

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

C1



FILE: [REDACTED]
WAC 04 116 54401

Office: CALIFORNIA SERVICE CENTER

Date: JUL 13 2005

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:



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, California Service Center, 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 Seventh-day Adventist 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 cantor or music director (the petitioner uses both terms). The director determined that the petitioner had not established that had the requisite two years of continuous work experience in a qualifying religious occupation immediately preceding the filing date of the petition.

On appeal, counsel states that the denial arose from a misunderstanding involving a translation error.

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).

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 March 15, 2004. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a cantor throughout the two years immediately prior to that date.

The beneficiary’s past and future work must qualify as a religious occupation. 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.

Citizenship and Immigration Services interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination. Part-time volunteer work does not qualify the alien for special immigrant classification. *See Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

The petitioner states that the beneficiary arrived in the United States on July 10, 1999, and thus the beneficiary was in the United States throughout the entire two-year qualifying period from March 2002 to March 2004.

Counsel describes the position offered to the beneficiary:

The primary duty for the position is to lead the congregation in music ministry. As the cantor, [the beneficiary] will be responsible for selecting the musical arrangement for the scheduled worship services of each week. The cantor will also lead the choir in hymns and praise songs during worship services.

[The beneficiary's] primary responsibility in the church will be to strengthen the beliefs of the congregation through the music that he is able to produce from the choir and praise groups. . . . [I]t is [the beneficiary's] responsibility to properly evangelize through his musical leadership. . . . [The petitioner] is to work 40 hours per week performing duties such as training the choir in each week's scheduled selection of worship hymns and songs and conducting the choir or praise groups during each worship service during the week. [The beneficiary] will also continue to perform these duties during special church events such as revivals, conferences, and retreats.

[redacted] senior pastor of the petitioning church, states that the petitioner "served for this church as music director since January, 2001, until we voted to hire him to pay \$1,500.00 a month beginning February 1, 2004." From the wording of this letter, it is clear that the petitioner did not pay the beneficiary this amount prior to February 2004. Mr. Lee, in this letter, does not specify how much, if anything, the church paid the beneficiary prior to February 2004, nor does [redacted] mention any other form of compensation.

An audited financial statement indicates that the petitioner paid the "Choir Leader" \$1,800 between July 2002 and June 2003, an amount that averages \$150 per month, or one-tenth of the wage the beneficiary now receives. Counsel, in the introductory letter that accompanies the initial filing, acknowledges a previous immigration proceeding that conferred on the beneficiary the right to work in the United States. This proceeding took place in 2000. Therefore, there was no apparent legal impediment that would have prevented the petitioner from hiring the beneficiary at full salary prior to February 2004.

On December 14, 2004, the director instructed the petitioner to submit "evidence of the beneficiary's work history beginning March 15, 2002 and ending March 15, 2004. . . . Ideally, this evidence should come in a way that shows monetary payment, such as W-2 forms, pay stubs, or other items showing the beneficiary received payment." The director also requested "evidence to establish how the beneficiary has been supporting him or herself." In response, the petitioner submits a new letter from [redacted] who states:

From January to December, 2001, [the beneficiary] had volunteered this music director job for the services and we gave him about \$300 - \$500 a month to return the courtesy. From

September, 2001 to December, 2003, we had provided an apartment (\$980 per month) in addition to the courtesy amount \$300-\$500 a month to help his living. From January, 2004 to present, we have been paying \$1,500 a month for his professional work for this church as a music director.

The petitioner submits a copy of a "Tenant Estoppel Certificate," identifying both the petitioner and the beneficiary as tenants of a Los Angeles apartment, rented for \$980 per month. The certificate is dated August 28, 2003. The petitioner also submits a copy of a "Rental Agreement" for the same apartment, showing the same monthly rent. The document states the "Beginning Date" as September 1, 2001. The phrase "moved out" is handwritten across the bottom of the document. The above documents purport that the petitioner paid the beneficiary's rent in the amount of \$980 per month, equivalent to \$11,760 per year. The record contains no canceled checks or other documentation of these rent payments.

The petitioner submits a photocopy of a check for \$300, payable to "[REDACTED]" and dated May 25, 2002. Counsel states that "[REDACTED]" is the beneficiary's "Korean name." This is not the name written on the check, although the pronunciation is similar. The photocopy shows no markings to indicate that the check was cashed. This single check also fails to establish a pattern of regular payments.

With regard to counsel's claim that "[REDACTED]" is an alias for the beneficiary, we note that the petitioner has submitted a member directory. The beneficiary's name does not appear in this directory, but that of Jang Chul Kim does appear. The address for "[REDACTED]" does not match any of the several addresses listed for the beneficiary elsewhere in the record. The directory shows two telephone numbers for "[REDACTED]". The second number is preceded by the prefix "B," presumably for "business" (some other listed members also show "B" telephone numbers). The "B" phone number for "[REDACTED]" does not match the telephone number of the petitioning church; it uses a 487 Los Angeles exchange rather than a 285 Rosemead exchange.¹ Thus, there is no evidence that "[REDACTED]" works at the petitioning church, nor any persuasive indication that "[REDACTED]" is, in fact, the beneficiary. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner submits photocopies of checks from the petitioner to the beneficiary, in the amount of \$1,500 per month, from January 31 to September 25, 2004. Only the January check bears markings to show that it has been presented for payment. From October 29, 2004, onward, the beneficiary received monthly paychecks from the Southern California Conference in Glendale, California. The checks identify the beneficiary as "Minister of Music." These checks, unlike the checks from the petitioner, reflect withholding of taxes. The "Year-to-date" amount on the October 2004 check matches the amount of that check, and therefore the checks from the Southern California Conference do not reflect any payments to the beneficiary prior to October 2004.

Form W-2 Wage and Tax Statements show that the "Southern Calif Conference" paid the beneficiary \$4,530 in 2004. This amount matches the three paychecks that the conference issued to the beneficiary in that year; it does not reflect any of the petitioner's claimed prior payments to the beneficiary. Counsel states that the

¹ According to <http://www.thecityoflosangeles.org/attorney/attorney-immigration-naturalization-customs-law.html>, [REDACTED] business telephone number, (213) 487-5211, belongs to Pro Network USA on Wilshire Boulevard in Los Angeles. Pro Network is listed in a directory of "Immigration, Naturalization & Customs Law Attorneys & Services In Los Angeles, California." Thus, the implication is that [REDACTED] is, or at least works for, an immigration attorney or consultant.

beneficiary "did not report his federal tax during this period because he received his compensation in cash, of which the amount is miniscule." This claim appears to conflict with the *check* that the beneficiary purportedly received in May 2002. Also, the petitioner has indicated that the beneficiary was paid by check throughout 2004, but only his last three months' earnings were reported.

The petitioner submits an audited financial statement for the period from January 1, 2001 to June 30, 2002. As noted above, the petitioner had previously submitted an audited statement for the period from July 1, 2002 to June 30, 2003. The statements show that the "Choir Leader" received \$1,600 in 2001, \$1,800 in the first half of 2002, and \$1,800 during the following twelve months (consistent with a reduction in payments to the choir leader). These amounts average out to \$173.33 per month, barely half the \$300-\$500 per month that the petitioner claims to have paid the beneficiary. There is no entry in either statement that corresponds with monthly \$980 rent payments. This equates to \$11,760 per year. The only entries that exceed \$10,000 per year are "Youth Teaching," "Books" and "Assistant Pastor Salary." None of these expenses can reasonably be interpreted as including the beneficiary's rent payments. Thus, the audited financial statements fail to corroborate the alleged rent payments or payments to the beneficiary. (If the petitioner did, in fact, pay the beneficiary's rent in 2001-2003, then these financial statements must, logically, be inaccurate, incomplete, and unreliable, and new questions of credibility would arise from the claim that the statements were audited.)

The petitioner has also submitted an unaudited profit and loss statement for calendar year 2004. This document reflects a \$1,723.55 "conference transfer" payment under the beneficiary's name, and \$13,500 paid to an unnamed "Conductor" (consistent with nine monthly \$1,500 payments). Most of 2004 took place after the petition had been filed and the qualifying period had ended.

With regard to the director's request for "evidence to establish how the beneficiary has been supporting him or herself," the petitioner provides copies of the beneficiary's driver's license, employment authorization card, and Social Security card. These documents show that the beneficiary is *allowed* to work in the United States, but they do not document the beneficiary's actual employment. Also, we note that the employment authorization card was issued June 11, 2004, and thus does not cover the March 2002-March 2004 qualifying period.

The director denied the petition, stating that the beneficiary appears to have been a volunteer choir director rather than a paid, full-time church employee during much of the qualifying period. The director noted that the petitioner's first letter on the beneficiary's behalf did not indicate that the beneficiary received any payment prior to 2004, the year he was "hired."

On appeal, counsel asserts that the beneficiary "was hired by the church beginning in 2001 on a fulltime basis," and that the response to the director's request for evidence inadvertently contained "incorrect periods of [the beneficiary's] employment by the petitioner." Counsel asserts that "grammatical mistakes" prevented the petitioner and counsel from making it clear that the beneficiary's permanent employment began in January 2002.

In a new letter, [redacted] states that the beneficiary "has been a permanent employee of our church . . . since January of 2002," and that "[t]he small salary is why I initially considered it voluntary in nature." [redacted] states that counsel erroneously indicated that the beneficiary was a volunteer until December 2003. Given that it was [redacted] himself who specifically stated that the church "hired" the beneficiary in early 2004, it is not clear how counsel is responsible for this claimed error.

The wording of [REDACTED] past letters is far from the only reason to question the extent of the beneficiary's past employment (as we have explained above in detail). The record does not reflect any remuneration in the beneficiary's name prior to January 31, 2004. Counsel links a single uncashed check payable to [REDACTED] who appears to be neither the beneficiary nor a church employee. The audited financial statements reflect payments to an unnamed "Choir Leader," but these payments are, on average, considerably less than the amounts subsequently claimed; and the statements contradict, or at least fail to support, the claim that the petitioner paid the beneficiary's rent from 2001 to 2003.

Counsel argues that the beneficiary has consistently served as a full-time cantor, rather than as a part-time volunteer choir director. The latter capacity would not qualify the beneficiary for immigration benefits. The preponderance of evidence indicates that the beneficiary was involved with the petitioning church in some way during the qualifying period, and he may have been the recipient of the small payments issued to the unnamed "Choir Leader." Nevertheless, owing to the many discrepancies, gaps, and contradictions in the evidence of record, we cannot conclude that the petitioner has presented consistent or persuasive evidence that the beneficiary worked for the church in a paid, full-time capacity throughout the entire qualifying period, as the petitioner now claims. The credibility issues arising from these discrepancies cast such doubt on the petitioner's overall credibility that we cannot find that the statements made in support of the petition are true. Absent such a finding, the petition cannot be approved. *See* Section 204(b) of the Act, 8 U.S.C. § 1154(b). 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, 586 (BIA 1988).

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 appeal will be dismissed.

ORDER: The appeal is dismissed.