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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE: WAC 00 131 53218 Office: CALIFORNIA SERVICE CENTER Date: MAY 18 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: 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.

Maureen

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal and also dismissed a subsequent motion to reconsider. The matter is now before the AAO on a second motion to reopen and reconsider. The motion will be dismissed.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Citizenship and Immigration Services (CIS) policy. 8 C.F.R. § 103.5(a)(3). A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

The self-petitioner seeks classification 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 priest. In its previous decisions, the AAO affirmed the director's determination that the petitioner had not established that he had worked continuously as a priest for two full years preceding the filing of the visa petition or that his religious organization with which he was associated had the ability to pay the proffered wage.

The petition was filed on March 30, 2000. Therefore, the petitioner must establish that the beneficiary was continuously working as a priest throughout the two-year period immediately preceding that date.

In its decision dismissing the petitioner's previous motion, the AAO stated that the evidence of the petitioner's previous work experience was contradictory. The AAO noted that the petitioner stated in one letter that the Birda Church in Romania had employed him from 1990 until March 1999, and in another that the church had employed him from 1990 until November 23, 1998. The AAO also found that the evidence indicated that the petitioner assisted another priest in Palermo, Italy from March 1999 to May 1999, that he performed ministerial services at the Saint Anthony the Great Monastery in Cleveland, Ohio from May 1999 to August 1999, and that, in August 1999, he went to Orange County, California to establish and minister at the Saint Ilie Romanian Orthodox Church. The AAO found that the record established that the Saint Ilie Romanian Orthodox Church was not established until February 2000, and that the petitioner's own statements indicate that he worked only on a part-time, intermittent basis.

On motion, the petitioner submitted a September 30, 2003 letter from the Right [REDACTED] the Orthodox Bishop of Palermo and All Sicily, who states he is the bishop responsible for the petitioner and his church in California. According to Bishop Lorenzo, the petitioner worked in the Birda Church from July 1990 to March 1999, first as pastor (July 1990 to November 1998), and then as pastor with the additional responsibility of training and initiating the new priest (November 1998 to March 1999). The petitioner submitted no documentary evidence, such as canceled checks, pay vouchers, verified work schedules, or other documentary evidence to corroborate the beneficiary's employment. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

A motion to reopen must provide new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). The letter from Bishop Lorenzo is not an affidavit as is not sworn to or affirmed by the

declarant before an officer authorized to administer oaths or affirmations who has, having confirmed the declarant's identity, administered the requisite oath or affirmation. See *Black's Law Dictionary* 58 (7th Ed., West 1999). Nor, in lieu of having been signed before an officer authorized to administer oaths or affirmations, does it contain the requisite statement, permitted by Federal law, that the signers, in signing the statements, certify the truth of the statements, under penalty of perjury. 28 U.S.C. § 1746. Such unsworn statements made in support of a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

The second issue presented on motion is whether the petitioner established that his prospective U.S. employer had the ability to pay the proffered wage.

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 above-cited regulation states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of evidence.

According to a letter from [REDACTED] the petitioner receives as remuneration for his services at the Saint Ilie Romanian Orthodox Church, a monthly salary of \$600, free lodging, free groceries and the use of an automobile. As evidence of the church's ability to pay this remuneration, the petitioner submitted copies of checks for \$600 made payable to the petitioner and dated in October, November and December 2000. The director noted that there was no evidence that these checks were canceled by the bank. The petitioner also submitted a copy of his year 2000 Form 1040, U.S. Individual Income Tax Return, which reflected self-employment income of \$7,200. The Form 1040 is stamped as "taxpayer's copy" and is unsigned and undated, and does not indicate the nature of the beneficiary's self-employment. The petitioner did not submit a copy of a Form W-2, Wage and Tax Statement, or Form 1099 MISC, Miscellaneous Income.

In later stages of this proceeding, the petitioner also submitted a declaration from the church's treasurer, copies of canceled checks made payable to the petitioner in May, June, July and August 2001, and a copy of the church's October 2001 monthly bank statement. On motion, the petitioner submits a copy of his 2001 and 2002 Form 1040, on which he reported self-employment income as a priest of \$7,200 in each year. We note that both of these forms are dated in June 2003 and do not indicate they were filed with the Internal Revenue Service.

We note that the petitioner reported self-employment income of \$7,200 in 2000, 2001 and 2002. Although the evidence does not reflect the nature of the petitioner's self-employment in 2000, we also note that the Saint Ilie Romanian Orthodox Church was not founded until February 2000. Therefore, the reported income, if for services as priest of the church, is for at least \$600 or one month more than the period of time that the church existed. Further, although the petitioner submitted copies of checks for each month of the last quarter of 2000, we further note that the checks are in sequential order and, as noted by the director, contained no evidence that they were submitted to the bank for payment. Additionally, in response to this observation by the director, the petitioner submitted no copies of the canceled checks and submitted no evidence of any other payments in 2000.

Doubt cast on any aspect of the petitioner's proof may, of course, 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). If Citizenship and Immigration Services (CIS) fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The evidence does not establish that the Saint Ilie Romanian Orthodox Church, the petitioner's prospective U.S. employer had the continuing ability to pay the petitioner the proffered wage as of the date the petition was filed.

As the petitioner failed to present new facts supported by documentary evidence in its motion to reopen, or to cite any precedent decisions in support of its motion to reconsider and does not argue that the previous decisions were based on an incorrect application of law or CIS policy, the petitioner's motion will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.