

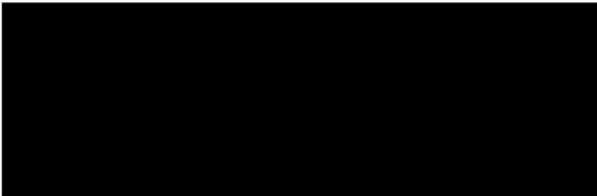
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U.S. Citizenship
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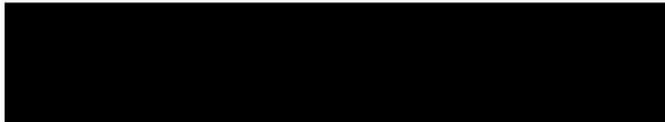
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PUBLIC COPY



FILE: LIN 05 174 50533 Office: NEBRASKA SERVICE CENTER Date: SEP 08 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.

2 Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska 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 Pentecostal 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 missionary pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous membership in the petitioner's religious denomination and work experience as a missionary pastor immediately preceding the filing date of the petition.

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 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," and that the alien must have been a member of the petitioner's religious denomination during that same two-year period. 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 membership in the denomination and experience in the religious vocation, professional religious work, or other religious work. The petition was filed on May 17, 2005. Therefore, the petitioner must establish that the beneficiary was a member of the petitioner's denomination and continuously performing the duties of a missionary pastor throughout the two years immediately prior to that date.

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.

In a letter accompanying the initial filing, [REDACTED] senior pastor of the petitioning church, states: “Ever since 1989 on countless occasions [the beneficiary] has ministered effectively to us on a completely voluntary basis . . . in addition to his many years of faithful pastoral ministry in Haiti as an affiliate of [the petitioning church].” The initial submission contained documentation of the beneficiary’s credentials, but no direct evidence of the beneficiary’s employment in Haiti.

On June 24, 2005, the director issued a request for evidence (RFE). The RFE reads, in part:

- Submit evidence to show the beneficiary’s compensation for his services from 2003 through the present day.
- Please specify the religious denomination of the petitioning entity.
- Submit evidence which establishes 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.
- Please identify the religious organization abroad that the beneficiary has maintained membership through. Submit clear evidence of the affiliation between the organization abroad and the petitioner entity [*sic*]. The evidence should establish that both organizations share the same form of ecclesiastical government with the same creed or statement of faith and code of doctrine and discipline.
- Submit a letter from the organization in Haiti where the beneficiary served in the pastoral ministry.

In response, [REDACTED] states:

[The beneficiary] has been working as a native missionary for our organization in the island of Haiti . . . since 1996. Since then he has been in good standing with our church. . . . To compensate [the beneficiary] for his services (due to the difficulties of sending money to his place of mission), we deposit money in a Bank Account opened in his name here in Traverse City, MI every quarter. FIFTY PERCENT (50%) OF THAT DEPOSIT GOES TO HIM AS COMPENSATION FOR HIS SERVICES. Please see enclosed the quarterly cash flow statement from May, 2003 through May, 2005.

The cash flow statement indicates that, beginning with a balance of \$4,352.51 in April 2003, the petitioner has deposited \$58,031.97 through June 2005, with \$62,382.78 in “Expenses Paid Out,” leaving a balance of \$1.70.

In a separate letter, [REDACTED] states:

We are Pentecostal Charismatic in nature. [REDACTED] . . . in Haiti is one of our affiliates. . . .

Both [the beneficiary] and the church in Haiti share the same form of ecclesiastical government, creed or statement of faith, code of doctrine and discipline with our local church here in Traverse City, MI.

For many years now we have considered both [the beneficiary] and the church in Haiti as part of this organization. . . . Every year, since 1996, either someone from our congregation here goes to Haiti or [the beneficiary] comes to us, to discuss the state of his mission on the island.

The petitioner submits a copy of a letter from the beneficiary, dated April 22, 1996, to the petitioner's board of elders. The letter reads, in part:

My congregation and I have been tremendously blessed by our association over the past several years. . . . Our working together with your various mission and work teams that have been coming to us here in Haiti, have not only been impacting and blessing this nation as a whole, but has challenged our congregation to become increasingly involved in missions ourselves. . . .

I have . . . taken the time to read your vision and statement of faith and do embrace the same. I therefore now feel led to ask you to kindly consider granting me and my church affiliation with you, for the purpose of care, nurture and spiritual oversight.

[REDACTED] acting administrator of [REDACTED], states that the beneficiary founded the church in 1993 and became its senior pastor in 1996, maintaining a full-time schedule. The petitioner submits a list of weddings, baptisms, and funerals at which the beneficiary is said to have officiated.

Nothing in the petitioner's response to the RFE identifies the religious denomination of either the petitioner or the church in Haiti. "Pentecostal Charismatic" is a style of worship rather than a formally organized denomination, and there exist numerous Pentecostal denominations that are not monolithic in their doctrinal positions.

In denying the petition, the director found that the petitioner had not established that the [REDACTED] belongs to the same religious denomination as the petitioning church. The director observed that two churches do not necessarily belong to the same denomination simply because one describes itself as "Pentecostal," and that there is no documentary evidence that the church in Haiti is formally affiliated with the petitioning church. The director also stated:

While the petitioner asserts that fifty percent of the expense amounts shown were payments made to [the beneficiary] for services, the Service finds the evidence insufficient in relation to the requested documentation. It would seem reasonable that an entity would keep separate

entries for money contributed to missions and money paid as compensation for services. The record does not address any compensation the beneficiary may have received from the Family [REDACTED] in Haiti in exchange for his services as a Pastor.

On appeal, [REDACTED] states:

I can understand the Service's difficulty in establishing affiliation in membership between two churches that are technically classified as "Non-denominational." However in our case our church has a very active missions arm which has planted churches in several countries around the world. We commonly refer to these churches as daughter or sister congregations to our own. [REDACTED] . . . is one of these churches. . . . They share . . . identical statements of faith [with] us, their membership document is patterned after ours and most of the programs they use . . . are those they have received from us. . . .

It has never been our practice to compensate Pastors of our churches in foreign lands with separately designated accounts. As a pastor of our church plant in Haiti we don't pay [the beneficiary] as we would a state side employee of our church. All the funds sent to him are to be used by him at his discretion. . . . We could have designated more of these large sums into a "Compensation" category but we never saw a need.

[REDACTED] of Living Word Ministries, Manton, Michigan, states:

It has come to my attention that there may be some confusion about the history of the relationship between [the petitioning church] and [the beneficiary], pastor of [REDACTED] in Port-Au-Prince, Haiti. Toward clarification of this I offer the following.

I was privileged to serve as Senior Pastor of [the petitioning church] from 1988 through mid 2001. It was in the very early 1990s that the mission outreach program of the church began to blossom and it was at that time that our relationship with [the beneficiary] began. . . .

Beginning in the early 1990s and continuing to the present day, many mission trips from [the petitioning church] have gone to [the beneficiary] and Family Tabernacle of Praise. . . . Through the years these trips have further knit the hearts of the leadership of both churches together as well as the hearts of the two congregations into a "sister" church relationship.

The petitioner submits copies of letters, dating from the 1990s, between the beneficiary and various personnel of the petitioning church. These letters corroborate the assertion that the two churches have been closely allied, even if not formally affiliated through official documentation. The ongoing collaboration between the churches is consistent with the type of relationship that one might expect if the churches had any formal denominational affiliation.

Upon consideration of the materials submitted by the petitioner, we find that the petitioner's claims and documents are credible and sufficient to establish a preponderance of evidence in favor of approval. The petitioner's financial support of the church in Haiti demonstrates a relationship between the two churches, and the director's dissatisfaction with the specific terms of this support is not sufficient grounds for denial. The director has adduced no evidence that would contradict or cast doubt on any of the petitioner's statements or evidence. In the face of the petitioner's credible, plausible, and un rebutted assertions, we find that the petitioner has met its burden of proof.

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 decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.