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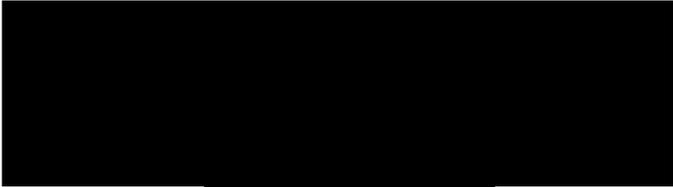
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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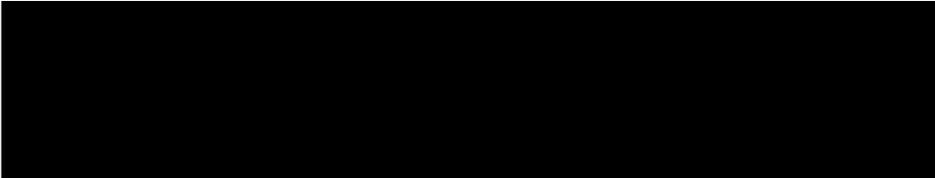


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **JUN 07 2007**
WAC 06 101 50054

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.

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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is a local arm of a New York-based 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 pastor. The director determined that the petitioner had not established that it is a qualifying tax-exempt religious organization.

On appeal, the petitioner submits a brief from counsel and copies of various documents, some of them previously submitted.

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)(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 Form I-360 petition shows a Los Angeles, California address for the petitioning entity. The initial filing included a letter from [REDACTED] Treasurer, dated October 18, 2005. The letterhead of this letter shows an address in New York, New York. [REDACTED] stated that the petitioner "is a Non-Profit Corporation organized in the State of New York," and "is also registered in the State of California as a Non-Profit Corporation." The petitioner submitted a copy of a "Certificate of Qualification," issued by the California Department of State, which refers to the petitioner as "a corporation organized and existing under the laws of New York." [REDACTED] stated that the petitioner operates "one hundred and four (104) Churches in the United States." [REDACTED] identified one of those churches, at [REDACTED], Los Angeles, as the location of the beneficiary's intended employment.

The petitioner also submitted a copy of a March 2, 2004 letter from the Internal Revenue Service (IRS), addressed to the petitioning church at [REDACTED] New York, New York. The letter shows the petitioner's federal employer identification number (EIN) as [REDACTED]. The IRS's letter reads, in part: "In October 1989 we issued a determination letter that recognized your organization as exempt from federal income tax. Our records indicate that your organization is currently exempt under section 501(c)(3) of the Internal Revenue Code." The letter does not indicate that the church and its subordinate entities are all covered by a group exemption.

IRS Form W-3 Transmittals of Wage and Tax Statements indicate that the New York church, with EIN [REDACTED] reported the payment of nearly \$4 million in salaries and wages in 2002, over \$4.8 million in 2003, and more than \$5.2 million in 2004. IRS Form W-2 Wage and Tax Statements issued to the beneficiary for those same years identify the beneficiary's employer as the church in New York, including the same address and EIN shown on the IRS letter of 2004.

The petitioner submitted a "List of Churches in United States," showing locations in California, Texas, Illinois, and other states. The list shows the address shown on the Form I-360 petition, and the Eagle Rock Blvd. address listed as the beneficiary's place of employment.

A lease reproduced in the record shows that the petitioner, "A New York Non-Profit Corp.," has leased the space at [REDACTED], Los Angeles, for "Church Assembly and other closely related uses."

On May 12, 2006, the director issued a request for evidence concerning various issues. The director stated: "The Tax Exempt Certification on the petitioner's file indicates an address that is different from the address listed in the I-360 petition." The director instructed the petitioner to submit either a new IRS letter showing the address on the Form I-360, evidence that the petitioner notified the IRS of a change of address, or evidence that the petitioner "is a subordinate organization" covered by "a group exemption letter" issued to the church in New York.

In response, the petitioner submitted a new letter from [REDACTED] at the New York church, along with copies of various documents. [REDACTED] stated that the petitioner "is a non-profit New York State corporation which is authorized to perform religious services . . . in all of the States of the United States." [REDACTED] also stated that the petitioner does not hold a group exemption from the IRS because the petitioning church "does not have subordinate organizations that are affiliated with a central organization." Rather, she asserted, the petitioner "is one (1) religious non-profit organization and operates all of its Churches." [REDACTED] elaborated:

The real properties that are owned by [the petitioner] are owned by the New York State, non profit corporation. All of the Leases that are held by [the petitioner] are in the name of the New York State, non-profit corporation. All of the payroll is under the name of the New York State, non profit corporation. Once again The [petitioning] Church in California is not a subordinate or affiliated with any central organization.

The petitioner resubmitted a copy of the California Certificate of Qualification, which identifies the petitioner as a New York corporation operating in California. The petitioner also submitted copies of the beneficiary's pay stubs, dated between 2002 and 2006, all identifying the employer as the church in New York, drawn from a New York bank.

The director denied the petition on September 29, 2006, citing only one ground for denial. The director stated:

[N]one of the documents submitted by the petitioner meets the required evidence for a subordinate organization or church that is affiliated with a central organization. As stated in the May 12, 2006 RFE, the evidence required is a group exemption letter from IRS.

It appears that the petitioner claims the Universal Church in New York operates and controls all of its churches in the United States. However, the petitioner also claims that the Universal Church in New York is not a central church and does not have subordinate organizations.

As stated in the RFE, if the Universal Church in New York, New York is one religious organization that operates and controls all of its churches in the United States, then it is a central church which has one or more subordinates under its general supervision or control. . . . The Universal Church in California is subordinate to the Universal Church in New York.

(Emphasis in original.) The director concluded that, in the absence of a group exemption letter, the petitioner had not established that the church in California qualifies as a 501(c)(3) tax-exempt religious organization.

On appeal, the petitioner submits a legal opinion from the law firm of Stein Riso Mantel (the individual author is not identified), indicating that the petitioner's "individual locations do not require and are not eligible to obtain independent recognition of tax exempt status. As mere points of operation for the Church, rather than separate entities, the locations fall under the recognition of tax-exempt status granted to the Church." We concur with this reasoning. As noted previously, the petitioner's corporate documents and the

beneficiary's tax records consistently identify the employer as the church in New York. An audited financial statement submitted with the initial filing indicates that, in 2004, the New York-based church paid over \$17.4 million for "Purchases of Churches and buildings," over \$6.6 million for "Rent of churches and parsonages" and over \$5.9 million in "Salaries and wages." These expenses are consistent with a large organization with a sizeable number of employees, operating at a number of locations. The statement also indicates that the petitioner owns land in New York, California, and numerous other states and territories of the United States.

We note that the letter identifies an IRS employee as having provided certain information. The record contains no statement from that individual, but counsel urges the AAO to contact that individual "to verify." The burden of proof is on the petitioner to provide supporting evidence. Neither the AAO nor any other immigration authority is required to pursue research or verification on the petitioner's behalf. It cannot suffice for the petitioner simply to identify a witness and urge contact with that witness. Because the record contains nothing from the identified IRS official, we consider claims regarding that official's assertions to be unsubstantiated and thus lacking evidentiary weight. Nevertheless, the evidence present in the record amply supports a finding in the petitioner's favor regarding the tax exemption issue.

The evidence readily shows that all of the church's locations are not merely subsidiaries of a central office, but rather they all, collectively, constitute a single corporate entity. The beneficiary's employer is a New York-based church that, in turn, is clearly identified as tax-exempt on IRS correspondence in the record. The absence of a group exemption letter does not cast doubt on the tax-exempt status of the local churches where the beneficiary works or has worked. We find that the director's sole stated basis for denial is without foundation, and the AAO will therefore withdraw that finding.

The above being said, however, the record does not at this time justify approval of the petition without additional inquiry and clarification regarding what appear to be contradictions in the record. In her initial letter dated October 18, 2005, [REDACTED] stated that the beneficiary's "Religious Services are conducted on a daily basis at . . . [REDACTED] Los Angeles." She added: "The Beneficiary's Services are needed because of the growth of the Congregation at [REDACTED]." [REDACTED] stated that the beneficiary had worked in Los Angeles at the South Broadway address shown on the Form I-360 from December 12, 2002 to January 31, 2004, and at the [REDACTED] location from "February 1, 2004 to Present."

On July 27, 2006, in response to the director's request for evidence, [REDACTED] stated:

On Jan 23rd 2004, the [beneficiary] was sent to perform religious services at . . . [REDACTED]

[In] May 2004, the [beneficiary] was sent [to] . . . [REDACTED] where the [beneficiary] performs three (3) religious services a week. . . . The other three days of the week [the beneficiary] performs religious services . . . at the Long Beach Marriott Hotel located at [REDACTED] Long Beach, CA.

The last four pages of [REDACTED]'s July 2006 letter are presented in the form of a first-person statement by the beneficiary, but the beneficiary did not sign this statement. This statement repeats the assertion that the beneficiary left the [REDACTED] location for the [REDACTED] location in "May 2004." This contradicts [REDACTED]'s earlier assertion that the beneficiary was still at the Eagle Rock location as of October 2005. Also, we note that the petitioner has amply documented its lease of the Eagle Rock property, but the record is devoid of documentation to confirm the petitioner's regular use of rooms at the Long Beach Marriott Hotel.

There are also questions regarding the beneficiary's residence. Copies of pay stubs show the beneficiary residing in New York until December 2002 and in California thereafter, consistent with the narrative of the beneficiary's employment history. The check stubs place the beneficiary's residence in the same apartment on [REDACTED] Los Angeles, from January 2003 through the most recent stub shown, dated June 2006.

The petitioner's initial submission included copies of tax documents for 2002, 2003 and 2004. Every IRS Form W-2 from the petitioner shows the beneficiary's address as the apartment on [REDACTED] Los Angeles. The beneficiary's 2002 tax return shows the [REDACTED] but his 2003 and 2004 tax returns show an address on [REDACTED], Los Angeles.

Two IRS Form 1099-MISC Miscellaneous Income statements show that Columbia Pictures Industries paid the beneficiary \$3,000 in 2003. One Form 1099-MISC shows \$2,000 in "[REDACTED] associated with the production of the film *Charlie's Angels 2*. The other Form 1099-MISC shows that the beneficiary received \$1,000 in "Nonemployee compensation." The Forms 1099-MISC both show the beneficiary's address as being on [REDACTED]. If the beneficiary moved to [REDACTED] in 2003, it is not clear how he has managed to receive paychecks that, three years later, continued to go to his former address on [REDACTED]. We also note that the beneficiary is required under section 265 of the Act to report changes of address.

[REDACTED], in her introductory letter, stated: "The apartment Lease where the Beneficiary and his wife live is in the name of [the petitioner] as Lessee, said Lease is attached hereto as Exhibit 'H.'" Exhibit H is a copy of the lease for an apartment on [REDACTED], Los Angeles. The lease, executed on September 7, 2005, ran from November 1, 2005 through October 31, 2006, meaning it was in effect at the time of filing in February 2006. As already noted, the beneficiary's paychecks from the petitioner show the same address from 2002 through 2006.

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).

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, it cannot suffice for the petitioner simply to assert that a mistake was made. The petitioner must provide contemporaneous, verifiable documentary evidence to show where the beneficiary was actually working and actually residing between 2004 and 2006. If the petitioner fails to resolve the contradictions in the record, then the petition cannot be approved because the petitioner's claims, to date, cannot all be true.

As a side note, we observe that the record contains nothing from the beneficiary or Columbia Pictures to explain the work performed or services provided in exchange for the compensation paid in 2003. There is no evidence of similar activity during the two years immediately preceding the petition's February 9, 2006 filing date. We note that, pursuant to statute cited above, the beneficiary must seek to enter the United States *solely* to carry on the vocation of a minister for a non-profit religious organization. We advise that any future work on behalf of the motion picture industry would not be compatible with that requirement.

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.