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[REDACTED]

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date:

AUG 03 2007

SRC 02 191 53428

IN RE:

Petitioner:

Beneficiary:

[REDACTED]

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:

[REDACTED]

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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is a United States component of an international Protestant Christian organization. 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 Redemption Chapel in Birmingham, Alabama. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a pastor immediately preceding the filing date of the petition.

On appeal, the petitioner submits arguments from counsel as well as additional evidence.

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." 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 4, 2002. 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.

██████████ Pastor-in-Charge of the petitioner's Dominion Chapel in Stafford, Texas, stated that the petitioner "was appointed as an Assistant Pastor in 1996. [The beneficiary] was transferred to Portau-Prince [sic], Haiti to head the Haiti Mission in June 2000. He's currently the Pastor-in-charge of the Birmingham, Alabama branch of" the petitioning church.

The petitioner's initial submission included correspondence, dated mid-May and early June 2000, relating to the beneficiary's transfer to the church in Haiti, but no evidence to show that the beneficiary in fact was engaged solely as a minister from June 2000 to June 2002.

On April 3, 2003, the director issued a request for evidence, stating: "the beneficiary must have been working full-time and receiving a salary for [the required] two-year period." In response to that notice, ██████████ stated that that the beneficiary served "in Lagos Nigeria between 1995 and 2000. He was the Missionary/Pastor of our Parish in Port-au-Prince, Haiti from August 2000 until his posting to Birmingham, Alabama last year," *i.e.*, 2002. This statement indicates that, while the transfer was announced in June 2000 (as previously documented), it did not actually take effect until at least two months later. This is important because the period from June to August 2000 falls within the two-year qualifying period.

Other correspondence, dated July and August 2000, discusses arrangements for the beneficiary's travel to Haiti, further supporting the conclusion that the beneficiary was not yet in Haiti as of June 2000. For instance, on July 19, 2000, the beneficiary signed a receipt for his "Air France ticket to Haiti," a ticket that would have been of no use to him if he was already there. A travel document from the Haitian government is dated July 25, 2001.

A May 25, 2000 memorandum from ██████████ states: "Apapa State will pay a monthly subvention of Twenty Five thousand naira (N25,000) to the family of the Missionary that will be going to Haiti." The petitioner submits copies of receipts for monthly "Family Maintenance Allowance" payments of N25,000 from the petitioner's Nigerian headquarters payable to the beneficiary in 2001 and January 2002. Accompanying deposit slips identify the depositor as "Apapa State" and indicate that the funds were deposited at "Guaranty Trust Bank / Victoria Island" in Lagos, Nigeria. Bank printouts from Guaranty Trust Bank show monthly N25,000 deposits from October through December 2000. We note that these deposits were made in Nigerian rather than Haitian currency, to a bank in Nigeria, even though the beneficiary was in Haiti at the time. The bank printouts show withdrawals originating from Nigerian cities such as Port Harcourt.

Letters indicate that the beneficiary opened two bank accounts in Haiti on September 1, 2000 and May 9, 2001 respectively. Another bank document shows that the "City of David" paid the beneficiary U.S. \$6,500 on June 19, 2002 (after the filing date). The payment originated by wire transfer from an Australian bank. Printouts of electronic mail messages from August 2001 refer to funds wired to the beneficiary in Haiti in order to pay his overdue rent.

In a July 4, 2000 letter, the beneficiary identified "the recipient bank for the captioned allowance." The fact that the beneficiary did not identify this bank until July 2000, along with the absence of any evidence of

earlier payments, supports the conclusion that the beneficiary did not begin his work in Haiti until weeks or months after June 4, 2000.

Other materials indicate that the beneficiary most recently entered the United States on January 18, 2002, and ten days later, on January 28, 2002, was formally appointed as pastor-in-charge of Redemption Chapel in Alabama. (This letter of appointment is dated nearly three months earlier than the April 18, 2002 "Letter of Transfer to Alabama Parish" submitted with the initial filing.) The petitioner's response to the director's notice included no evidence to show how the beneficiary supported himself during the first half of 2002. The letters discussing the beneficiary's work in Alabama mention his *future* pay, but do not indicate that the beneficiary had already received any compensation for that work.

The director denied the petition on January 31, 2007, stating that the petitioner has not demonstrated that the payments to the beneficiary in Haiti constituted salary payments. The director added: "Nothing was submitted for 2002." The director concluded that the petitioner failed to demonstrate "a salary received by the beneficiary for the entire two years preceding the filing of the petition," and that, therefore, the petitioner had not shown that the beneficiary had been engaged solely in the vocation of a minister during that period.

The director is correct that the record contains no direct evidence that the beneficiary received a salary in Haiti. Payments to a Nigerian bank account, in Nigerian currency, are not direct evidence that the beneficiary was working as a minister in Haiti. Nevertheless, the record shows regular payments from the petitioner's Nigerian headquarters into an account in the beneficiary's name, and these payments deserve evidentiary weight.

[REDACTED] the petitioner's Provincial Administrator for Lagos Province 4 (Apapa) states:

The volatile nature of Haiti necessitated leaving [the beneficiary's] family behind in Nigeria during this period.

His salary was split into two, a portion was paid directly into his bank account locally to provide for his family in Nigeria whilst the other part was remitted to him. Please note that "Family Maintenance Allowance" is the term for that portion of his salary paid in Nigeria.

His Salary in Haiti was denominated in American Dollars because the Haitian Currency is not convertible internationally. Due to the exigencies of our developing economy and the government fiscal policies seven (7) years ago, the American Dollar was not always or readily available. When available Lump sums were quickly remitted to all our Missionaries, including [the beneficiary].

These assertions are consistent with the available evidence. The beneficiary's ongoing work for the petitioner would certainly explain why the church made regular payments to the beneficiary's family in Nigeria. The evidence of payments to the beneficiary in Haiti, fragmentary as it is, is convincing as far as it goes. Considering the documentation showing that the petitioner appointed the beneficiary to the position in Haiti, and then began making regular payments to the beneficiary's family, the obvious inference is that the payments relate to the

beneficiary's work. The petitioner's use of the term "family maintenance allowance" instead of the word "salary" is not, by itself, a disqualifying factor, yet the director's objection seems to rest on what the petitioner chose to call these payments.

The petitioner also submits, on appeal, copies of documents showing that the beneficiary received monthly "allowance" payments of \$1,200 in early 2002. Also, the petitioner paid \$900 per month in rent, the implication being that the beneficiary resided at the rented property. The checks were paid from an account held by Redemption Chapel in Alabama.

Evidence submitted by the petitioner overcomes the director's cited grounds for denial, as those grounds are worded. Therefore, the director's denial decision cannot stand. Nevertheless, additional information is needed before we can reasonably find that the petitioner has met its burden of proof.

The director must, therefore, issue a more detailed request for evidence, in order to give the petitioner an opportunity to provide contemporaneous documentary evidence, including but not limited to payroll records, to answer the following questions:

- Where was the beneficiary working, and what was he doing, immediately before he went to Haiti?
- When did the beneficiary stop actually performing the work he was doing before he went to Haiti?
- When did the beneficiary leave Nigeria and arrive in Haiti?
- When did the beneficiary actually begin working in Haiti?
- When did the beneficiary cease working in Haiti?
- When did the beneficiary actually begin working in Alabama?

The sometimes vague evidence currently in the record is not sufficient to answer the above questions. For instance, letters and documents regarding the beneficiary's appointment to Haiti span several months in mid-2000, and they do not tell us when the beneficiary stopped working in Nigeria and began working in Haiti. The evidence seems to indicate that the beneficiary's actual work in Haiti (proof of presence in Haiti is not proof of employment there) began in August 2000, leaving a two-month gap at the beginning of the qualifying period that the petitioner must fill with persuasive documentary evidence.

Furthermore, the record reveals another area that bears additional inquiry. 8 C.F.R. § 204.5(m)(4) requires the prospective United States employer to state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration). The petitioner has indicated that the beneficiary "will be compensated monthly with a salary of \$1,500.00 and other fringe benefits solely from church funds." 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 this issue in a request for evidence, and did not raise the issue in the denial notice. This omission suggests that the director found the petitioner's evidence to be satisfactory. The evidence, however, indicates otherwise. [REDACTED] has stated: "The Redeemed Christian Church of God is responsible for financial and other support required to keep and sustain the entire family." In this same letter, [REDACTED] stated that there are "several Parishes under the supervision of the undersigned." The petitioner submitted an audited financial report for Dominion Chapel in Texas. The report does not indicate that the audit covered Redemption Chapel in Alabama, where the beneficiary is to work, or any of the petitioner's churches other than Dominion Chapel.

Also, the record does not show that Dominion Chapel is responsible for Redemption Chapel's finances, or that Dominion Chapel has ever paid the beneficiary's salary or committed to do so in the future. A "Payroll Summary" for January 1 through June 5, 2003, identifies four paid employees, including [REDACTED], but the beneficiary's name does not appear on this document. Also, because the document lists only four names, the payroll summary appears to apply only to a single church, rather than to some hypothetical regional or nationwide master payroll that would cover both Dominion Chapel in Texas and the beneficiary's Redemption Chapel in Alabama. (The record shows that the petitioner has eight parishes in the Houston area alone, of which Dominion Chapel is one.)

As noted elsewhere in this decision, the petitioner's appeal includes copies of bank statements showing that the petitioner's Redemption Chapel in Birmingham, Alabama maintains its own bank account, from which the beneficiary received payment in 2002. The petitioner must produce persuasive evidence, consistent with the regulatory requirements, in order to establish that Redemption Chapel, itself, has the ability to pay the beneficiary's salary, or that some other body of the petitioning organization is able to pay, and will pay, the beneficiary's salary. The payments documented in the record show that Redemption Church paid the beneficiary \$1,200 per month, well short of the proffered rate of compensation. Therefore, these past payments cannot show Redemption Church's ability to pay the full rate.

Based on the above discussion, additional evidence is needed in order to establish the identity of the beneficiary's intending employer, and that employer's ability to compensate the beneficiary at the proffered rate.

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.