



U.S. Citizenship  
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **JAN 08 2007**  
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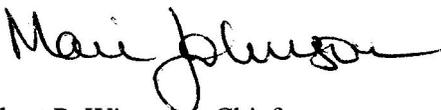
IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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:  
[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, California Service Center, denied the employment-based immigrant visa petition, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The AAO subsequently reopened the proceeding on its own motion. The AAO will withdraw its prior decision, and the petition will be approved.

The petitioner is a 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 “Director of Christian Education/Pastoral Assistant.” In denying the petition, the director made three findings: (1) “the evidence is insufficient to establish that the beneficiary has been performing full-time work as a Director of Christian Education/Pastoral Assistant for the two-year period immediately preceding the filing of the petition”; (2) the petitioner had failed to establish its ability to pay the beneficiary’s proffered salary; and (3) “The petitioner has not adequately established that the needs of the petitioning entity will provide permanent, full time religious work for the beneficiary in the future. The petitioner has not demonstrated that it has extended a valid job offer to the beneficiary.”

The AAO, in dismissing the appeal, affirmed findings (1) and (2) above, withdrew (3), and added a new finding that the petitioner had failed to show that the beneficiary’s position qualifies as a religious occupation.

On October 11, 2006, pursuant to 8 C.F.R. § 103.5(a)(5)(ii), the AAO allowed the petitioner 30 days in which to supplement the record. Because the AAO’s prior decision, issued August 17, 2005, discussed the petitioner’s initial submission and appeal, we will not repeat that discussion here, except where it is necessary to cite prior submissions or findings for context.

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 first issue concerns the beneficiary's prior 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 July 8, 2003. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a Director of Christian Education/Pastoral Assistant throughout the two years immediately prior to that date.

In a letter dated June 29, 2003, Rev. [REDACTED] Senior Pastor of the petitioning church, indicated that the beneficiary "will receive a monthly salary of \$1,500," a rate of pay that annualizes to \$18,000 per year. Tax documents indicate that the petitioner paid the beneficiary \$14,400 in 2001 and \$16,200 in 2002. The director determined that, because the beneficiary received less than \$18,000 per year in 2001 and 2002, the beneficiary must have worked on a less than full-time basis during those years. The AAO affirmed this finding.

On motion, Rev. [REDACTED] states:

[The beneficiary] was paid a monthly salary of \$1,200.00 in 2001, and a monthly salary of \$1,350.00 in 2002. In 2003, when the I-360 petition was filed, he was paid \$1,500.00 per month and the petition therefore stated an offered salary of \$1,500.00 per month. We did not state anywhere that he was paid at the rate of \$1,500.00 per month in 2001 or 2002. [The beneficiary] was given annual raises as happens commonly in most lines of work including church work. We apologize for not making this clearer and causing the assumption he was being paid the same as the 2003 rate for 2002 and 2001.

The evidence of record, including tax documentation, is largely consistent with Rev. [REDACTED] explanation. We note that, in its quarterly tax return for the third quarter of 2003, the petitioner reported paying the beneficiary \$4,050. Thus, as late as September 2003, the petitioner was paying the beneficiary \$1,350 rather than \$1,500 per month. The record does, however, substantiate the general assertion that the petitioner has repeatedly increased the beneficiary's salary, both before and after the petition's filing date.

It appears that the director, and later the AAO, simply assumed that the beneficiary's rate of pay had not changed. This arbitrary assumption is not sufficient grounds for denial of the petition. We withdraw the finding that the petitioner has not established that the beneficiary worked continuously in the proffered position throughout the two-year qualifying period.

The next issue concerns the petitioner's ability to pay the beneficiary's salary of \$1,500 per month. 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.

In denying the petition, the director stated: "The petitioner has not submitted annual reports, federal tax returns, or audited financial statements at the time of filing the petition, that would illustrate the liabilities of the church and permit a conclusive determination on the church's ability to pay the proffered wage." In the appellate decision, the AAO asserted: "the evidence does not indicate that the petitioner has ever paid the beneficiary the proffered wage of \$1,500 per month. Evidence that the petitioner has paid the beneficiary in a lesser amount does not satisfy the requirements of the regulation." The AAO added that bank statements and other financial documents do not conform to the regulatory requirements at 8 C.F.R. § 204.5(g)(2).

On motion, Rev. [REDACTED] states:

Although we are not required by the Internal Revenue Service to file income tax returns (Form 990 for tax exempt organizations), we have decided to do so for 2001, 2002, 2003, 2004, and 2005. Copies of the returns submitted in early November 2006 are attached. Additionally, [the beneficiary] has been paid the offered wage or more for 2003, 2004, 2005, and 2006. Submitted herewith are copies of W-2's showing actual payment of the offered wage as proof of ability to pay the offered wage.

The petitioner submits copies of Form 990 returns for 2003 (prepared December 28, 2004), 2004 (prepared February 4, 2006) and 2005 (prepared November 4, 2006). Each of these returns shows income well in excess of expenses (and the expenses, in turn, include salaries paid to employees and officers). Contrary to Rev. [REDACTED] assertion, the submission does not include Form W-2 Wage and Tax Statements showing the beneficiary's compensation in 2003 and later years, and the evidence list accompanying the submission does not mention those forms. Instead, the petitioner submits copies of payroll records, showing that the petitioner paid the beneficiary \$2,400 per month in 2005 and 2006. Cumulatively, these documents support the assertion that the petitioner is able to pay the beneficiary's proffered wage, and consistently has been able to do so since the July 2003 filing date. (The lower payments the beneficiary received prior to the filing date are not of concern here, because the petitioner need not establish ability to pay the proffered wage prior to the filing date.) We hereby withdraw the finding that the petitioner has not established its ability to pay the proffered wage.

The final issue is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) defines "religious occupation" as an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does

not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

Citizenship and Immigration Services interprets the term “traditional religious function” to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

In multiple letters, Rev. [REDACTED] has stated that the beneficiary’s duties “include teaching Bible study classes and cell groups, assisting with worship services, selecting and developing Christian education curriculums and materials, coordinating worship ministry and organizing special praise services, and assisting the pastor with pastoral care and congregational visitations.” The petitioner has submitted a copy of the beneficiary’s “Weekly Schedule and Job Description,” which includes such tasks as “Preparation for Worship Services,” “Teacher’s Meeting” and “Young Adult Group/Study.”

The director did not question the qualifying nature of the position. The AAO, in dismissing the appeal, stated:

The weekly schedule provided by the petitioner does not include any duties that relate to selecting and developing Christian education curricula or materials. Further, the beneficiary’s role in “assisting” or “coordinating” worship service is unclear. The record does not reflect that the position existed with the petitioning organization prior to the beneficiary assuming the role.

On motion, the petitioner submits a copy of a letter from Rev. [REDACTED] Assistant Stated Clerk of the Southern Presbytery of the Korean American Presbyterian Church, indicating that the position of pastoral assistant is “defined and recognized” within the denomination, and that such a position is “usually permanent, full-time, and salaried.” With regard to the weekly schedule, that document includes several two-hour blocks of “Preparation for Bible Study Course.” Such preparation could easily include work with the course curriculum and materials; it is not clear what other kind of “preparation” would require several hours a week. On balance, we find that the petitioner has amply established that the beneficiary’s duties amount to duties of a religious nature, and that within the denomination, these duties are delegated to paid, full-time employees rather than to part-time and/or unpaid volunteers from the congregation who primarily support themselves via secular work. We withdraw the AAO’s prior finding that the position offered to the beneficiary, and which the beneficiary has held for several years, does not qualify as a religious occupation.

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 previous decision of the AAO will be withdrawn, and the petition will be approved.

**ORDER:** The AAO’s decision of August 17, 2005 is withdrawn, and the petition is approved.