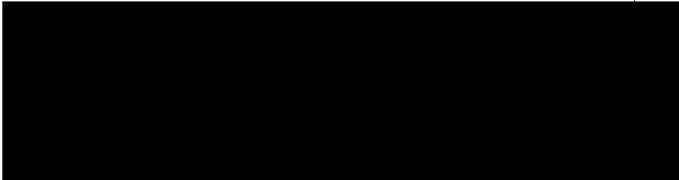




U.S. Citizenship
and Immigration
Services

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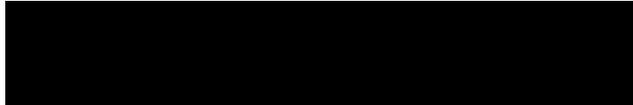
Office: VERMONT SERVICE CENTER

Date: APR 28 2005

EAC 01 110 52713

IN RE:

Petitioner:
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:



PUBLIC COPY

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.

Maia Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted, the AAO's previous decision will be affirmed and the petition will be denied.

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 Bible teacher. The director determined that the petitioner had not established: (1) its ability to pay the beneficiary's proffered wage; (2) that the position offered qualifies as a religious occupation; or (3) that the beneficiary had the requisite two years of continuous work experience as a Bible teacher. The AAO affirmed the director's decision and dismissed the appeal.

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 issue of the petitioner's ability to pay the beneficiary's proffered salary of \$15,600 per year. 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 initial submission includes an audited financial statement for the years 1996 through 1998, prepared by Timothy Alapo of Timmalap and Associates. The petitioner has since submitted a second audit report, by the

same preparer, covering the years 1998 through 2000. The more recent audited statement indicates that, in calendar year 2000, the petitioner's income exceeded expenses by \$21,881, and the petitioner ended the year with \$22,885 in cash in the bank. The more recent audit does not show any salary payments among the itemized list of expenditures. In a letter dated January 21, 2002, Rev. Emmanuel A. Adewumi, pastor of the petitioning church, asserts that the petitioning church "currently has no full time paid employees," although "several" volunteers receive stipends. The petitioner's audited financial statement shows stipends for the pastor, but not for anyone else. These stipends are minimal: \$420 in 1998, \$650 in 1999 and \$500 in 2000.

In denying the petition, the director stated that the petitioner had failed to establish its ability to pay, but did not elaborate. The petitioner, on appeal, submitted copies of previously submitted documents. The AAO, in dismissing the appeal, stated:

The petitioner has stated that it currently has no salaried employees. However, the petitioner has also stated that it has filed three additional petitions for religious workers, in April 1997, January 1998, and September 2001, all of which were approved by [the Immigration and Naturalization Service]. The salaries provided to these individuals, and any other employees the petitioner may have had at the time of filing the petition, are not included as line-item expenses in the financial documentation provided.

The AAO added that, if these other salaries are taken into account and subtracted from the income reflected in the audited financial statements, insufficient funds would remain to cover the beneficiary's salary. On motion, Rev. Adewumi states that the beneficiaries of the earlier petitions have all left the petitioner's employ. The beneficiary of the 1997 petition "worked with the church for three years"; the beneficiary of the 1998 petition "left the employ of the church [in] January 2001"; and the beneficiary of the 2001 petition "opted out of the payroll of the church after a few months on the payroll." Rev. Adewumi's statement does not explain why the recent audited financial statements do not reflect *any* salary payments in 1998-2000.

We note that the petitioning church had, once before, filed a petition on the beneficiary's behalf (receipt number EAC 98 078 53292, filed January 14, 1998). In conjunction with that earlier petition, Rev. Adewumi stated: "Our Church currently employs only one full time religious worker (i.e., Pastor, \$16,500 per year)." This statement appears in a letter dated July 1, 1998. Thus, in 1998, Rev. Adewumi stated that he, himself, as pastor of the petitioning church, was earning \$16,500 per year; but the petitioner's more recent audited report had indicated that the pastor's compensation for all of 1998 totaled only \$420. There is no other expense that could be construed as the pastor's salary; the petitioner's total expenditures for the year are shown as only \$11,113 for the year.

As noted above, the two audited financial reports overlap by a year. A comparison of the figures for 1998, as shown in the two reports, reveals the following:

	<u>FIRST REPORT</u>	<u>SECOND REPORT</u>
Tithes and Offerings	\$34,437	\$8,710
Cash in bank	16,269	2,776
Total revenue	50,487	30,382
Salary	3,200	[none claimed]
Pastor's stipend allowance	650	420
Total expenditures	27,602	11,113
Excess net income	22,885	19,269

There are numerous other discrepancies between the two financial reports, both prepared by the same auditor, both purporting to reflect the same period (calendar year 1998). Given these discrepancies, it is obvious that the audited financial reports are unreliable as evidence of the petitioner's financial standing.

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. 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. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988). Because the audited financial reports contain contradictory information, and the petitioner's comments about past salary payments raise more questions than they answer, we cannot conclude that the petitioner has submitted credible or reliable evidence to establish its ability to pay the beneficiary's proffered wage.

The next issue concerns the nature of the beneficiary's position. The regulation at 8 C.F.R. § 204.5(m)(2) defines "religious occupation" as 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.

Rev. Adewumi states that the beneficiary is "responsible for teaching the Bible, Hymns, the Nigerian language and Culture, and providing religious, moral and spiritual support and guidance to the children (and their parents) of the congregation." The petitioner has submitted a copy of a weekly schedule containing the following information:

TUESDAY

11 AM – 1 PM	Prepare Bible Study
1 PM – 2 PM	Lunch
2 PM – 4 PM	Teaching Bible Study
4 PM – 7 PM	Teaching Korean Language

WEDNESDAY

9 AM – 10 AM	Staff Meeting
10 AM – 1 PM	Religious counseling
1 PM – 2 PM	Lunch
2 PM – 5 PM	Teaching Bible Study

THURSDAY

9 AM – 10 AM	Staff Meeting
10 AM – 1 PM	Visiting the sick and old
1 PM – 2 PM	Lunch
2 PM – 5 PM	Counseling for students

FRIDAY

9 AM – 10 AM	Staff Meeting
10 AM – 1 PM	Religious counseling
1 PM – 2 PM	Lunch
2 PM – 5 PM	Teaching hymns to younger [sic]

SUNDAY

9 AM – 11 AM	Prepare for the Sunday Service
11 AM – 1 PM	Sunday Worship
1 PM – 2 PM	Lunch
2 PM – 5 PM	Sunday School teacher education

The above schedule accounts for 40 hours per week. Five of those hours are devoted to “lunch,” and three hours to “Teaching Korean language,” neither of which relate to traditional religious functions. Lunch hour is generally not considered part of an employee’s paid working day. Rev. Adewumi claims that “teaching . . . the Nigerian language and Culture” is a traditional religious function, but the schedule submitted indicates that the beneficiary teaches the *Korean* language.

In a letter dated January 12, 1998, Rev. Adewumi states that the beneficiary “will be responsible for teaching the Bible, Hymns, and the Nigerian language & culture.” The letter originally stated “. . . Korean language and culture,” but this phrase has been obscured with correction fluid and overtyped with the phrase “Nigerian language & culture.” Even if we were to make the questionable assumption that the preparer of the schedule and Rev. Adewumi both accidentally substituted “Korean” for “Nigerian,” the petitioner does not explain how such language lessons relate to a traditional religious function. The Pentecostal Protestant Christian religion practiced at the petitioning church is not indigenous to Nigeria.¹ A more recent version of the job description refers neither to “Korean language” nor “Nigerian language,” but rather “God’s language.” The change is unexplained.

Furthermore, the petitioner has not shown that the beneficiary is, or will be, officiating or actively participating in Sunday worship services. Attendance at such services as a parishioner is not a qualifying religious activity; otherwise, whole congregations could claim to engage in qualifying religious work.

The petitioner submits copies of diplomas and transcripts from various institutions. A copy of a transcript from the University of Port Harcourt shows some irregularities. The beneficiary’s name and certain other information is out of alignment with, and in a visibly larger, more widely spaced typeface than, other information typed onto the transcript. The document submitted is at least a third-generation copy, as is evident from artifacts such as staples reproduced in the copies. These irregularities are consistent with the insertion of the beneficiary’s name and other information into copies of pre-existing documents.

Article XI of the petitioner’s bylaws, entitled “LOCAL MINISTER AND CHURCH STAFF,” defines the functions and qualifications of the minister, pastor, elder, church text translator, Sunday school teacher, and pianist. Article XII, “SUNDAY SCHOOL,” states “[t]he pastor shall appoint the superintendent of the Sunday School from among the members of the church.” It is not clear whether the beneficiary is considered a “Sunday school teacher” or “superintendent of the Sunday School.”

The director, in denying the petition, stated that the petitioner’s “church bylaws do not specifically mention a Bible teacher and the positions that they do delineate in Articles XI and XII do not appear to be part of the original bylaws.” The director concluded that the petitioner had amended its bylaws specifically to facilitate the approval of the petition. The AAO concurred with the director’s finding that the petitioner had failed to establish that the proffered position qualifies as a religious occupation.

¹ We further note that there is no single “Nigerian language.” There are several indigenous languages, such as Igbo and Yoruba, in addition to English.

On motion, counsel stipulates that the petitioner amended its bylaws, but asserts that this was only to correct an "oversight." This assertion is reasonable on its face, but pursuant to *Matter of Ho*, we must consider such a claim in light of the credibility issues raised elsewhere in this proceeding. The inexplicable references to "Korean language," followed by multiple revisions, cast further doubt on the credibility of the job description. We conclude that the petitioner has not credibly demonstrated that the position offered qualifies as a religious occupation.

Finally, we turn to the issue of 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 February 20, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a Bible teacher throughout the two years immediately prior to that date.

Rev. Adewumi indicates that the beneficiary "has been serving this Church on a full time, voluntary basis, [and] he has been supporting himself in this country by selling real estate on a part time basis." When no payroll record exists, other means of verification and corroboration become necessary. In this instance, the petitioner has sought to provide such corroboration in the form of witness statements. Blessing Igiri, treasurer of the petitioning church, states "I provided [the beneficiary] with lunch money on a daily basis from February, 1995 to present." The audited financial report does not contain any itemized expenditure entry to show these payments. Assuming conservatively that the petitioner provided the beneficiary with three dollars a day, five days a week, this would total roughly \$780 per year. The only itemized expenses that consistently exceeded \$600 in 1998, 1999 and 2000 are "Rent & rent subsidy" and "Telephones." Other major expenses exceeded \$600 in some (but not all) of the above years include "Mortgage," "Musical equipment (purchases)" and "Purchase of furniture." The one category that could, on its face, possibly cover lunch money payments to the beneficiary is "General Expenses & Food distribution," but this amount varied between only \$250 and \$550, averaging \$433 per year or \$1.70 per work day. We find this amount to be too low to be credible, even if we were to make the unfounded assumption that every cent of the "General Expenses" money went, in fact, to the beneficiary.

Judging from the above information, we must conclude either that: (1) the petitioner did not consistently provide the beneficiary with lunch money as claimed; (2) the petitioner did provide this money, but did not report this expense in its supposedly complete financial audit; or (3) the payments are included among the petitioner's expenditures, but have been included under other, unrelated categories of expenditures. All three possibilities have adverse consequences with regard to the credibility of the petitioner's claims and the reliability of the petitioner's evidence. The record contains no contemporaneous record of any payments, large or small, from the petitioner to the beneficiary.

The director requested further evidence to show how the beneficiary has supported himself. In response, Rev. Adewumi states that the beneficiary "has been supporting himself in this country by selling real estate on a part time basis as evidenced by the enclosed federal income tax return." The petitioner submits a copy of the

beneficiary's Form 1040 Income Tax Returns for 1999 and 2000.² On the tax returns, the beneficiary listed his occupation as "Real Estate Agent." Tax documents show that the beneficiary's real estate activities earned him \$20,905.52 in 1999 and \$42,150.00 in 2000.

The director, and later the AAO, concluded that the beneficiary was primarily a real estate agent during the two-year qualifying period. On motion, counsel argues, "the beneficiary worked full-time, i.e. more than 50% of time for the Church and only did some part-time work in real estate." We are not persuaded that the record credibly supports this claim.

The beneficiary's primary, and perhaps only, source of income during the 1999-2001 qualifying period was his work as a real estate agent. In both of the years for which tax documentation is available, the beneficiary's real estate earnings significantly exceeded his proffered wage as a Bible teacher. Rev. Adewumi's assertions that the beneficiary has been, and will continue to be, a full-time worker rather than a part-time volunteer are uncorroborated by independent evidence, and Rev. Adewumi's inconsistent statements on other matters have compromised the credibility of his unsupported claims.

As noted above, the petitioner's submission of two completely different financial reports for the same period raise questions of credibility. In light of these credibility issues, other discrepancies and statements in the record take on added significance. For instance, we have already noted the inconsistent statements by Rev. Adewumi as to whether or not he himself received a salary. Also, in light of these credibility issues, we cannot ignore the pattern admitted by Rev. Adewumi: The petitioning church has, on multiple occasions, filed immigrant petitions for alien religious workers, who then leave the church after their petitions are approved. When viewed in the context of the inconsistencies and contradictions in the record, and the utter absence of any evidence that these individuals ever received salaries, this pattern does not suggest that the individuals sought immigration benefits in order to work for the church. Rather, it suggests that the aliens worked for the church (or claimed to do so) in order to obtain immigration benefits.

Section 204(b) of the Act provides for the approval of an immigrant petition only "if the facts stated in the petition are true." Given the petitioner's submission of contradictory evidence and other credibility issues throughout the record of proceeding, we cannot confidently conclude that the facts stated in the petition are, in fact, true, and because some claims contradict one another, at least some of the petitioner's claims must, logically, be false.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the previous decision of the AAO will be affirmed, and the petition will be denied.

ORDER: The AAO's decision of August 21, 2003 is affirmed. The petition is denied.

² On both returns, the beneficiary claimed the filing status of a "Head of household," a status that is not available to taxpayers who reside with their spouses. The petition lists an alien spouse, as well as a son born in 1992; the tax returns identify only the son. An earlier petition filed by the same petitioner also mentions only the son.