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U.S. Citizenship
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Office: VERMONT SERVICE CENTER

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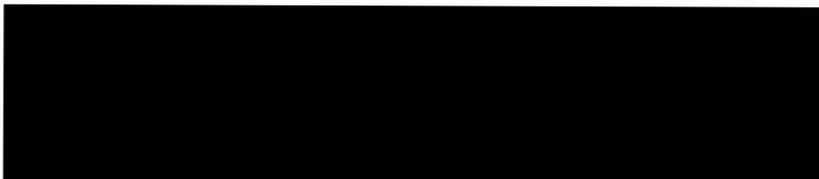
Petitioner:

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, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is an organization comprised of six local Presbyterian churches. 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 evangelist missionary. The director determined that the petitioner had not established that the position qualifies as a religious occupation.

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 principal issue is whether the petitioner seeks to employ the beneficiary in a qualifying 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.

The petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

Citizenship and Immigration Services therefore 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.

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 September 29, 2003. Therefore, the petitioner must establish that the beneficiary was continuously engaged in a religious occupation throughout the two years immediately prior to that date. If the beneficiary’s past duties do not constitute a religious occupation, then the petitioner cannot meet this two-year requirement.

Reverend [REDACTED] executive director of the petitioning council, describes the beneficiary’s work for the petitioner.

[The beneficiary] has been employed at our mission as a trained Evangelist Missionary since the very end of October 2002. . . .

During his appointment as an Evangelist Missionary, [the beneficiary] has primarily worked to serve two main functions: in our inner city mission spreading the gospel of Jesus and the beliefs of our church and in planting and redeveloping the churches within our council. . . . [The beneficiary] has worked tirelessly with the people whom our council feeds at our Evangelistic Outreach Program to the Homeless and Hungry as well as with the at-risk children who are in our after school care program. . . . He possesses a fervent desire to counsel each person and to share with them and educate them regarding the aspects and beliefs of our church that he feels will make them most whole spiritually. . . . Approximately 20-22 hours of his workweek are spent with these job duties performing Missionary work at our ecumenical charities.

The second primary facet of [the beneficiary’s] role as Evangelist Missionary is to work with the congregations of the six churches that comprise our council. Through his work and his teachings, he empowers individuals and congregations to identify and carry out the ministries to which God is calling them. [The beneficiary] also organizes groups of church members to work together to establish church-planting movements to develop and redevelop churches. This involves working closely with congregation leaders and members to target areas of the community that are underserved or underrepresented in each congregation and to reach out and introduce people in these target areas to the belief system of our church and to inspire them with the ways in which our church and our spiritual beliefs can improve their lives. . . . [The beneficiary] spends at least 15 hours per week fulfilling these job duties.

In addition to working in the field at our urban missions during the week, [the beneficiary] assists in church services and leads prayer sessions with local congregation members on Sundays and runs bible study programs for our members. These duties take up approximately 5-6 hours per week.

Rev. [redacted] overseer/mission director of [redacted], Accra, Ghana, discusses the beneficiary's work prior to his October 2002 arrival in the United States:

[The beneficiary] was a trained evangelist missionary at our church from December 1997 until October 2002. [The beneficiary] was employed on a full-time basis and worked approximately 40-45 hours per week. . . .

During his appointment as an evangelist missionary, [the beneficiary] primarily worked in our rural missions spreading the Word of the Lord and the beliefs of our church. His most important job duty, and one in which he showed significant success, was to effectively communicate and teach people about the tenets of the church and to convert people to the church to establish church-planting movements that possessed all of the resources, motivation, and skill to become self-sustaining congregations of the church.

Through the birth and development of these new congregations, [the beneficiary] was able to bring many new believers into our fold and to welcome them into the faith and love to be found in the Church. The great majority of [the beneficiary's] time was spent in fostering and developing the commitment of these new believers and the new congregations that they formed. Approximately 30-32 hours of his workweek was concentrated in this area.

In addition to working in the field at our rural missions, during the week, [the beneficiary] held church services with local congregation members on Sundays and ran bible study programs for our members. These duties took up approximately 4-5 hours per week.

The rest of [the beneficiary's] work week was spent on recruiting and training people to participate in local missions, developing and coordinating a support network for missionaries. He spent anywhere from 7-12 hours per week on these duties.

The director denied the petition, stating: "This order is based on two grounds of denial. They are the past and proposed duties of the occupation . . . in which the beneficiary will be engaged." The director stated that the petitioner "did not explain the standards for ordination in this denomination," and that the petitioner has not substantiated the assertion that the beneficiary possesses, or that his occupation requires, "advanced religious training." Thus, the director concluded that the petitioner has not offered the beneficiary employment in a qualifying religious occupation, and that the beneficiary does not have the required two years of experience in such an occupation.

The director's decision cannot stand as written. The director, by focusing on "advanced religious training," has ignored the discussion of the actual nature of the beneficiary's duties. This discussion appears to indicate that the beneficiary's duties can be said to relate to a traditional religious function in the petitioner's denomination. Indeed, "missionaries" are specifically included within the regulatory definition of "religious occupation" at 8 C.F.R. § 204.5(m)(2). This is, of course, not to say that a church can foreclose all inquiry simply by applying the label "missionary" to a given alien. The director has not claimed or shown that the beneficiary's duties, as described, deviate significantly from what are generally understood to be the duties of a missionary.

On appeal, the petitioner submits copies of a diploma from the Bible Institute, dated January 18, 1999, and a "License to Preach" in the beneficiary's name, dated October 14, 1999. A new letter from Rev. [REDACTED] accompanies these documents. Absent contradictory evidence, these documents are *prima facie* evidence of theological training (assuming, for the sake of argument, that such training is indeed necessary for the position) and what essentially amounts to ordination.

While the petitioner appears to have overcome the director's stated grounds for denial, critical deficiencies remain in the record. One such deficiency relates to the petitioner's ability to pay the beneficiary's stated compensation of \$400 per week plus room and board. 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 director raised the issue of ability to pay in the request for evidence issued on March 18, 2005, but the director did not spell out the documentary requirements to make such a showing. In response to that notice, Rev. [REDACTED] states that the petitioner "has received weekly remuneration of approximately \$400 and also receives free room and board. Before obtaining his employment authorization document, [the beneficiary] was paid off the books and also received free room and board."

The above-cited regulation at 8 C.F.R. § 204.5(g)(2) states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. Counsel has argued that the types of evidence required by 8 C.F.R. § 204.5(g)(2) are not available to the petitioner. Nevertheless, the cited regulation clearly applies to special immigrant religious worker petitions, as can be shown by an analysis of its plain wording. 8 C.F.R. § 204.5(g)(2) applies to "any petition filed by or for an employment-based immigrant which requires an offer of employment." Because the special immigrant religious worker classification requires an offer of employment, it falls within the compass of that regulation. Furthermore, pursuant to 8 C.F.R. § 204.5(c), for most employment-based immigrant classifications that require an offer of employment, only the employer may file the petition. An alien cannot, for example, self-petition as an

outstanding professor or researcher. The only employment-based immigrant classification that requires a job offer, and for which current regulations permit an alien to self-petition, is the special immigrant religious worker classification. Thus, the reference at 8 C.F.R. § 204.5(g)(2) to “any petition filed by . . . an employment-based immigrant which requires an offer of employment” can only refer to special immigrant religious worker petitions.

If the petitioner is unable to produce the specific types of evidence required by 8 C.F.R. § 204.5(g)(2), the petitioner does not have unlimited discretion to decide what kind of evidence to submit instead (or to simply declare that the petitioner need not meet the requirements at all). The regulation at 8 C.F.R. § 103.2(b)(2)(i) states:

The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

Thus, the petitioner must show that no tax returns, audited financial statements, or annual reports are available for the period in question, and the petitioner must also provide secondary evidence or, through independent sworn affidavits, account for the absence of both primary and secondary evidence.

The petitioner has submitted a copy of a Form W-2 Wage and Tax Statement, indicating that the petitioner paid the beneficiary \$15,872.50 in 2004. The document does not show a full year’s pay at \$400 per week (which would be \$20,800), nor does it otherwise show that the petitioner has consistently been able to provide \$400 per week, plus room and board, from the September 2003 filing date onward.

If it is the petitioner’s contention that part of the beneficiary’s compensation takes the form of free room and board, it cannot suffice for the petitioner simply to assert that this is the case. The petitioner must provide evidence of its ability to provide this compensation by showing that the church owns or rents the property where the beneficiary actually resides. The record contains no such evidence.

We note that the beneficiary has claimed, on Form G-325A, Biographic Information, to have lived at two different addresses since arriving in the United States. The beneficiary indicated that he resided at [REDACTED] Pleasantville, New Jersey, from October 2002 to July 2003, and at [REDACTED] City, New Jersey, from July 2003 onward. The Ventnor City address also appears on the beneficiary’s 2004 Form W-2, presumably issued in early 2005. Without evidence that the petitioning organization owned, rented, or otherwise controlled the properties at both of those addresses, the petitioner has not met its burden to show that it had been providing the beneficiary with lodging during that time. The petitioner cannot relieve

itself of its burden of proof simply by declaring that the beneficiary's early compensation was "off the books." Indeed, in this instance, the petitioner has produced no "books" whatsoever.

Pursuant to the above discussion, the petitioner must show that it has, and has had since September 2003, the ability to provide the beneficiary with \$400 per week plus room and board. The director must provide the petitioner an opportunity to overcome this issue before the director issues any new decision.

Another issue remains to be resolved. The regulations at 8 C.F.R. §§ 204.5(m)(1) and (3)(ii)(A) require the petitioner to show that, immediately prior to the filing of the petition, the beneficiary has the required two years of membership in the denomination in which the beneficiary seeks employment. 8 C.F.R. § 204.5(m)(2) defines "religious denomination" as a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, religious congregations, or comparable indicia of a bona fide religious denomination. We note that evangelical Protestantism is not, itself, a denomination as such; there are several distinct Protestant denominations that are evangelical or at least have evangelical factions.

The petitioning church in this proceeding is a member of the [REDACTED] which is one of several distinct Presbyterian denominations active in the United States. Because the beneficiary was outside the United States for most of the two-year qualifying period, working for [REDACTED] Ministry in Ghana, the petitioner must show some qualifying denominational connection between Chosen [REDACTED] and the P [REDACTED]. The petitioner has, thus far, submitted some materials from the Louisville, Kentucky headquarters of the [REDACTED] but these materials do not mention the ministry in Ghana, much less establish qualifying denominational affiliation. Materials from [REDACTED] that the petitioner has submitted do not contain the word "Presbyterian" or otherwise hint at such an affiliation.

The petitioner must demonstrate that the beneficiary's former employer in Ghana has a qualifying denominational connection to the petitioner's denomination, the [REDACTED]. If the petitioner cannot demonstrate that such a connection exists, then the petition cannot be approved. The director must address this issue before rendering any new decision.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.