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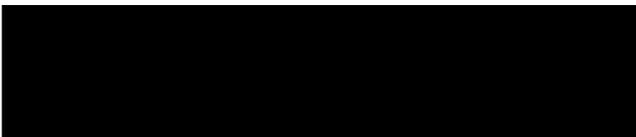
U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: AUG 03 2007
SRC 05 100 50652

IN RE: Petitioner: [Redacted]
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:



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.

Maureen Deardorff
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 seeks classification 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 pastor at the Prayer Center, a church in Cleveland, Tennessee. The director determined that the petitioner had not established that he had the requisite two years of continuous work experience as a pastor immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that the prospective employer is able to remunerate the petitioner, or that it had made a qualifying job offer to the petitioner.

On appeal, the petitioner submits a brief from counsel and numerous exhibits, most of them previously submitted.

In this decision, the term "prior counsel" shall refer to [REDACTED] who represented the petitioner at the time the petitioner filed the petition. The term "counsel" shall refer to the present attorney of record.

Part 1 of the Form I-360 petition identifies Living Word Fellowship Church (LWFC) as the petitioner. Review of the petition form, however, indicates that the alien beneficiary is the petitioner. An applicant or petitioner must sign his or her application or petition. 8 C.F.R. § 103.2(a)(2). In this instance, Part 9 of the Form I-360, "Signature," has been signed not by any official of LWFC, but by the alien beneficiary himself. Thus, the alien, and not LWFC, has taken responsibility for the content of the petition. Indeed, the attorneys who have represented the petitioner throughout this proceeding have acknowledged that the beneficiary, as the signer of the petition form, is the petitioner. This will not affect the adjudication of the appeal, because the record shows that the attorney who filed the appeal represents the alien beneficiary. Thus, the appeal has been properly filed.

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 first issue we shall discuss concerns the petitioner's past experience. 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

[REDACTED]

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 February 23, 2005. Therefore, the petitioner must establish that he was continuously performing the duties of a pastor throughout the two years immediately prior to that date.

The petitioner's initial submission includes a five-page letter on LWFC letterhead. Printed below the signature on the last page is "[REDACTED], Ph.D. / Senior Pastor." The record amply demonstrates that LWFC's Senior Pastor is [REDACTED], not "[REDACTED]". The misspelling of [REDACTED] name suggests that an unidentified third party prepared the letter, as it seems highly unlikely that [REDACTED] would misspell his own name in this manner. The letter contains the following passage relating to the petitioner's experience: "We are blessed to have found [the petitioner] to serve as an Associated [*sic*] Minister at the Prayer Center under the umbrella of Living Word Fellowship Church. [The petitioner] has been a full-time minister for the church since October, 2001 (well over two years)" (emphasis in original). The letter also indicates: "we are attaching the church budget, copies of recent bank statements, and copies of [the petitioner's] recent pay stubs and individual tax returns." The petitioner's initial submission, however, does not contain copies of pay stubs or the petitioner's individual tax returns.

In other correspondence in the record, other witnesses (including the petitioner himself) assert that the petitioner never received a salary and never filed income tax returns. This contradicts [REDACTED] claim that "we are attaching . . . copies of [the petitioner's] recent pay stubs and individual tax returns." This early reference to documents that were never submitted, and which apparently do not exist, would raise significant questions all by itself, even if it did not appear in a letter in which [REDACTED] supposedly misspelled his own name. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

We note that the following legend appears at the bottom left of every page of D [REDACTED] letter:

[REDACTED]

Similar legends appear, also at the bottom left corner of each page, on subsequent correspondence from counsel and prior counsel. A letter from prior counsel includes this legend:

[REDACTED]

Counsel's appellate brief contains this legend:

[REDACTED]

The two-line legend appears to relate to an internal filing system at counsel's law firm. The conclusion most consistent with the evidence is that prior counsel (or someone at that law firm) prepared the "Cockerman" letter. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 2, 4 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). It could be argued that the letter became evidence when I [REDACTED], by signing the letter, endorsed the contents thereof. This would only be the case, however, if he were fully aware of and in agreement with the contents of that letter. Considering the errors and contradictions discussed above, however, it seems unlikely that [REDACTED] reviewed the document closely. We must therefore conclude that the "Cockerman" letter, the source of several key claims in the record, is devoid of both credibility and evidentiary weight.

After the "[REDACTED]" letter, the chief source of information in the record is [REDACTED] identified as Administrative Pastor of the Prayer Center. [REDACTED] stated: "Please find attached documentation showing that [the petitioner] has been the Senior Pastor of Prayer Center Church under Living Word Church since 2001." The "attached documentation" consists of financial documents that say nothing about employment. The petitioner's name appears on only one of these documents, specifically an "Account/Product Profile" from First Tennessee Bank, designating the petitioner as the signatory on the Prayer Center's bank account. We will discuss the bank documents in greater detail elsewhere in this decision.

[REDACTED] further stated: "These bank statements show that Prayer Center/Living Word Church has been responsible for the living expenses for [the petitioner] for the period covered. Although he has not been a salaried minister, Prayer Center/Living Word Church has been responsible for" about \$12,000 per year in the petitioner's expenses, including rent, utilities, and meals. The financial documents in the initial submission do not substantiate the specific expenses listed by [REDACTED]. The fact that LWFC and the Prayer Center both maintain active bank accounts does not compel the conclusion that either church has been responsible for the petitioner's material support.

Annual expense statements from LWFC are only grossly itemized into less than a dozen broad categories, such as "Personnel Ministries." Expense reports from the Prayer Center are more detailed, but they are difficult to correlate to the list of expenses that [REDACTED] provided.

Copies of LWFC's quarterly tax returns show that LWFC has paid employees, but the returns do not identify those employees or show that the petitioner is among them.

We will return, later in this decision, to the claimed relationship between the Prayer Center and LWFC.

On May 27, 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 including duties, hours, and compensation," along with corroborating evidence such as payroll and tax documents. In response, prior counsel stated that the petitioner "has never personally filed income tax returns, as he was unaware that he should do so in view of the fact that he does not receive a salary from Living Word Fellowship." As we have already noted, this statement directly contradicts the claim in the [REDACTED] letter that "pay stubs and individual tax returns" not only exist, but allegedly accompanied the initial submission.

The petitioner's response to the RFE includes new letters attributed to [REDACTED] but these letters do not mention the prior reference to pay stubs and tax returns, let alone explain why [REDACTED] "mistakenly believed that these items not only exist but were to be included in the initial submission. These new letters contain significantly less detail than the earlier [REDACTED] letter. One letter, dated October 19, 2004 (several months before the filing date), reads in part: "Enclosed with this letter is evidence of continuous payment for his services as a full-time Associated [sic] Pastor since October, 2001." The letter contains no description of this evidence, and the record contains no evidence of any payment from LWFC to the petitioner. The October 19, 2004 letter also makes no mention of the Prayer Center.

Prior counsel asserted that the petitioner's "compensation is derived from the Prayer Center and his expenses are covered as shown in the First Tennessee Bank Statements attached to this statement." Along with the bank statements, the petitioner has submitted copies of canceled checks from 2004, signed by the petitioner, for "Parsonage Utilities" and "Parsonage Rent." This additional evidence substantiates earlier claims that the bank statements reflect the petitioner's material support.

Prior counsel stated: "Living Word Fellowship was not able to provide detailed time sheets, weekly time logs and schedules, work logs or reports, but has provided a letter stating what the hours and work duties have been for February 23, 2003 to February 23, 2005." The record contains no letter from LWFC matching that description, although [REDACTED], in a letter on Prayer Center letterhead, provided a description of the petitioner's duties. The petitioner also submitted an unsigned letter on LWFC letterhead, discussing elements of the petitioner's claimed past work. This letter consists of sections copied word-for-word from Dr. [REDACTED]'s earlier letter.

The director issued a denial decision on April 12, 2006. In that decision, the director did not contest the evidence that the Prayer Center supported the petitioner, but the director found that "payment for living expenses and giving love offerings cannot be substituted for a salary." This position is in conflict with case law. The Board of Immigration Appeals ruled that an alien who "receives compensation in return for his efforts on behalf of the Church" is "employed" for immigration purposes, even if that compensation takes the form of material support, such as room and board, rather than a cash wage. See *Matter of Hall*, 18 I&N Dec. 203, 205 (BIA 1982). For this reason, we agree with counsel's assertion on appeal that the petitioner "was compensated in kind."

The director's finding that the petitioner worked without compensation is, as explained above, flawed and must be withdrawn. Nevertheless, this finding by itself is not sufficient to warrant approval of the petition.

The next issue concerns the nature of the job offer extended to the petitioner. 8 C.F.R. § 204.5(m)(4) requires the prospective employer to set forth the terms of the job offer, including an explanation as to how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration).

The initial letter attributed to [REDACTED] contains only vague references to the petitioner's schedule, but a somewhat more specific discussion of compensation:

Living Word Fellowship Church . . . is offering a salary of \$400 per week, plus expenses. . . .

[The petitioner] is responsible for coordinating and preaching at the prayer services conducted at Prayer Center Monday Through Saturday. He is also responsible for the Evangelism and Outreach Ministry of Living Word Fellowship Church and Prayer Center.

...

The Minister has Sunday services one day a week, but there is never truly a "day off" in this holy work. Every day, the minister performs his responsibilities to his church members through his visits, counseling, and prayer. [The petitioner] performs all these duties as part of his calling to be a minister of the Gospel.

The director, in the May 2005 RFE, requested "a detailed job description of the current proffered position, including how much the [petitioner] will be paid, proposed schedule (number of hours) and other compensations." In response, the petitioner submitted a letter from [redacted] containing a breakdown of the petitioner's duties and activities during a typical week. On page 2 of this letter, [redacted] listed the petitioner's activities from Sunday through Tuesday. The schedule for Wednesday through Saturday appeared on the third and final page of the letter. The time allotted for various duties adds up to 44 hours per week. This letter is reproduced at various points in the RFE response. At one such point, page 3 is omitted from the copy, with the result that the schedule shows only Sunday through Tuesday. The petitioner also submitted additional materials showing the petitioner's involvement not only with the Prayer Center, but also with other area ministries. Various exhibits show the beneficiary working 40 or more hours per week; nothing indicates a shorter work week.

The director, in denying the petition, quoted in full the portion of the schedule that appears on page 2 of [redacted] letter, and stated: "According to the weekly schedule submitted the sum of the hours to be worked by the [petitioner] is a total of 16 hours per week. . . . Part-time employment is not a qualifying job offer." The director, in arriving at this conclusion, selectively cited this single page, without examining numerous other exhibits (including page 3 of the letter, elsewhere in the record) that clearly and consistently indicated that the petitioner would work a full-time schedule of more than 40 hours per week. Counsel, on appeal, rightly resubmits copies of these materials.

The director's finding that the petitioner has not established a full-time schedule appears to rest entirely on the incomplete copy of [redacted] letter. This ground for denial cannot stand, and is hereby withdrawn.

The remaining basis for denial, less easily overcome, concerns the prospective employer's ability to compensate the beneficiary. The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part:

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.

Pursuant to the regulation quoted above, the United States employer is responsible for the alien's compensation, and that employer must, itself, possess the necessary resources to compensate the alien. Therefore, it is necessary to identify the actual entity that will be directly responsible for the beneficiary's compensation. The letter attributed to [REDACTED]" states:

Churches, by their nature, are not able to pay high salaries to their ministers. Living Word Fellowship Church is no exception to this rule. The church is offering a salary of \$400 per week, plus expenses. As **evidence of the church's ability to pay** [the petitioner's] salary, we are attaching the church budget, copies of recent bank statements, and copies of [the petitioner's] recent pay stubs and individual tax returns.

(Emphasis in original). We have already noted the problematic references to "pay stubs and individual tax returns" and will not revisit that issue in detail here. Given the context, "the church" here appears to be LWFC. [REDACTED] as implied joint responsibility, stating: "Prayer Center/Living Word Church has been responsible for the [petitioner's] living expenses" and referring to "Prayer Center/Living Word Church's Annual Financial Statements." The financial documents accompanying this letter, however, do not show that the Prayer Center and LWFC share joint accounts or common finances. Instead, the petitioner has submitted partial copies of LWFC's bank statements issued by First Citizens Bank, and copies of the Prayer Center's bank statements issued by First Tennessee Bank. Not only do the two churches have separate accounts, they use two different banks. There is no documentary evidence that LWFC has ever been responsible, in whole or in part, for the Prayer Center's finances.

The suspect letter attributed to [REDACTED] places "the Prayer Center under the umbrella of Living Word Fellowship Church" and indicates that "[t]he Prayer Center . . . is under the corporate charter of Evangel Fellowship International." The record contains materials from LWFC's web site (<http://www.lwfonline.org>), but these do not ever mention the petitioner or the Prayer Center. Similarly, printouts from the Prayer Center's web site (<http://www.backtoprayer.org>) never mention LWFC or Evangel Fellowship International. LWFC's May 2003 directory, which contains perhaps a hundred names, does not name the petitioner or the Prayer Center. The record contains no documentary evidence that the Prayer Center is in any way connected or affiliated with LWFC or with Evangel Fellowship International. The petitioner's 2003 ordination certificate from Evangel Fellowship International does not establish any institutional connection between that entity and the petitioner's church. At best, the record establishes that the petitioner, as an individual, is a member of Evangel Fellowship International; there is no evidence of any formal institutional connection between that organization and the Prayer Center.

In the absence of documentary evidence linking LWFC and the Prayer Center, the latter entity stands as the one most likely to be responsible for the petitioner's compensation. Supporting this conclusion are the canceled checks mentioned previously, which the petitioner issued to himself as the signatory of the Prayer Center's bank account. [REDACTED] has indicated that the petitioner "has not been a salaried minister," and the only figure provided for the petitioner's future salary has been \$400 per week, roughly

\$20,800 per year. If the \$400 salary would replace the petitioner's existing in-kind compensation worth just over \$12,000 annually, the Prayer Center would need to cover the difference - about an additional \$8,800 per year. [REDACTED] October 2004 letter, however, states the petitioner's salary as "\$400 per week *plus expenses*" (emphasis added). This indicates that the salary is to be *added* to the Prayer Center's existing expenses, in which case the Prayer Center must show income or assets sufficient to cover \$20,800 per year beyond what it has already provided.

The most recent expense report for the Prayer Center is for calendar year 2003, showing \$24,385.84 in expenses. The report does not show the Prayer Center's income for that year, although that information is crucial to determine whether the Prayer Center could afford to add the petitioner's proposed salary to its existing expenses. The bank statements show that the Prayer Center generally carries a relatively low bank balance. The 2003 expense report indicates that the Prayer Center spent \$140 in "Bank Charges: Bad check fee." Bank documents in the record indicate that the bank's insufficient funds fee was less than \$25 in 2003, and therefore there must have been multiple instances of "bad checks" in order to incur \$140 worth of fees. These facts do not tend to suggest a significant reserve of additional funds.

In the RFE issued May 27, 2005, the director acknowledged the petitioner's submission of "bank statements and un-audited financial statements," but indicated that this evidence would not suffice. The director instructed the petitioner to "submit conclusive evidence" of his prospective employer's ability to pay him at the level offered. The director listed the types of documents required by 8 C.F.R. § 204.5(g)(2). The director also requested "a list of all employees salaried and non-salaried including their names, job title and salaries."

The petitioner's response to the RFE did not include income tax returns, annual reports or audited financial statements. With respect to the requested list of employees, the petitioner submitted a list of the Prayer Center's "Church leaderships" (*sic*), consisting of seven names. A second list of the Prayer Center's "employees/volunteers" lists five of the same names, plus a sixth name not on the first list. Everyone on both lists is described as a volunteer. The petitioner's name is not on either list. A letter attributed to [REDACTED] indicates that LWFC has on salary "2 full-time pastors, 5 part-time pastors and an Administrative Assistant. We also have 5 non-salaried ministers." These individuals are not identified. The letter also indicates that the petitioner is "on our staff." The implication is that the petitioner's "employer," as such, is LWFC and not the Prayer Center. The original letter attributed to [REDACTED] indicated that the petitioner "is the sole employee of The Prayer Center." No letter attributed either to [REDACTED] or to [REDACTED] has ever mentioned additional staff, paid or unpaid, at the Prayer Center.

The director denied the petition, stating that the petitioner had failed to comply with the regulatory requirements regarding the prospective employer's ability to pay. On appeal, counsel states: "The Church is a small nonprofit religious organization and does not have audited financial statements or issue annual reports. Therefore, the Church submitted federal tax returns and all additional financial evidence that it had available."

The regulation at 8 C.F.R. § 204.5(g)(2) states that evidence of ability to pay "shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements." The petitioner is free to submit other kinds of documentation, but only *in addition to*, rather than *in place of*, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of

evidence. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

The “federal tax returns” to which counsel refers on appeal are Internal Revenue Service Form 941 quarterly returns, on which LWFC reported the salaries paid, and taxes withheld, during each financial quarter. The information on Form 941 quarterly returns is considerably more limited in scope than the information on an annual income tax return (or on the Form 990 return used by many 501(c)(3) nonprofit organizations). Unlike an annual income tax return, a Form 941 return does not list income, assets, or expenses other than payroll. The Form 941 returns are evidence that LWFC has paid a number of employees, but they are not evidence that LWFC can afford to add the petitioner’s salary to its existing expenses.

Furthermore, as we have already discussed at length, the record is far from clear that LWFC is, will be, or ever has been responsible for the petitioner’s material support. The checks issued to pay the petitioner’s rent and utilities did not come from LWFC’s bank account, or even the same bank. [REDACTED] has repeatedly referred to “Prayer Center/Living Word Church” as though they were the same entity, but the record contains no documentary evidence that this is the case. The only materials to mention such a link are letters that were written for the specific purpose of helping the petitioner to obtain immigration benefits.

Even apart from the lack of the required types of documentation, the confusing and sometimes contradictory claims in the record make it difficult for us to determine just who is ultimately responsible for the petitioner’s remuneration. Without knowing who the true employer is, it is impossible to determine whether the true employer is able to compensate the petitioner at the level offered.

Section 204(b) of the Act, 8 U.S.C. § 1154(b), provides for the approval of immigrant petitions only upon a determination that “the facts stated in the petition are true.” False, contradictory, or unverifiable claims inherently prevent a finding that the petitioner’s claims are true. *See also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). In this proceeding, the record clearly contains false statements. It is logically impossible to reconcile, on the one hand, [REDACTED]’ claim that the petitioner has “recent pay stubs and individual tax returns” and, on the other hand, the assertion that the beneficiary received no pay and filed no tax returns. Therefore, it is a matter of indisputable and inalterable fact that at least one of those statements is, and must be, false. Pursuant to *Matter of Ho*, cited above, this necessarily colors the credibility of each and every claim for which the petitioner has been unable or unwilling to adduce concrete, verifiable evidence (as opposed to self-serving testimonial claims).

The confusion over the connection, if any, between LWFC and the Prayer Center raises another issue beyond the decision of the director. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

The petitioner has submitted ample evidence to establish the qualifying tax-exempt status of LWFC. The evidence submitted, however, does not show that the Prayer Center is likewise a qualifying religious organization exempt from income tax under section 501(c)(3) of the Internal Revenue Code. The regulations cited above set forth clear evidentiary standards for such exemption, and [REDACTED]'s unsubstantiated claim that the Prayer Center is under LWFC's "umbrella" cannot suffice to meet those requirements.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely 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.