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FILE: [Redacted]
WAC 02 190 50232

Office: CALIFORNIA SERVICE CENTER

Date: SEP 30 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 pastor. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the visa petition.

On appeal, counsel submits a brief and additional documentation.

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 issue on appeal is whether the petitioner established that the beneficiary had been continuously employed in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States." The regulation 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."

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on May 20, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as a pastor throughout the two-year period immediately preceding that date.

The petitioner submitted a Form ETA 750, Application for Alien Employment Certification, with the petition, on which the beneficiary indicated that he had worked as a pastor with the petitioning organization since June 2001, and had served as head pastor with the [REDACTED] church in Seoul, Korea, from October 1998 to June 2001. The petitioner also submitted a copy of a June 7, 2001 "certificate of career for pastor" issued by the Presbyterian General Assembly of Korea, certifying that the beneficiary had worked as a pastor with the Sung Am Church from October 1998 to "the present." The certificate did not indicate the beneficiary's terms of employment with the Sung Am Church, and the petitioner submitted no documentary evidence, such as canceled paychecks, pay vouchers, certified work schedules, or other documentary evidence to corroborate the beneficiary's employment with the Sung Am Church. 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)).

In a request for evidence (RFE) dated August 30, 2002, the director instructed the petitioner to:

Provide evidence of the beneficiary's work history beginning May 20, 2000 and ending May 20, 2002 only. Provide a weekly breakdown for this two-year period of the time spent performing the religious occupation. Provide evidence for the experience where the beneficiary obtained the two years work experience prior to the filing of the petition. Include the . . . number of hours worked, remuneration, level of responsibility and who supervised the work. 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. Documentation showing the withholding of taxes is good evidence. However, you may also show payment through other forms of remuneration. If any work was on a volunteer basis, provide evidence to show how the beneficiary supported him or herself (and family members, if any) during the two-year period or what other activity the beneficiary was involved in that would show support.

In response, the petitioner submitted an October 29, 2002 letter from the beneficiary outlining his work on a weekly basis from May 20, 2000 to June 7, 2001. The petitioner also submitted a copy of a November 8, 2002 letter from [REDACTED] who identifies himself as the president of the Presbyterian General Assembly of

Korea.¹ Mr. [REDACTED] stated that the beneficiary submitted this schedule of his activities as pastor of the [REDACTED] Church to Mr. [REDACTED] who "reviewed the reconstruction of [the beneficiary's] weekly ministerial activities and compared these to the Church's calendar and . . . confirm[ed] that all of these are true and correct." Mr. [REDACTED] does not indicate how much detail is included in the church's calendar, who maintained that calendar, and how he was able to verify work such as "preparing a sermon manuscript" and "encouraging all family members in our church to participate in Youth Spiritual Training Seminar." The beneficiary also did not indicate what methods or resources he used to "reconstruct" the details of his work schedule one to two years after the events.

The petitioner submitted a second letter from the beneficiary also dated October 29, 2002, in which he outlined his work with the petitioning organization from June 8, 2001 to May 20, 2002. This work schedule is verified as being accurate by Rev. [REDACTED] who identifies himself as the secretary of the American Presbytery in the USA of the Korean Presbyterian Church.² As with Mr. [REDACTED] indicates that the reconstruction was compared with the church's calendar to verify the information, but fails to state how detailed the calendar is, who maintained the information on the calendar, and how he was able to verify work such as "preparing a sermon manuscript" and "reading the Bible."

The petitioner submitted copies of canceled checks indicating that it paid the beneficiary \$1,500 per month from June 2001 to January 2002, and \$2,000 per month from February 2002 to May 2002. The petitioner submitted no evidence of any remuneration received by the beneficiary for his work at the [REDACTED] Presbyterian Church during the qualifying period, and no other documentary evidence in the record corroborates that the Sung Am Presbyterian Church employed him in a full-time, paid capacity. See *Matter of Soffici*, 22 I&N Dec. at 165.

In response to the director's second RFE dated August 11, 2003, the petitioner submitted a copy of an October 7, 2003 letter from Mr. [REDACTED] who stated that the beneficiary served as head pastor at the Sung Am Church on a full-time basis, working an average of 40 hours per week. The petitioner also submitted copies of photographs, which purport to show the church in Korea, the beneficiary and members of the congregation. However, the petitioner submitted no corroborative documentary evidence of the beneficiary's work with the church. *Id.*

Additionally, at the director's request, the petitioner submitted copies of California State Employment Development Department (EDD) Form D-6, Quarterly Wage Reports, and Form 941, Employer's Quarterly Federal Tax Return, for the quarters ending December 2002 through September 2003. The wage reports and tax returns reflect that the petitioner reported paying wages of \$30,000 to the beneficiary during the December 2002 quarter, and \$6,000 per quarter in each of the following quarters. The petitioner's Form W-2, Wage and Tax Statement, reflects that the petitioner paid the beneficiary \$30,000 in 2002.

In response to a third RFE from the director, the petitioner submitted a copy of the beneficiary's year 2003 Form 1040, U.S. Individual Income Tax Return, copies of his year 2003 Forms W-2, and a Letter 1722 from the Internal Revenue Service (IRS), reflecting tax information reported on his 2001 and 2002 returns. The evidence reflects that in 2003, the beneficiary received wages of \$24,000 from the petitioner and \$12,600 from [REDACTED] Rancho Cordova, California. The petitioner submitted no other evidence regarding the work performed by the beneficiary for [REDACTED], or otherwise identifying [REDACTED]

¹ This letter is not written on Presbyterian General Assembly of Korea letterhead and does not reflect an address for the organization.

² This letter is not on the letterhead of the American Presbytery in the U.S.A. and does not include an address for the organization.

The director noted that the petitioner indicated that the beneficiary entered the United States without inspection on or about April 4, 2001, but submitted conflicting documentation reflecting that the beneficiary worked for the Sung Am Presbyterian Church in Korea until June 7, 2001. The director stated that the documentation submitted by the petitioner as evidence of compensation that it paid to the beneficiary was not consistent, indicating on one hand that it had paid the beneficiary in excess of \$39,500 in 2002 and on the other hand, that it paid the beneficiary less than \$30,000 for the year.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore, that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

On appeal, counsel asserts that the documentation regarding the beneficiary's employment with Sung Am Presbyterian Church is not contradictory. Counsel notes that the beneficiary indicated that he was on vacation from April 3 to April 12, 2001, and that he worked for the petitioner from April 13, 2001 to June 7, 2001. Counsel asserts that [REDACTED] does not state that the beneficiary was in Korea until June 7, 2001, only that the Sung Am Presbyterian Church considered him as an employee until that date.

Counsel's clarification, however, does not explain how Mr. [REDACTED] was able to confirm the beneficiary's duties in the United States, particularly since he claimed to have used the church calendar of the [REDACTED] Church as his source of his information. It is incumbent upon the petitioner to resolve any

inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Further, the record contains no documentary evidence, such as evidence of payment, that corroborates the beneficiary's employment with the Sung Am Presbyterian Church. *Matter of Soffici*, 22 I&N Dec. at 165. Accordingly, the petitioner has not established that the beneficiary was employed in by Sung Am Presbyterian Church or any other entity from April to June 7, 2001.

To address the director's concerns regarding the beneficiary's 2002 compensation, the petitioner's accountant on appeal states:

Wage Reporting:

Form DE-6 and Form 941 (4th Quarter of 2002) are the forms that should be filed on [a] quarterly base [sic], not yearly. However, a petitioner has decided to file yearly wage of \$30,000 on the last quarter of 2002 which includes five paychecks of a beneficiary in the amount of \$9,500 dated from January 13, 2002 to May 17, 2002 . . . In addition, an Exempt Organization like a petitioner was not mandatory to filed Form 941 according to the regulation of the Internal Revenue Service.

Financial Statement:

Total wage of \$14,000 shown on the petitioner's financial statement for the period of May to December 2002 is incorrect. That was an error of classification arising between "Outside Service" and "Wage". Total amount of \$6,500 should have been allocated to "Wage" section instead of "Outside Services" which increases total wage to \$20,500 (\$14,000 plus \$6,500) . . .

Income Tax Return:

A beneficiary filed income tax return (2002) with Internal Revenue Service indicating that his adjusted gross income is \$25,633. Below is the breakdown:

Total Wage earned by a beneficiary (W-2)	\$30,000.00	
Clergy Housing Allowance*	<u>(23,500.00)</u>	
Unused clergy Housing Allowance (1040 Line 7)		\$6,500.00
Total Wage earned by a beneficiary's spouse (W-2)		<u>\$19,133.00</u>
Total Gross Income		\$25,633.00

*Note: A minister's housing allowance, sometimes called a parsonage allowance or a rental allowance is excludable from gross income for income tax purposes as set by the Internal Revenue Service.

The accountant's explanation of the petitioner's accounting practices in 2002 does not resolve the following conflicting information within the record regarding the beneficiary's salary for 2002:

1. Forms W-2, DE-6, and 941 for the fourth quarter of 2002 show that the petitioner paid the beneficiary \$30,000.

2. Form 990-EZ, signed by the beneficiary on May 11, 2004, reveals that in 2002, the petitioner paid the beneficiary only \$14,000 in salary for his work as "president" of the petitioner 40 hours work per week.
3. In response to an August 30, 2002 RFE, the petitioner submitted a "Pastor Monthly Salary Policy" dated December 31, 2001. This document set the beneficiary's salary at \$2,000 per month (\$24,000 annual), of which \$920 (\$11,040 annual) was designated for housing.
4. The financial documents (Statement of Activities May through December 2002) provide no explanation of the "Outside Service" expense, and neither the petitioner nor the accountant offers an explanation as to why \$6,500 was posted to the wrong expense category and why it should have constituted "wage" for the beneficiary.
5. On appeal, the petitioner submits an IRS Letter 1722 showing that the beneficiary declared \$25,633 in adjusted gross income in 2002.

As noted by the accountant, the beneficiary may exclude the value of the parsonage allowance from his gross income. However, as discussed above, the petitioner indicated that the beneficiary's 2002 compensation included only \$11,040 for housing. The beneficiary, however, claimed \$23,500, only \$500 less than the stated compensation package for the year. Further, it is unclear from the record why the petitioner did not exclude the value of the beneficiary's housing allowance from the wages reported on his Form W-2. The petitioner submitted no evidence that it issued a corrected Form W-2 to the beneficiary for his 2002 wages, or that it filed an amended Form 990 with the IRS to correct the wages it reported as having paid the beneficiary in 2002.

Based on this conflicting information regarding the beneficiary's salary, the petitioner has not established that it paid the beneficiary for full-time employment during the 2002 qualifying period. *Matter of Ho*, 19 I&N Dec. at 591.

The evidence is insufficient to establish that the beneficiary was continuously engaged in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

Beyond the director's decision the petitioner has not established either the proffered wage or that it has the ability to pay the beneficiary the proffered wage in accordance with 8 C.F.R. § 204.5(g).

According to the "Pastor Monthly Salary Policy" dated December 31, 2001, the beneficiary's salary for 2002 was \$2,000 per month (\$24,000 annual). As discussed above, the Forms W-2 and DE-6 for 2002 show that the beneficiary was paid \$30,000, and the IRS Letter Form 1722 reflects adjusted gross income for the beneficiary and his wife of \$25,622 in 2002. The petitioner's Form 990 EZ reflects that the petitioner paid the beneficiary \$14,000 as "president." Finally, in response to an August 11, 2003 RFE, the petitioner submits an October 10, 2003 letter allegedly from the Secretary of the America Presbytery in U.S.A. of Korean Presbyterian Church which states that the beneficiary's salary is now \$1,500 per month (\$18,000 annual); however, Forms W-2 for 2003 show that the petitioner paid the beneficiary \$24,000.

The petitioner submitted a May 7, 2004 statement from the Hanmi Bank in Los Angeles, California, which states that the petitioner's current balance in its business checking account, opened on March 1, 1999, was approximately \$13,015. The bank listed the *petitioner's* address at [REDACTED] in Los Angeles.

According to the record, this is the *beneficiary's* home address. Copies of canceled checks in the record, written in 2001 and 2002, display the petitioner's address at [REDACTED] in Los Angeles, the same address listed for the petitioner on the current petition. However, the account number is the same for both addresses. Thus, it is unclear what the proffered wage is, what exactly the petitioner has been paying the beneficiary, and whether the petitioner has been paying the beneficiary or the beneficiary has been paying himself from his own account.

Finally, the record does not establish that the beneficiary will not be solely dependent on supplemental employment in accordance with 8 C.F.R. § 204.5(m)(4). As discussed, the petitioner has submitted conflicting information regarding the amount of wages it has paid the beneficiary and whether it has been paying the beneficiary at all. In addition, the petitioner submitted Forms W-2 for 2003 showing that he and his wife have been working for one or more additional employers. The petitioner submitted no evidence of the nature or terms of employment of the beneficiary's 2003 work for [REDACTED] nor did it provide anything that identifies [REDACTED]. We note that the copies of the Forms W-2 for the beneficiary and his wife reflect that they earned wages of \$51,274 in 2003; however, their Form 1040 for 2003 reflects they earned only \$40,734. Moreover, the Forms W-2 from [REDACTED] and [REDACTED] show that those employers are located at the same address and have the same federal employee identification number (EIN), although they have different State ID numbers. Based on this information, it is unclear whether the beneficiary is actually employed by the petitioner or by one or more secular employers. The record does not establish that the beneficiary will not be solely dependent on supplemental employment. *Matter of Ho*, 19 I&N Dec. at 591. 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 petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.