

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

CL

[Redacted]

FILE: [Redacted]
EAC 01 230 60473

Office: VERMONT SERVICE CENTER

Date: FEB 24 2005

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, 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 an assistant pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as an assistant pastor immediately preceding the filing date of the petition. The AAO affirmed the director's decision and dismissed the appeal.

Regulations at 8 C.F.R. § 103.3(a)(2)(vii) permit petitioners to submit supplements to already-filed appeals, but only within certain limits. The AAO is not required to accept untimely supplements to appeals. Rather, the petitioner must, in advance, demonstrate that good cause exists for an extension of time. This provision, allowing the petitioner to supplement a previous filing, applies only to appeals, and not to motions. There is no provision in the regulations for a petitioner to supplement a previously filed motion. Even if these regulations did apply to motions, the petitioner's supplementary submission would have been unacceptable. In the initial motion, counsel indicated that an additional brief would arrive "within 30 days." The petitioner filed the motion on August 21, 2003, and the supplementary submission was not filed until December 22, 2004, nearly seventeen months later. The petitioner did not show good cause for such a delay. The filing of a motion to reopen does not grant the petitioner an open-ended period in which to supplement the record at will, and the untimely submission of evidence outside of conditions contemplated by regulation does not compel its consideration. Because there is no provision for us to accept supplements to already-filed motions, we must restrict consideration to the materials submitted at the time the appeal was filed. If the petitioner desires consideration of the new materials submitted in December 2004, the proper course of action would be to file a new petition. We must consider only the materials submitted on August 21, 2003.

The petitioner claimed to have employed the beneficiary as assistant pastor from April 1999 until the autumn of 2000, and as parish administrator from that point onward. The petitioner had indicated that the beneficiary received housing and a stipend of \$400 per week. In dismissing the appeal, the AAO had observed that the petitioner had submitted some financial documentation, but nothing to corroborate the assertion that the petitioner has been providing the beneficiary with housing and a salary. The petitioner had submitted what purported to be the beneficiary's work schedule, but the AAO did not find this documentation to be persuasive, contemporaneous evidence. The AAO concluded that it was not credible that the beneficiary could work for the petitioning church for over two years without generating any documentation of any kind, such as financial records or baptismal certificates.

On motion, counsel asserts that the AAO's decision is "in direct conflict with the Supreme Court holding involving a different Holy Trinity Church, *Church of Holy Trinity vs. US* 143 US 459 (1892)." The cited case involved a British minister, invited to serve at a New York church. The issue in that case was whether this arrangement violated a federal law which prohibited United States employers "to prepay the transportation, or in any way assist or encourage the importation or migration, of any alien or aliens, any foreigner or foreigners, into the United States . . . , under contract or agreement, parol or special, express or implied, made previous to the importation or migration of such alien or aliens, foreigner or foreigners, to perform labor or service of any kind." The Supreme Court determined that the statute (now defunct) applied only to manual laborers, and was intended to deter "large capitalists in this country" from procuring "the shipment of great numbers of an ignorant and servile class of foreign laborers."

Counsel's comparison of the instant proceeding to *Church of Holy Trinity* appears to arise from the allegation that the AAO applied too strict a burden of proof, and has "emphasiz[ed] the safeguards . . . to such an extent as to nullify the basic purposes of the Act itself." The legislative record indicates that those safeguards are in place "to prevent abuse." H.R. Rpt. 101-723, at 75 (Sept. 19, 1990). Thus, one of "the basic purposes" of the legislation is to ensure that only eligible aliens are admitted. If we were required to accept every claim without corroborating evidence, such a policy would be an intolerable invitation to fraud.¹ The AAO's stance is, therefore, borne not of "extreme hostility" as counsel alleges, but through principled evaluation of real-life experience with regard to the special immigrant religious worker program.

Counsel states:

The Service Center denied the I-360 solely on the basis that "the record does not establish that the beneficiary was a full time religious worker from April 1999 to April 2001." That issue was successfully addressed on appeal. A new basis was asserted in the instant petition of which petitioner was first advised by the decision. This violates 8CFR103.2(b)(16) because it deprived petitioner of due process of law. There should have been a notice of intent to deny rather than a denial.

The AAO did not find that the petitioner had "successfully addressed" the issue of the beneficiary's past experience. Rather, the AAO concluded that the petitioner had not provided adequate evidence to meet its burden of proof. Counsel does not specify the "new basis" for denial supposedly introduced at the appellate stage. The AAO mentioned conflicting information, but this is not "derogatory information unknown to petitioner" as contemplated by 8 C.F.R. § 103.2(b)(16)(i). Rather, as the AAO clearly noted, the information arose from statements made *by an official of the petitioning church* in the context of an earlier petition. The petitioner's own claims and statements are not, by any reasonable standard, information unknown to the petitioner. Furthermore, the apparently conflicting information concerned the original basis for denial (i.e., the continuity of the beneficiary's past work), rather than any "new basis."

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 July 31, 2003 is affirmed. The petition is denied.

¹ Numerous recent publicized prosecutions for immigration fraud have, in fact, revolved around the special immigrant religious worker program, showing that this concern is not merely academic or hypothetical.