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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

[Redacted]
SRC 06 162 53100

Office: TEXAS SERVICE CENTER

Date:

NOV 20 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.


for 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 is a Christian denomination with twelve congregations in the Southern and Midwestern United States. 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 pastor of the petitioner's congregation in Waukegan, Illinois. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a pastor immediately preceding the filing date of the petition.

On appeal, the petitioner submits new exhibits 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).

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 April 28, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a pastor throughout the two years immediately prior to that date.

In a letter accompanying the initial filing, [REDACTED] the petitioner's General Superintendent, stated that the beneficiary's "official membership and ministry [with the petitioner] began November 8, 2001," and that the beneficiary "is receiving \$1,600.00 per month plus travel expenses." [REDACTED] indicated that the beneficiary "is supported from two funds, one of which is The General Church fund (national church)," the other belonging to "the local church in Waukegan, IL where he is serving."

The petitioner's initial submission contains ample documentation of the beneficiary's ministerial credentials, earned well before the two-year qualifying period began, but little documentation specific to the qualifying period.

On December 11, 2006, the director issued a request for evidence (RFE), instructing the petitioner to submit "evidence of the beneficiary's work history for the years 2004, 2005 and 2006," including evidence of compensation or other material support. The director stated: "[e]ach experience letter must be written by an authorized official from the specific location at which the experience was gained. The petitioner may only write an experience letter for the experience gained at the petitioner's location." By this notice, the director advised the petitioner that witnesses at the petitioner's headquarters in Louisville were not in a position to attest to the beneficiary's employment outside of Louisville, without corroboration from the actual locations where the beneficiary had worked.

In response, the petitioner submitted a "Transaction Detail," prepared by the petitioner's Treasurer, Carol Wright. The report lists 24 checks issued to the beneficiary between July 28, 2004 and December 19, 2006. Two of the checks were in the amount of \$0.00, and five of the checks were issued after the filing date, leaving 17 payments issued to the beneficiary during the qualifying period. These 17 checks total \$2,500.00 in 2004, \$9,224.39 in 2005 and \$3,200.00 in the first four months of 2006. Most of the checks were in multiples of \$100.00, but two were in odd amounts (respectively, \$756.96 and \$167.43). The checks were issued at irregular intervals. The petitioner issued four checks the same day, February 18, 2005 (including a check for \$0.00), but sometimes months would elapse between checks, such as the period between August 11, 2005 and October 27, 2005. The most recent checks show a pattern of \$1,600 paid to the beneficiary every even-numbered month from October 2005 onward. The petitioner also submitted copies of the actual checks from 2006, but not from earlier years.

Undated statements (transmitted by facsimile on February 16, 2007) from [REDACTED] Treasurer of the beneficiary's local church in Waukegan, indicate that the local church paid the beneficiary \$750 per month from March 2005 through May 2006, subsequently increased to \$1,000 per month. There is no report for 2004 or the earliest months of 2005.

An unattributed "History of Pastoral Work" indicates that the beneficiary worked at the petitioner's church in Columbus, Georgia from 2001 to 2004, moving to the Waukegan church in 2005. The petitioner submitted no documentation from the Columbus church, and no letters from any officials of that church.

Photocopied Internal Revenue Service (IRS) Form 1099-MISC Miscellaneous Income statements show the following amounts paid to the beneficiary:

Paid by:	2004	2005	2006
The petitioner's headquarters	\$2,500.00	\$9,224.39	\$9,600.00
The Waukegan congregation	--	7,500.00	10,750.00
Total	2,500.00	16,724.39	20,350.00

There are no IRS Forms 1099 from the church in Columbus, where the beneficiary is said to have worked before transferring to Waukegan.

On the beneficiary's income tax returns, the beneficiary reported \$16,950 in "gross receipts" in 2005, which is close to the amounts shown on the two Forms 1099-MISC for that year. The beneficiary indicated that \$1,584 of the above amount remained after expenses. For 2004, the beneficiary reported only \$4,193 in "gross receipts," leaving \$2,537 net after expenses. The beneficiary's 2003 return shows \$12,000 in gross receipts, leaving \$1,170 net after expenses. We note that the beneficiary did not claim rent or housing as an expense on his 2003 return. The amount reported for 2004 is significantly lower than those reported for either the year before or the year after. The 2004 tax return was prepared by [REDACTED] of H & H Accounting Service.

On March 8, 2007, the director issued a second RFE, asking the petitioner to "explain why the beneficiary's wages [for the] year 2004 [were] significantly less than those of the year[s] 2005 and 2006." The director also asked for detailed information about where the beneficiary was working in 2004 and early 2005.

In response, the petitioner submitted documentation showing that [REDACTED] had purchased airline tickets for the beneficiary and his spouse to fly from Tegucigalpa, Honduras to Atlanta, Georgia in November 2001, and that the beneficiary rented a "Mini Mover" truck to travel from Columbus, Georgia to Chicago, Illinois in February 2005. These documents show that the beneficiary traveled to and from Columbus (with the implied inference that the beneficiary remained in that city during the intervening period), but they do not show what the beneficiary was doing.

A document with the heading "Daily and Weekly Schedule / The Sanctified Church of Columbus, GA" includes the following information:

2:00 – 5:00 p.m. Monday – Friday visiting homes of the Hispanics [for the] purpose of Christian orientation.

PROJECT: Thurs. to Saturday – visiting Victory Drive. (area of house trailers where many Hispanics live with problems of alcoholism and broken families. Job was to try to rehabilitate them.)

Sundays and Tuesdays – Worship services at The Sanctified Church, 5303 Miller Road with Bible classes and preaching. . . .

SCHEDULE:

TUESDAY	6:00 – 8:00 P.M.	Prayer Meeting
THURSDAY	6:00 – 8:00 P.M.	Bible Study
SUNDAYS	10:00 – 1:00 P.M.	Sunday Services

There is no attribution or signature on the above schedule. Another document bears an identically-formatted heading that names the church in Waukegan. There is no evidence that anyone at the church in Columbus was involved in preparing the above schedule.

Regarding the beneficiary's income, [REDACTED] made the following assertions:

1. **yr. 2004 income (\$13,700.)** was as follows: (note – because [the beneficiary] was filing from Illinois for income in GA, he had some difficulty filing)
 - a. The Sanctified Church - \$2,500.00
 - b. Local church in Columbus parsonage \$500.p/mo = \$6,000.00
 - c. Anonymous gift received \$5,200.00
2. **yr. 2005 income (\$16,950.)**. Note – this includes rent for parsonage and utilities.
3. **yr. 2006 income (\$20,350.)**. Note – this includes rent for parsonage and utilities.

The petitioner submitted no new documentation, from any source, to support the figures claimed above.

The director denied the petition on June 5, 2007, stating that the petitioner did not submit any evidence to show that the beneficiary earned \$13,700 in 2004, rather than the \$4,193 that the beneficiary himself had reported on his income tax return.

The director also asserted that the schedule for the beneficiary's work in Georgia shows "the beneficiary has been working seven hours per week plus spending time in other activities during . . . 2003-2004." The director determined that the beneficiary's low reported pay, coupled with the imprecise work schedule, support the conclusion "that the beneficiary did not work full time in the year 2004."

On appeal, counsel asserts that the beneficiary worked full-time in 2004, and that his 2004 tax return "included most of the cash compensation he received [but] did not include the non-cash compensation of furniture and transportation provided by the Church." Counsel blames the beneficiary's tax preparer (Donald Hens of H & H Accounting Service) for omitting crucial information from the 2004 tax return.

The petitioner submits a copy of an amended 2004 tax return showing gross income of \$13,700, with \$3,359 remaining after expenses (including \$6,000 for housing). The amended return includes the explanation that [REDACTED] prepared the beneficiary's original return without the assistance of an interpreter, leading to inadvertent omissions. In a separate statement on appeal, the beneficiary states: "I . . . have found a new accountant who has helped me make the tax amendment." The return, however, was prepared not by "a new accountant," but by [REDACTED] of H & H Accounting Service, the same individual (at the same firm) who prepared the earlier version of the return. Neither the petitioner nor the beneficiary nor [REDACTED] provide copies of any documentary evidence to show that the \$13,700 sum shown on the amended return is more accurate or reliable than the \$4,193 sum shown on the original return. [REDACTED] does not provide or identify

the documentation that initially led him to list the \$4,193 sum on the beneficiary's original return, nor does he specify what evidence led him to revise that figure to \$13,700.

The filing of amended tax returns in response to the denial raises serious questions regarding the truth of the facts asserted. *Cf. Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394, 397 (BIA 1991) (discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings). 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Witness letters are not independent objective evidence. For these reasons, it cannot suffice for the beneficiary simply to alter his tax return to show figures that are more consistent with full-time employment. The credibility of the amended return, therefore, depends on the nature and extent of documentary evidence that the petitioner submits to show that the amendment of the tax return was warranted and to support the claims in that amended return.

We note counsel's assertion that the beneficiary was originally not aware of what he needed to report on his income tax returns. The beneficiary's 2003 return, however, shows an amount similar to that reported in 2005. The beneficiary's 2004 tax return was demonstrably not his first tax return, and he did not report minimal income in 2003 as he did in 2004.

The petitioner submits a detailed weekly work schedule for the beneficiary's position in Columbus, showing 46 hours per week. The document is undated and appears to have been newly executed for submission with the appeal. Like the previously submitted schedule, the new schedule is unattributed, and shares the same format heading as the previously submitted schedules for the Columbus and Waukegan churches. Church officials attest to the beneficiary's work in Georgia, but these officials are all located in Louisville, Kentucky. The appellate submission contains nothing from church officials in Columbus. The petitioner has previously shown the existence of rather detailed payment records at the Louisville headquarters and at the Waukegan church, both of which issued IRS Forms 1099 to the beneficiary at the end of each calendar year. There is no evidence that the Columbus church ever issued a Form 1099 to the beneficiary in any of the years that he was said to be working there.

The only Columbus witness is [REDACTED] a certified public accountant who states that the beneficiary "paid rent of \$500.00 per month to [REDACTED] for the lease of a home . . . in Columbus, Georgia for each month during the year 2004." It is not clear whether [REDACTED] is any relation, by blood or marriage, to [REDACTED] neither submits nor identifies any documentary evidence of the rent payments. There is no evidence in the record to show where the beneficiary obtained the money to make the rent payments. Therefore, the record contains no evidence to show that the church paid the beneficiary's rent in Columbus.

The petitioner has provided no documentary evidence from the church in Columbus, despite the director's specific admonition that information about the beneficiary's work must come from the location where the work took place. The petitioner has submitted contradictory claims about the beneficiary's work in Columbus and the record flatly contradicts the beneficiary's claim on appeal that "a new accountant" prepared the

amended 2003 tax return. 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. 591.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The AAO makes no definitive finding that the beneficiary did not work full-time as a minister while in Columbus, Georgia. The AAO finds only that the petitioner, on whom the burden of proof rests, has failed to meet that burden through credible and consistent evidence. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.