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U.S. Citizenship
and Immigration
Services

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FILE:

SRC 05 141 51597

Office: TEXAS SERVICE CENTER

Date:

MAY 02 2006

IN RE:

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:

SELF-REPRESENTED

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 dismissed.

The petitioner is a Baptist 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 pastor of the petitioner's Hispanic church. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous (*i.e.*, paid, full-time) work experience as a pastor immediately preceding the filing date of the petition.

On appeal, the petitioner asserts that it submitted the best evidence available at the time.

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 April 21, 2005. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a pastor throughout the two years immediately prior to that date.

the petitioner's associate pastor, asserts in a letter, dated April 4, 2005, that the beneficiary "has been active with our church as the Hispanic Church Pastor since February 1, 2004." In a letter dated April 1, 2005, [REDACTED] financial secretary for the petitioning church, also states that the beneficiary "has been pastor of our Hispanic Church since February 1, 2004."

A Form 1099-MISC Miscellaneous Income statement indicates that the petitioner paid the beneficiary \$10,607.36 in 2004. The petitioner submits a list of checks paid to the beneficiary in 2005, showing a total of \$8,271.61 in payments to the beneficiary during the first three months of 2005. [REDACTED] indicates that the beneficiary "will receive a Form 1099 at year-end" to reflect his compensation. This total includes an entry

for "Study Bibles" and three for "Missions Escrow." It is not clear how much of the amount was intended as compensation for the beneficiary's services, as opposed to reimbursement for expenses incurred on behalf of the church.

The beneficiary's work at the petitioning church accounts for only about half of the qualifying period. In order to establish the beneficiary's qualifying work from April 2003 through the end of January 2004, the petitioner has submitted a letter dated April 4, 2005 from [REDACTED], pastor of Friendship Baptist Church, St. Petersburg, Florida. [REDACTED] states:

[The beneficiary] started working with this church in September 2000 as its Voluntary Hispanic Church pastor.

After working very hard for the Lord, [the beneficiary] became an employee of this church on February 1, 2003, when he agreed to become our Hispanic Pastor for a compensation package where he received seven hundred thirty dollars (\$730.00) a month as home allowance, two hundred dollars (\$200.00) a month from Sun Coast Baptist Association, and two hundred dollars (\$200.00) a month from Friendship Baptist Church.

[The beneficiary] went to become the Hispanic pastor for [the petitioning church] after we agreed to have both Hispanic congregations join each other at the facilities of [the petitioning church].

The petitioner submits no evidence that Friendship Baptist Church provided the compensation described above.

On June 7, 2005, the director issued a request for evidence (RFE), instructing the petitioner to "[s]ubmit a detailed description of the beneficiary's prior work experience . . . accompanied by appropriate evidence (such as copy of pay stubs or checks, W-2's or other evidence as appropriate). Submit an IRS certified copy of the income tax returns with all the pertaining W-2s for the two years preceding the filing of this petition."

In response to the RFE, the petitioner submitted uncertified copies of the beneficiary's Form 1040 federal income tax returns, indicating that the beneficiary earned \$14,235 in 2003, and \$15,569 in 2004, for his work as a pastor. Photocopied pay stubs show payments in varying amounts from the petitioner to the beneficiary from February 2004 through July 2005. It is not clear which of these checks were for the beneficiary's own compensation, and which were to cover the church's expenses. The petitioner also submitted a program from the September 8, 2002 worship service at Friendship Baptist Church. This program includes an announcement that the beneficiary is leading meetings of "the Spanish Mission Church" on Sunday mornings at 10:00. A notarized statement from [REDACTED] lists several of the beneficiary's former duties at Friendship Baptist Church. [REDACTED] concluded the statement with the assertion that "the dedication demanded was not less than 40 hrs/week."

The director denied the petition, stating that the petitioner had submitted insufficient evidence of the beneficiary's full-time, paid employment as a pastor during the 2003-2005 qualifying period. The director

specifically noted the petitioner's failure to produce Form W-2 Wage and Tax Statements, but the director did not indicate that the absence of Forms W-2 was the single deciding factor. On appeal, [REDACTED] asserts that the "Beneficiary, as an ordained pastor, does not receive a W-2 and files his 1040 as a Self Employed person." [REDACTED] states that the beneficiary no longer has copies of his tax documentation from his earlier employment with Friendship Baptist Church.

[REDACTED] asserts that the beneficiary had requested certified copies of his tax returns, but the copies did not arrive in time for submission in response to the RFE and therefore the petitioner had no choice but to submit uncertified copies. [REDACTED] asserts that the petitioner has also submitted a "Sworn Statement" from [REDACTED] which ought to be accepted as evidence. While the record contains various letters and statements from [REDACTED] none of them are marked as sworn statements. The statement dated July 25, 2005 is notarized, but the attestation of a notary does not make the document a sworn statement.

In a subsequent brief, [REDACTED] further discusses the absence of Forms W-2 from the record and asserts "there was an agreement between Friendship Baptist Church and [the beneficiary] which kept the reverend busy for 40 hours or more a week." [REDACTED] states: "There not being better evidence available, the one filed by Appellant should be considered, absent any information that might make it dubious, as good enough to show what it intends to show."

With regard to [REDACTED] assertion that the petitioner's documentation should suffice "absent any information that might make it dubious," the AAO notes that the petitioner's response to the RFE included additional documents beyond those mentioned above. Most significantly, the petitioner submitted copies of "Church/Pastoral Assistance Applications" submitted to the Florida Baptist Convention in 2002 and 2004 in order to secure financial support for the beneficiary's churches. The 2002 form identifies the "Lead Sponsor" as Friendship Baptist Church; the 2004 form identifies the petitioning church as the "Lead Sponsor." A section of each form, marked "Applicant Pastor," includes several optional check boxes. Given the choice between "Full-Time" and "Bivocational," the "applicant pastor," *i.e.*, the beneficiary, was identified as "Bivocational" on both forms. Florida Baptist Convention guidelines, submitted along with the assistance applications discussed above, state: "Bi-vocational pastors must devote no fewer than 20 hours per week in the new church."

Thus, as recently as early 2004, documents submitted to denominational authorities indicate that the beneficiary was a "bivocational" pastor who, by definition, works at a secular job separate from his part-time pastoral duties. The assistance applications are, therefore, contemporaneous evidence that the beneficiary was considered to be a part-time "bivocational" pastor as late as 2004.

We also note that both the petitioner and Friendship Baptist Church claim to have paid the beneficiary for his work, but the petitioner also claimed on the Form I-360 petition that the beneficiary has never worked in the United States without authorization. The beneficiary entered the United States under an H-1B nonimmigrant visa sponsored by Liberty Christian Enterprises, which operates a Baptist church and a private school in St. Petersburg, Florida. The record contains no documentation from Liberty Christian Enterprises to show how long the beneficiary worked there, if he worked there at all, following his arrival into the United States. While the beneficiary's H-1B visa would have entitled him to work for Liberty Christian Enterprises, he

would not have been authorized to work elsewhere under that visa. On the Form I-360, the petitioner acknowledged that this H-1B visa had expired prior to the filing of the present petition. Any employment undertaken following the expiration of the beneficiary's nonimmigrant status would have been unauthorized.

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. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988).¹

We conclude from the available contemporaneous evidence that the beneficiary was a part-time bivocational minister in 2004, and therefore he was not solely engaged in the vocation of a minister during the qualifying period. As the director noted in the denial decision, *Matter of Faith Assembly Church*, 19 I&N Dec. 391 (Comm. 1986) precludes special immigrant religious worker classification for an alien who worked only part-time as a minister during the two-year qualifying period. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980), also indicates that part-time experience is not qualifying. While the case law cited here predates the current controlling legislation, Congress approvingly noted the existing case law when the present legislation was formulated. See H.R. Rpt. 101-723, at 75 (Sept. 19, 1990). Pursuant to *Matter of Ho*, the available evidence casts doubt on the assertion that the beneficiary will, in the future, work solely as a minister as required by the statute and regulations cited above.

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.

¹ We note that an earlier petition on the beneficiary's behalf, filed on May 27, 2003, included a letter from [REDACTED] in which he stated that the beneficiary "has been the Pastor for our Spanish Mission Church for the past two and one half years, on a voluntary basis." In this letter, [REDACTED] stated that the church intended to pay the beneficiary \$12,000 per year plus the beneficiary's utilities and bills. In describing this prospective compensation package, [REDACTED] gave no indication that the church was already providing such compensation. Furthermore, the compensation package described in [REDACTED]'s 2003 letter does not match the package described in [REDACTED]'s 2005 letter. These conflicting statements diminish the evidentiary weight of [REDACTED]'s after-the-fact statements regarding the beneficiary's work at Friendship Baptist Church.

We emphasize here that the petitioner's own submissions, including the assistance applications, cast sufficient doubt on the petitioner's claims to prevent the approval of the petition. The information in [REDACTED]'s earlier letter does not change the outcome of the appeal; it simply reinforces a trend already evident in the petitioner's own documentation.