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FILE:

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Office: TEXAS SERVICE CENTER

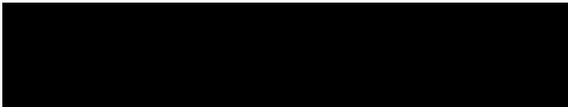
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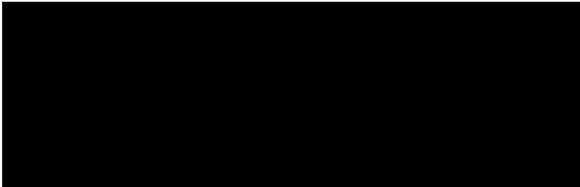
Petitioner:

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:



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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

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 minister. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition.

On appeal, the petitioner submits various financial documents and protests that these materials had already been submitted previously.

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 . . . ; 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 June 9, 2005. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a minister throughout the two years immediately prior to that date.

██████████ senior pastor of the petitioning church, states that the beneficiary “has been a member of Shady Grove Churches since 1998. [The beneficiary] has made an important impact as a staff member in our church.” Rev. Pinto states that the beneficiary’s salary “will be \$2,350 per month including a housing allowance of \$1050 per month,” but he does not state that the beneficiary has already begun receiving this compensation.

The petitioner submits copies of the federal income tax returns filed jointly by the beneficiary and her spouse in 2003 and 2004. In 2003, the couple reported \$6,000 in wages and \$9,041 in business income. In 2004, the

couple reported \$9,600 in wages and \$9,175 in business income. The returns indicate that the sole source of the couple's business income was a landscaping business operated by the beneficiary's spouse. On both returns, the beneficiary's occupation is listed as "Housewife."

The petitioner submits copies of pay stubs showing that the petitioner paid the beneficiary \$1,000 twice each month from late April 2003 through mid-April 2005. Starting in January 2005, each \$1,000 check indicates that \$400 is for "Wages" while \$600 is for "Housing Allowance." The stubs indicate that the beneficiary received \$17,000 in 2003 and \$24,000 in 2004, although this information does not match the wages reported on the beneficiary's tax returns. The petitioner has submitted copies of bank statements, but only the statements from 2003 correspond to the pay stubs. Bank statements from 2004 and 2005 do not show check numbers corresponding to claimed payments to the beneficiary; they reflect the status of a different bank account, as shown by the account numbers on the statements. These statements do not falsify the later check stubs, but neither do they corroborate them; the later statements are effectively neutral as evidence.

The director instructed the petitioner to submit detailed information and evidence regarding the beneficiary's work experience during the qualifying period, including documentation of the beneficiary's compensation. In response, the petitioner submits additional copies of the pay stubs and bank statements mentioned above, and a new letter in which [REDACTED] states that the beneficiary "has been employed full-time at [the petitioning] Church . . . since April 2003."

The director denied the petition, stating that the petitioner has now shown that the checks paid to the beneficiary represent salary for church work. The director observed that the checks paid to the beneficiary do not show any taxes withheld, as would be expected of wage or salary checks. The director also noted that the petitioner has not provided Form W-2 Wage and Tax Statements to show that the petitioner reported any salary payments to the beneficiary, or to show that the wages shown on the beneficiary's tax returns were from the petitioning church.

On appeal, counsel states: "Attached AGAIN are copies of payroll check stubs . . . , tax returns (with W-2s) and bank statements" (counsel's emphasis). We note that the appeal includes no copies of bank statements. While the petitioner had, indeed, provided the check stubs, tax returns and bank statements in previous submissions, the Forms W-2 are not submitted "again" on appeal; they are submitted for the first time. The director, in the request for evidence, had specifically instructed the petitioner to submit the Forms W-2. The petitioner's response to that notice included neither the Forms W-2 nor any explanation for their absence. Because the director specifically requested the Forms W-2 in the request for evidence, and the petitioner failed to submit them at that time, the AAO will not consider this newly submitted evidence. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

Having said the above, the omission of those documents is not automatically fatal to the petition. Even in the absence of the Forms W-2, we find that the preponderance of evidence is sufficient to support the petitioner's claims. As noted above, some of the pay stubs specifically identify the payments to the beneficiary as "wages" and "housing allowance." While earlier pay stubs lack these annotations, the earlier payments are identical in amount and frequency to the later, annotated stubs. Because the petitioner consistently paid the beneficiary \$1,000 at the middle and the end of each month, there is no reason to presume that the 2003-2004

payments were for some other reason unrelated to wages and housing allowance. We note that the beneficiary's first pay period, the second half of April 2003, coincides with the April 18, 2003 issuance of an R-1 nonimmigrant religious worker visa to the beneficiary, permitting her to work at the petitioning church.

The individual who prepared the beneficiary's tax returns states that he incorrectly identified the beneficiary as a housewife on the returns, and that the beneficiary "should have been classified as Worship Minister instead." On the 2004 tax return, the word "CLERGY" has been typed at line 65a. This annotation appears on every copy of the 2004 tax return in the record, including the copy submitted with the initial filing, before the director had expressed any concerns regarding the beneficiary's compensation or tax returns.

The petitioner cites 26 U.S.C. § 107, indicating that housing allowance is not included in the gross income of "a minister of the gospel." Other documents indicate that 60% of the beneficiary's gross pay is dedicated to the housing allowance, which is consistent with the annotations on the 2005 pay stubs. This also explains the reduced amounts on the beneficiary's tax returns.

Therefore, we know from the record (even without the Forms W-2) that the beneficiary was authorized to work for the petitioner beginning in mid-April 2003; that the petitioner began paying the beneficiary \$2,000 per month in April 2003; that bank statements reflect that the checks were cashed; that the petitioner eventually identified these payments as "wages" and "housing allowance"; and that the beneficiary reported the "wages" portion of these payments as income on her tax returns (citing the term "CLERGY" on the 2004 return) before the director raised any questions about these payments. We therefore have a convergence of evidence from several different points toward the conclusion that the petitioner has consistently compensated the beneficiary. The record contains no affirmative evidence that the beneficiary was engaged in any non-qualifying or disqualifying activities during the 2003-2005 qualifying period. The tax preparer has explained the "Housewife" annotation on the tax return, and the "CLERGY" annotation on the 2004 return indirectly lends credence to this explanation. Certainly the record identifies no other (non-religious) source for the wages reported on the tax returns.

We find, for the reasons listed above, that the petitioner has credibly documented regular salary payments to the beneficiary throughout the qualifying period, and that the evidence submitted is more than sufficient to answer the director's legitimate concerns regarding those payments.

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 met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained. The petition is approved.