary” of \$42,000 and “proposed staff salary” of \$22,000.

On July 20, 2010, an immigration officer (IO) visited the petitioner’s premises at [REDACTED] to verify the petitioner’s claims in the petition. The IO reported that he spoke with Ms. [REDACTED] who advised him that the beneficiary is not currently employed in the United States but that he comes “two or three times per year for ‘speaking engagements’” and would relocate once a visa for him is approved. The IO stated that he was unable to verify any other information contained in the petition. On December 7, 2010, another IO visited the petitioner’s administrative offices at [REDACTED] where she apparently spoke with the beneficiary, who stated that he “uses the grounds of St. Paul’s Evangelical & Reformed Church . . . to hold services only once a month for 2 hours with different speakers.” The IO reported that the beneficiary stated that he held “worship [services] for approximately 18-20 people.”

According to the IO:

[The beneficiary] submitted a print out copy of a donor contribution summary from January 1[] through December 7, 2010 containing the name, date[,] payment method and amount of money donated to [the petitioning organization]. Copies of checking account statements from Chase Bank from November-December 2009 through January – October 2010; a copy of lease agreement of the office space on [REDACTED] [and] several copies of Newsletters.

The IO continued further:

It appears that the church [sic] the financial information provided to USCIS conflicts with the bank statements provide[d] by [the beneficiary] who claims to have 18-20 members only. The Financial bank statements indicate a robust operation of depository transactions on a daily basis of donor contributions from January 2010 to December 7, 2010 exceeding \$143,712.71.

Furthermore, the bank statements indicate on a monthly basis of large sums of monetary instruments withdrawals that are outgoing foreign electronic wired transfers to the National Bank of Commerce Dar Es Salaam, Tanzania.

The record does not contain copies of the petitioner's banking information described by the IO. The IO also reported that the petitioner employed only one person, a part-time administrative assistant, and concluded that, because the petitioner held church services "only once a month for 2 hours" the petitioner was not operating in the capacity claimed in the petition.

On February 17, 2011, the director notified the petitioner of her intent to deny the petition based on the findings of the December 2010 site visit. In his March 15, 2011 letter accompanying the petitioner's response, prior counsel stated:

Since its incorporation, [the petitioner] has operated a forerunner mission outreach in Dallas Texas, functioning as a precursor Christian mission conducting weekly bible studies, monthly worship services, revivals, organization of Mission Teams to Africa, training missions team members, and evangelism. . . .

A new mission of this type requires the presence and unique services of a minister such as the beneficiary with his special knowledge of East Africa and his skills and ability to effectively work with other ministries in North America. Due to the pending application, [the beneficiary] has been unable to function as a full time pastor to oversee the effective growth of this ministry. The mission is limited to using guest ministers for its worship services and this has greatly impacted its operations. The beneficiary's services are essential to the work of the mission in Texas and North America.

. . . .

[The beneficiary] has been travelling extensively on missions and evangelism trips to the USA for over 17 years. During the course of his work, [he] has established strong ministerial relationships with various pastors and churches over the years who are financial and strategic supporters of his Church and school in Tanzania. Humanitarian partnerships such as this are common practice for churches world wide and does not constitute unusual practices. [The petitioner] has been very transparent in its financial matters and maintains financial records which have been made readily available to the USCIS officers on site upon request.

The USCIS erred in fact in stating that the Petitioner is a part-time operation with nominal membership.

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The life cycle of a religious organization is progressive in nature and involves several stages or different strategies in starting a church. The Petitioner did start with monthly services, weekly bible study and prayer meetings, which have continued for over two years. They have been growing and now need a full time pastor to take it to next level. During site inspection it was stated clearly by the beneficiary and administrative assistant that regular Sunday services will start when the full time pastor is in place, as they could not run every Sunday services [sic] using guest preachers every week. The monthly worship service, has fulfilled its role in the strategy of planting the church in its first phase. It has shown success, and they are ready for the next phase which requires the presence of a full time pastor.

In denying the petition, the director quoted extensively from the petitioner's articles of incorporation, noting that the purpose of the organization included performing religious missionary work and ministries, converting nonbelievers to Christianity, and supporting local missionaries by providing equipment and finances. The director did not specify how this information factored into her decision. The director also noted that the articles provided that "the corporation may not pay dividends or other corporate income to its directors, officers, or employees, or otherwise accrue distributable profits, or permit the realization of private gain." The director noted that the beneficiary is identified as a member of the board of directors and that his proffered salary is \$42,000 per year. The director concluded that "[t]aking into consideration all of the above, it appears the petitioner is not operating in the capacity claimed on the Form I-360 petition."

On appeal, counsel states:

[T]here is no basis for USCIS' cryptic conclusion that Petitioner is not "operating in the capacity claimed on the petition." Petitioner has made it clear from the start that it is a new, forerunner mission that continues to grow through weekly bible studies, regular Sunday worship services, revivals and other evangelistic activities.

Counsel further states that:

[B]ecause it currently lacks a full-time pastor, [the petitioner] must rely on guest speakers for Sunday services. . . . However, Petitioner conducts weekly bible studies and is actively seeking to grow its congregation. Once [the beneficiary] is able to assume the role of full-time pastor, Petitioner will continue to grow its congregation, will have weekly Sunday services and, eventually, be able to purchase its own building. Despite its humble beginnings, the evidence submitted by Petitioner has established that it operates as a bona fide religious organization.

However, . . . USCIS largely ignored the evidence submitted and concluded that Petitioner is not operating as a full-time religious organization. First, USCIS vaguely states that “the financial information provided by the petitioning organization conflicts with the bank statements provided by the beneficiary,” but wholly fails to explain the alleged conflicts. Instead, the denial notice simply states that the provided bank statements show “a robust operation of depository transactions on a daily basis of donor contributions” and that some of the bank statements also indicate “large sums of monetary instrument withdrawals that are outgoing foreign electronic wired transfers to the National Bank of Commerce in Dar Es Salaam, Tanzania.” These statements do not support any alleged conflict. Rather this is consistent with Petitioner’s stated goals, as stated in its Amended Articles of Incorporation, of spreading the gospel by supporting local and foreign churches and missions. . . . Accordingly, the fact that Petitioner supports other churches and missions in Africa and around the world does not provide any basis for USCIS’ fanciful conclusion that it is not operating as a bona fide religious organization.

Second, USCIS points out that [the beneficiary] “apparently” travels “to the U.S. for financial support donations for a church in Arusha Maranatha World Outreach.” However, USCIS fails to state how [the beneficiary’s] travel is relevant or supports its conclusion that Petitioner is not operating as a full-time religious organization. At this time, [the beneficiary] is not Petitioner’s full-time pastor. Further, pursuant to the evidence submitted by Petitioner, [the beneficiary] is a well-respected evangelist pastor that is often invited to speak throughout the work [sic] and, in doing so, has established relationships with other churches to help support Maranatha Christian Center and is affiliates, including Petitioner. According, [the beneficiary’s] travel does not support the conclusion that Petitioner is not operating as a full-time religious organization.

By reciting the purposes of the organization as listed in its articles of incorporation, the director appears to imply that the petitioner is not engaging in all of the activities for which it was established. As counsel stated, however, the petitioner has been operating at a disadvantage without a full-time pastor. The petitioner submitted documentation indicating that it has held monthly services with guest speakers and advertised mission opportunities. The petitioner also submitted documentation to establish that it has arranged for space in which to hold its worship services until it is capable of financing its own church building. The petitioner provided a copy of its budget, but the record does not contain a copy of the bank statements apparently given to the IO. There is nothing in the record to indicate that the petitioner is not a church and that it does not operate in the capacity claimed in its petition. The director’s finding to the contrary is withdrawn.

Nonetheless, the petition may not be approved as the record now stands. The petitioner has not established that the beneficiary worked continuously throughout the two-year period preceding

the filing of the petition. The regulation at 8 C.F.R. § 204.5(m) provides that to be eligible for classification as a special immigrant religious worker, the alien must:

(4) Have been working in one of the positions described in paragraph (m)(2) of this section, either abroad or in lawful immigration status in the United States, and after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition. The prior religious work need not correspond precisely to the type of work to be performed. A break in the continuity of the work during the preceding two years will not affect eligibility so long as:

- (i) The alien was still employed as a religious worker;
- (ii) The break did not exceed two years; and
- (iii) The nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States. However, the alien must have been a member of the petitioner's denomination throughout the two years of qualifying employment.

Therefore, the petitioner must show that the beneficiary worked in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States, continuously for at least the two-year period immediately preceding the filing of the petition. The petition was filed on November 19, 2009. Accordingly, the petitioner must establish that the beneficiary was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

The regulation at 8 C.F.R. § 204.5(m)(11) provides:

Evidence relating to the alien's prior employment. Qualifying prior experience during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work, must have occurred after the age of 14, and if acquired in the United States, must have been authorized under United States immigration law. If the alien was employed in the United States during the two years immediately preceding the filing of the application and:

- (i) Received salaried compensation, the petitioner must submit IRS [Internal Revenue Service] documentation that the alien received a salary, such as an IRS Form W-2 [Wage and Tax Statement] or certified copies of income tax returns.
- (ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.

(iii) Received no salary but provided for his or her own support, and provided support for any dependents, the petitioner must show how support was maintained by submitting with the petition additional documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS.

If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

The petitioner stated that the beneficiary worked outside the United States during the qualifying period, but it submitted no evidence comparable to the IRS documentation required by the regulation. The record is remanded to the director for a determination of the beneficiary's qualifying work experience.

The record also does not establish how the petitioner intends to compensate the beneficiary. The petitioner states that it will pay the beneficiary a salary of \$42,000. The petitioner submitted a copy of its unaudited income and expense statement for 2009, which reflects a net deficit of \$2,331.01. The document reflects a line item under payroll expense of \$202.75 for insurance but no other entry. The record contains no other documentation to indicate that the petitioner will be able to compensate the beneficiary in the amount stated. The director shall address this issue on remand.

Additionally, the record does not establish that the petitioner has successfully completed a compliance review or other inspection. The regulation at 8 C.F.R. § 204.5(m)(12) provides:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

On remand, the director shall determine if another onsite inspection is appropriate for the instant petition.

This matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a

reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.