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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: DEC 0 3 2007

WAC 07 048 53082

IN RE: Petitioner: [redacted]
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:

[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.

Mari Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

Part 1 of the Form I-360 petition identifies Orlando, Florida, 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 church official, but by the alien beneficiary himself. Thus, the alien, and not the church, has taken responsibility for the content of the petition. This will not affect the adjudication of the appeal, because the record shows that the attorney who filed the appeal represents the self-petitioning alien beneficiary. Thus, the appeal has been properly filed.

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 music minister at First Methodist Church Star of David. The director determined that the petitioner had not established that he had the requisite two years of continuous work experience as a music minister immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established the existence of a qualifying job offer.

On appeal, counsel indicates that a brief will be forthcoming within 30 days. Counsel has since confirmed to the AAO that no such brief was submitted. Therefore, the statement submitted with the Form I-290B Notice of Appeal constitutes the entirety of the appeal, and the AAO considers the record to be complete as it stands.

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).

We first consider the issue of the job offer. 8 C.F.R. § 204.5(m)(4) requires the petitioner to submit a letter from an authorized official of the religious organization in the United States, setting forth the terms of employment and stating how the alien will be paid or remunerated. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support.

In a letter accompanying the initial filing Pastor and World President of First Methodist Church Star o stated: "we are offering to [the petitioner] the position of Music Minister of Adoration with a salary of $2,500.00 monthly. In addition we are furnishing [a] dwelling for him and [his] wife."

On March 14, 2007, the director issued a request for evidence (RFE), requesting additional information about the job offer. In response stated that the petitioner's duties occupied 30 hours per week.

The director denied the petition on July 13, 2007, stating that 30 hours per week is not full-time, and that "the petitioner has not established that there is a credible offer of employment and that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support."

On appeal, counsel states that "the descriptions and responsibilities, as describe[d] by the Pastor, demonstrates that [it] is a fulltime job." Counsel does not explain how a 30-hour week constitutes full time employment. Counsel asserts that the petitioner "was offered a salary of $1,500.00." Actually, the stated salary was $2,500 per month, not $1,500. The AAO will revisit the salary issue later in this decision.

We acknowledge that the church has quoted a salary for the petitioner, which indicates that the beneficiary would not be *solely* dependent on outside employment. As we shall discuss later, however, the church has not shown that it is actually capable of paying that salary.

The next issue 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 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 December 7, 2006. Therefore, the petitioner must establish that he was continuously performing the duties of a music minister throughout the two years immediately prior to that date.

The beneficiary entered the United States on May 1, 2006 under an H-2B nonimmigrant visa which permitted him to work for Loews Hotels from April 2006 to October 2006.

Although the form is not required for special immigrant religious worker petitions, the petitioner submitted Form G-325A, Biographic Information. On that form, asked to list his employment over the past five years, the beneficiary identified five overlapping jobs, three of which fell during the 2004-2006 qualifying period:

Employer	Occupation	From	To
Publicidad Maxima, Dominican Republic	Publicist/Painter	April 1991	July 2004
Foto Carnet Digital, Dominican Republic	Graphic Designer	March 1994	May 2006
Inarq Group, Dominican Republic	Resident Engineer	April 2003	April 2004
UniverJobs, Dominican Republic	System Technician	February 2005	April 2006
Loews Hotels, Orlando, Florida	Housekeeping	May 2006	Present Time

None of the employers listed above appear to be religious organizations, and none of the occupations listed above are religious occupations.

The petitioner's initial submission included a letter from two officials of Dominican Republic. The letter reads:

> Hereby we confirm that [the petitioner] has been [an] Active Member around twelve years of our Church Worship House Calvary mount, Which belong[s] to [the] Assembly of God Evangelic Council (Concilio Evangelico Asamblea de Dios, Inc.) in [the] Dominican Republic.
>
> [The petitioner] has worked in our Church as a Dominical School Teacher (1999-2006), Music Minister (2001-2006) and Youthful Manager (1996-2004), also as Flyer and Poster Designer.
>
> [The petitioner] has helped to develop our Church, which demonstrate[s] his capacity to work in God's job as a minister of music and Adoration, According offering [sic] by First Methodist Church Star Of David in the City of Orlando, Florida, USA.

We note that one of the two officials is whom the petitioner's Form G-325A identifies as the petitioner's father, although did not mention this relationship in the letter.

stated that the beneficiary "[h]as been performing as a music experienced [sic] in our music staff since his stay in this City of Orlando Florida."

The director, in the RFE, requested additional evidence of the beneficiary's past employment history and means of support. The petitioner submitted additional letters from who repeatedly referred to the beneficiary as an "Engineer." No evidence was submitted to show that any church or religious organization has ever compensated the petitioner for religious work.

In denying the petition, the director found that the petitioner had produced no evidence of compensated religious work during the two-year qualifying period. The director observed that the petitioner listed five different jobs on Form G-325A, none of which was religious in nature.

On appeal, counsel states that the petitioner "has been a voluntary worker with the Church" while employed at a hotel under the terms of his H-2B visa. Uncompensated volunteer work, however, is not qualifying experience for special immigrant religious worker classification. *See Matter of Varughese*, 17 I&N Dec. 399, 402 (BIA 1980) (a purported minister who worked part-time without compensation was found to lack continuous experience). There is no evidence that the petitioner has ever been a compensated religious worker, either in the United States or abroad. Rather, the petitioner (whom even calls an "engineer") has worked a succession of secular jobs, sometimes holding more than one such job simultaneously.

The petitioner having provided no evidence or persuasive argument on appeal, the AAO affirms the director's finding that the petitioner has failed to establish the required two years of continuous religious work immediately preceding the petition's filing date.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

In keeping with its *de novo* authority, the AAO notes the existence of additional grounds for denial, apart from those cited by the director and affirmed in this decision. The first such basis concerns the prospective employer's ability to compensate the petitioner. 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.

As noted above, the petitioner's prospective employer has offered the petitioner $2,500 per month (equal to $30,000 per year) plus housing. The initial filing included no evidence of the church's ability to meet those terms, and therefore the director, in the RFE, requested such evidence.

The response to the RFE includes a copy of the church's Form 990 Return of Organization Exempt From Income Tax for calendar year 2006. The church reported total revenue of $17,381 for the year. Out of this revenue, the church claimed to have paid $9,268 in expenses, leaving $8,406 in excess revenue. We note that the reported expenses and excess revenues do not add up to $17,381, and therefore the return must contain some kind of mathematical error.

An itemized list of expenses does not indicate that the church spent anything on salaries, wages, or compensation. The church claimed to have started 2006 with no assets of any kind, and the only assets claimed at the end of the year consisted of the $8,406 said to remain after expenses.

The church's entire reported income for 2006 would not pay seven months of the petitioner's salary, even if the church had no other expenses, and even then nothing would remain to provide for the petitioner's housing. The church did not list any buildings among its assets, and it did not claim rent costs among its expenses.

Church bank statements from early 2007 do not show $2,500 monthly payments, nor do the balances reflect net increases of at least $2,500 per month. Therefore, it appears that regular payment of the beneficiary's salary may rapidly deplete the church's bank balance.

Letters in the record indicate that the petitioner's parents (as officials of accepted the church's invitation to speak at "our Annual Assembly" for several days in the first week of October 2006, for which "your expenses will be covered by our church, such as: trip flig[ht] tickets, transport, food and lodg[ing]." These expenses cannot be identified in the 2006 Form 990 return, and there is no primary evidence (such as receipts) showing that the church paid these expenses. This, like the salary offer, is another example of an uncorroborated offer of financial support.

What little financial documentation the petitioner has submitted argues against a finding that the church is able to compensate the petitioner at the rate initially offered at the time of filing. Furthermore, while the church will supposedly provide the petitioner's housing, the record contains no evidence that the church either owns or rents any property that the petitioner could use as a dwelling, and there is no evidence that the church owns, rents, or otherwise controls the site that the petitioner listed as his home address on the Form I-360 petition. The AAO therefore finds, in addition to the director's stated grounds for denial, that the petitioner has not established the prospective employer's ability to pay him or otherwise meet the terms of the job offer.

Finally, the AAO examines the issue of religious denominational membership. 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.

8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner, for at least two years immediately preceding the filing date, to have been a member of the religious denomination to which his prospective employer belongs.

The initial submission contained no evidence of any connection between the churches in Florida and the Dominican Republic where the petitioner claims to have worked. We note that the church in Florida contains the word "Methodist" in its name, whereas the letterhead of the church in the Dominican Republic contains a phrase that translates as "Assembly of God," which is the name of a denomination entirely separate from Methodist denominations. In the RFE, the director asked: "What do you consider your religious

denomination?" and requested "evidence to establish the connection that exists between **First Methodist Church Star of** and any other church where the beneficiary has worked between December 7, 2004 and December 7, 2006. Provide proof of the corresponding registry, directory or association showing the connection between the churches" (emphasis in original).

In response, an unsigned letter on First Methodist Church Star of letterhead reads, in part:

> We consider us as Jewish-Messianic Christian, with form of worship Pentecostal. . . .
>
> First Methodist Star of is a church based in the denomination Methodist and is consider[ed] as . . .

Regarding the two churches where the petitioner claims to have worked, the letter reads:

> The Connection among Church[e]s and First Methodist Star of David, it is a relationship institu[t]ional among the Pastors and president of First Methodist Star of minister of the Council Assembly of God in Dominican Republic and shepherd of the Church Casa de oración Monte Calvario, *who also is the beneficiary's father. . . .*
>
> [First] Methodist Church Star of David is [t]totally independent from The Other[] Methodist Church[e]s, and . . [has had] a big influence [on] our form of worship.

The assertion that the Florida church is not linked to any other Methodist church does not compel, by default, the conclusion that the church *is* connected to the Assemblies of God, or that any formal denominational link exists between First Methodist Church Star of A longstanding personal relationship between the pastors of those churches, and past cooperation between the two churches, do not establish shared denominational ties. The repeated references to yet another denomination, Messianic Judaism, do nothing to clear up the matter.

Based on the above discussion, the AAO finds that the petitioner has not established at least two years of membership in his prospective employer's denomination immediately preceding the petition's filing date.

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.

ORDER: The appeal is dismissed.