

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

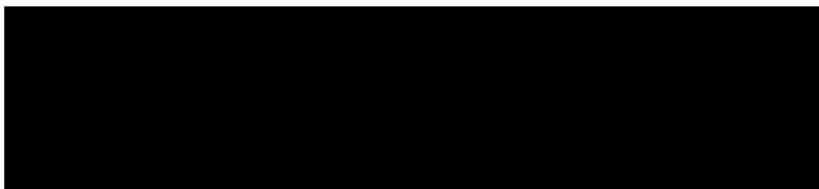
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

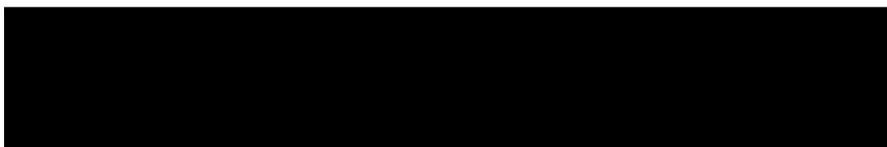
PUBLIC COPY

C<sub>1</sub>



FILE: LIN 04 236 50449 Office: NEBRASKA SERVICE CENTER Date: AUG 15 2007

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:



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, Nebraska Service Center, denied the employment-based immigrant visa petition. The director treated the petitioner's appeal as a motion,<sup>1</sup> and reopened the proceeding. The director again denied the 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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.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 Christian church of the Ethiopian Orthodox denomination. 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 head deacon. The director determined that the petitioner had not established that the beneficiary possesses the necessary qualifications for the position.

On appeal, the petitioner submits new witness letters and arguments from counsel.

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).

8 C.F.R. § 204.5(m)(3)(ii)(B) requires the petitioner to demonstrate that an alien minister has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the

---

<sup>1</sup> With the initial appeal, counsel requested the Service Center to review the appeal as a motion to reopen pursuant to 8 C.F.R. § 103.3(a)(2)(iii) which allows the director to reopen and take favorable action. Although not specifically stated in his decision, as the director did not take favorable action, it appears that the director reopened the matter on his own motion pursuant to 8 C.F.R. § 103.5(a)(5)(ii). Regardless, any argument regarding procedural error is moot as the entire record of proceeding is before us for review on appeal.

clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested.

In a letter accompanying the initial submission, [REDACTED], the petitioner's Parish Council Chairman, stated that the beneficiary had served as the petitioner's head deacon "from August 2002 to the present. . . . From July 2001 to August 2002, he provided his services as Head Deacon to the Ethiopian Orthodox Church of Michigan in Detroit."

The petitioner submitted translated copies of certificates showing that the beneficiary received a month of training from the denomination's Patriarchate in 1987, and additional training at the denomination's Holy Trinity Theological College in 1989 or 1999 (both dates appear in the translation; the original does not use Arabic numerals). The petitioner also submitted a copy of the beneficiary's passport, which identifies his occupation as "Church Service."

On April 18, 2005, the director requested "a letter from an authorized official of the religious organization in the United States which establishes that the alien has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy." The director did not, at that time, request a copy of the beneficiary's ordination certificate, nor did the director request a detailed description of the beneficiary's job duties. In response, [REDACTED] stated that the beneficiary has "more than 23 years of service with the Ethiopian Orthodox Church that prepare him highly to serve as head deacon at our parish." A May 20, 2005 letter from Archbishop [REDACTED] indicates that the beneficiary "was ordained deacon in the Ethiopian Orthodox Church in Ethiopia."

On July 23, 2005, the director denied the petition, stating:

The petitioner has claimed that the beneficiary is a Deacon for the Ethiopian Orthodox Tewahedo Church, but has not submitted evidence that he is ordained or has otherwise been authorized by the Ethiopian Orthodox Religious leadership or governing body, to be a Deacon for this religious organization. Evidence was presented that the beneficiary has completed coursework . . . but no information was presented as to the duration and course content. . . .

[N]o evidence has been submitted that identifies what the process for ordination is, what type of training is needed, or what the exact, specific duties of this position are.

The petitioner appealed the director's decision. The petitioner's Parish Council Secretary, Beyenech Tsegaye, claimed that the Ethiopian Orthodox Church did not customarily issue ordination certificates "until recent times," and that the church gave "greater weight . . . to reputation and credible attestation."

The petitioner submitted an August 21, 2005 letter from Archbishop [REDACTED], listing coursework that the beneficiary is said to have completed between September 1976 (when the beneficiary was nine years old) and April 1981. Archbishop [REDACTED] stated: "Upon completion of his studies [the beneficiary] was ordained Deacon on May 29, 1981 by His Grace [REDACTED] Archbishop of Shewa Province in Ethiopia." The

beneficiary was 13 years of age on May 29, 1981. An accompanying photocopied Certificate of Ordination, signed by Archbishop [REDACTED] states that the beneficiary “has been ordained Deacon on this 29<sup>th</sup> day of May 1981.”

The director reopened the proceeding and on February 22, 2006, the director instructed the petitioner to submit the original Certificate of Ordination dated 1981. The petitioner complied with this request. The original document is no longer in the record, the director having returned it to the petitioner pursuant to 8 C.F.R. § 103(b)(5).

The director again denied the petition on May 10, 2006, noting the pristine condition of the Certificate of Ordination, and stating that the document appears to have been newly created specifically to satisfy the director’s request for a copy of the document. The director concluded: “The Service is not convinced that this is a valid document. It appears to have been created merely to comply with the Service’s request for evidence.” The director found, therefore, that the petitioner had not adequately established that the beneficiary is qualified or authorized to serve in the Ethiopian Orthodox clergy.

The petitioner has again appealed the decision. Counsel states that the Certificate of Ordination was newly created “based upon existing church records,” and that there was no attempt or intent to represent the document itself as having originated in 1981. [REDACTED], a Counselor at the Ethiopian Embassy in Washington, affirms the beneficiary’s qualifications and asserts that “in Ethiopia the issuance of certificate[s] of ordination is not consistent [with the] manner that is practiced in [the] USA.” It is not explained what in this witness’ background has led to knowledge of Ethiopian Orthodox ordination practices in the 1950s.

It appears, from the available evidence, that the director’s narrow focus on the Certificate of Ordination has failed to take into account the preponderance of available evidence. We concur with counsel that the petitioner exhibited no fraudulent or deceptive intent in submitting the Certificate of Ordination dated 1981. The petitioner had previously indicated that the beneficiary was ordained not by Archbishop [REDACTED] but by Archbishop [REDACTED]. No attempt was made to indicate that Archbishop [REDACTED] signed the certificate. The director’s concerns about this document are not sufficient to justify denial of the petition.

At the same time, questions remain which the petitioner must address before the preponderance of evidence can be said to have shifted in favor of approval. For instance, counsel states that the Certificate of Ordination was newly created “based upon existing church records,” but the record of proceeding does not contain copies of these “church records” that are said to confirm the beneficiary’s 1981 ordination.

It would also be quite helpful if the petitioner were able to produce church documentation confirming that the denomination begins training for the diaconate as early as age nine, and ordains deacons at age 13, an age at which it is rare for a person to fully support himself or herself through full-time employment. Denominational publications that predate the filing of the petition would carry significantly more weight in this matter than newly-written letters executed specifically to support this particular petition. It cannot suffice for the petitioner to assert that the beneficiary’s own documents prove that the denomination ordains 13-year-old deacons with all the privileges, authority, and remuneration of adult clergy.

If the beneficiary's duties are, in fact, the same as those entrusted to a 13-year-old, it is reasonable to expect additional evidence to show that the beneficiary's position is in fact a full-time job with compensation, rather than a volunteer position. Because the petitioner has represented the beneficiary as a member of the clergy, 8 C.F.R. § 204.5(m)(4) demands evidence that the beneficiary supports himself solely through his work as a deacon. The petitioner has submitted documents showing that it pays payroll taxes, but these documents do not identify the beneficiary as a paid employee. The petitioner also claims to provide the beneficiary with housing, but the record does not establish that the petitioner owns or leases the property where the beneficiary resides or that the petitioner is otherwise directly responsible for providing the beneficiary's housing. Further evidence is needed in this regard.

Another issue remains. 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 August 20, 2004. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a head deacon since mid-August 2002.

As noted above, [REDACTED] stated that the beneficiary had served as the petitioner's head deacon "from August 2002 to the present. . . . From July 2001 to August 2002, he provided his services as Head Deacon to the Ethiopian Orthodox Church of Michigan in Detroit." The record does not contain any documentation from the Detroit church, or any testimony from any official of that church, to establish this employment. The letters from Archbishop [REDACTED] attest only to the beneficiary's work at the petitioning church, not its sister church in Detroit.

On the Form I-360 petition, asked whether the beneficiary had ever worked in the United States without authorization, the petitioner answered "No." The beneficiary initially entered the United States as a B-2 nonimmigrant visitor on March 12, 2001. B-2 nonimmigrants are not authorized to work in the United States. Later, the beneficiary changed to R-1 nonimmigrant religious worker status, effective September 11, 2002. The petitioner's assertion, under penalty of perjury, that the beneficiary has never worked in the United States without authorization contradicts the petitioner's assertion that the beneficiary worked in Detroit from July 2001 to August 2002. This discrepancy requires resolution. A simple statement from the petitioner will not suffice. 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, 586 (BIA 1988). 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. *Id.* at 582, 592.

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.