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U.S. Citizenship  
and Immigration  
Services

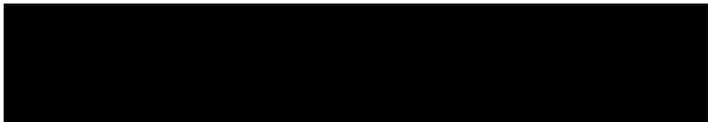
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FILE: WAC 06 131 51813 Office: CALIFORNIA SERVICE CENTER Date: OCT 09 2007

IN RE: Petitioner:  
Beneficiary:



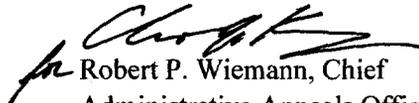
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

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, California 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 Coptic Orthodox 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 deacon. The director determined that the petitioner had not established that: (1) the beneficiary had the requisite two years of continuous work experience as a deacon immediately preceding the filing date of the petition; (2) the petitioner had made a qualifying job offer to the beneficiary; or (3) the position offered to the beneficiary qualifies as a religious occupation.

On appeal, the petitioner submits a brief from counsel and additional exhibits.

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).

First, we shall consider the issue of the beneficiary's past employment. 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 March 21, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a deacon throughout the two years immediately prior to that date.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (Sept. 19, 1990). See also *Lorillard v. Pons*, 434 U.S. 575, 580-81 (1978) (Congress is presumed to be aware of existing administrative and judicial interpretations).

The Board of Immigration Appeals (BIA) has determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399, 402 (BIA 1980).

It is clear, therefore, that to be continuously carrying on the religious work means to do so on a full-time basis. We note that the Ninth Circuit Court of Appeals, within whose jurisdiction this proceeding arose, has upheld the AAO's interpretation of the two-year experience requirement. See *Hawaii Saeronam Presbyterian Church v. Ziglar*, 2007 WL 1747133 at \*1 (9<sup>th</sup> Cir. June 14, 2007).

In a letter accompanying the initial submission, [REDACTED] of the petitioning church stated that the beneficiary "has been employed by our Church on a full-time basis since December of 2003 where he has served on a continuous basis as our Deacon."

On May 30, 2006, the director issued a request for evidence (RFE), instructing the petitioner to submit specific details regarding the beneficiary's work history from March 21, 2004 through March 21, 2006. In response, counsel stated that the petitioner had already provided most of the required information. Counsel claimed the following schedule for the beneficiary at the petitioning church:

Monday through Friday from 5:00 p.m. to 10:00 p.m.  
Saturday 4:00 p.m. to 4:00 a.m.

Counsel did not indicate that the beneficiary ever works for the petitioner on Sundays or on weekday mornings.

The director denied the petition on February 13, 2007, citing a schedule of worship services from the petitioner's web site, [REDACTED]. The director asserted that, according to this schedule, the church conducts services, meetings, and classes for two hours on Sundays, two and a half hours on Wednesday evenings, for three hours on Friday evenings, and for four hours on Saturday evenings. The director stated:

Based on the petitioner's services schedule, it is unreasonable to believe that the petitioner required the beneficiary to perform the duties daily when there is no daily service during the

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<sup>1</sup> The record contains numerous variant spellings of this surname. For consistency, we use the spelling shown on the Form I-360 petition.

week. Also it is questionable that the beneficiary is required to work from 4:00 pm to 4:00 am [on Saturdays] since the church is only open until 11:00 pm on Saturday. The evidence does not support [the claim that] the beneficiary work[s] full-time as claimed by the petitioner. Therefore, the evidence is insufficient to establish that the beneficiary has been continuously performing full-time work as a Church Deacon for the two-year period immediately preceding the filing of the petition.

(Emphasis in original.) The director printed out the schedule from the web site. We note that, while the director accurately repeated the information shown under "Weekly Services," the director omitted information from another column, headed "The Divine Liturgy." The latter column shows morning services on Wednesdays, Fridays and Saturdays, as well as two roughly simultaneous services on Sundays (one in English, the other in Arabic). While acknowledging this omission, we also note that the hours of these morning services do not coincide at all with the beneficiary's purported work schedule as identified by counsel. Considering that the beneficiary is alleged to have critical liturgical duties, it is no small matter that very few liturgical services occur during his purported work hours.

On appeal, counsel states:

Please be informed that the web-site . . . had not been updated for an extended period of time. The Services as conducted at the church are more numerous and extensive than those appearing on the Petitioner's web-site, especially liturgies conducted during the week which need the services of a Deacon.

The director printed the page from the web site on January 11, 2007. The printout states "Updated: September 03, 2006," and contains information about a "Youth Festival Sunday September 24<sup>th</sup>." This flatly contradicts counsel's wholly unsubstantiated assertion that "the web-site . . . had not been updated for an extended period of time" when the director printed it. Furthermore, the petitioner submits new schedules on appeal which do not broadly differ from those shown on the printout cited by the director. The schedules do not show enough activities on weekday evenings and overnight on Saturdays to permit full-time employment during those hours. For instance, counsel has claimed that the beneficiary works on Tuesday nights, but the schedules submitted on appeal rarely, if ever, show any church activities on Tuesday nights.

In a new letter, [REDACTED] does not discuss the beneficiary's work schedule except to state that the beneficiary "is preparing the Holy Bread for the Liturgy everyday."

Given the inconsistencies and unanswered questions detailed above, we concur with the director that the petitioner has not persuasively demonstrated that the beneficiary has worked (or will work) full-time for the petitioning church. We turn now to evidence of extensive secular employment so pervasive that it precludes a finding that the beneficiary's church work has been "continuous" in any relevant sense.

8 C.F.R. § 204.5(m)(4) requires the intending employer to demonstrate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support. The director, in denying the petition, erroneously indicated that the church must be the beneficiary's *sole* employer. The regulations do

not prohibit *all* supplemental employment for non-clergy religious workers. At the same time, when the beneficiary's *primary* source of support is secular employment, this calls into question the beneficiary's intention to devote himself to religious work.

In his initial letter, [REDACTED]s stated that the beneficiary "has been compensated [and is] being compensated at the rate of \$1000.00 per month," equivalent to \$12,000 per year.

The petitioner submitted copies of Internal Revenue Service (IRS) forms from 2004 and 2005. For 2004, IRS Form 1099-MISC Miscellaneous Income statements show that the petitioning church paid the beneficiary \$12,000 in "[n]onemployee compensation" while [REDACTED] paid the beneficiary \$5,725.48. The only form to identify the beneficiary as an "employee" is an IRS Form W-2 Wage and Tax Statement from [REDACTED] showing that beneficiary earned \$11,000 in 2004. These amounts, added together, total \$28,725.48. On his 2004 income tax return, the beneficiary reported \$28,725 in wages (which matches the above total, rounded to the nearest dollar) as well as an additional \$31,997 in "[r]ental real estate, royalties, partnerships, S corporations, trusts, etc." The record does not show the source of this income. On the income tax return, the beneficiary identified his occupation as "BUSINESS OWNER." The record contains no information about the name or nature of the beneficiary's business.

The petitioner did not submit a copy of the beneficiary's income tax return for 2005. The only documentation from that year consists of an IRS Form 1099-MISC showing that the petitioner paid the beneficiary \$12,000, the same amount as in 2004, and an IRS Form W-2 showing \$18,000 from Jasmine Cleaners, a significant increase from 2004.

In the denial notice, the director noted that "the beneficiary is a business owner and worked for [REDACTED] and Horizon Home Lending. Therefore, it must be concluded that the beneficiary is dependent on supplemental employment for support."

On appeal, counsel does not address the beneficiary's outside employment at all, except to state that the beneficiary's salary from the church is sufficient to support him and therefore the beneficiary is not "dependent" on his other income. Counsel states: "[a]dditional income as earned by the Beneficiary comes from his work ethic and not his need for monies with which to live." This is one of counsel's many unsupported assertions. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). It remains that the beneficiary himself, asked to identify his occupation on his own tax return, considered himself first and foremost a "business owner," such activity apparently accounting for the majority of his income.

The available evidence raises doubt as to whether or not there exists a *bona fide* job offer from the petitioner to the beneficiary, as required by regulation at 8 C.F.R. § 204.5(m)(4) and as opposed to an offer intended primarily to assist the beneficiary in securing immigration benefits. 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, 591 (BIA 1988). Here, the record contains numerous anomalies that raise doubts of one kind or another, not the least of which are the

inconsistent spellings of [REDACTED] letters that he himself supposedly wrote. (The first letter uses the spelling [REDACTED],” the second [REDACTED]

The remaining 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. (A function that typically provided no remuneration whatsoever would not be an “occupation” as such.)

In his initial letter, [REDACTED] stated that, as a deacon, the beneficiary

is responsible for saying the responses of the litanies prayed by the Priests during the raising of incense and Liturgy; in starting prayers with the congregation; in helping the Priests in visiting the church’s congregation; and in recording the names of the people who have offered gifts and oblations to the Church so that the Priests can remember them during the Litany of oblations.

In the RFE, the director requested “a detailed description of the work to be done” and instructed the petitioner to “explain how the duties of the position relate to a traditional religious function.” In response, counsel repeated the list of duties provided earlier by [REDACTED], adding additional functions: “helping to establish church regulations,” “taking part in Coptic educational classes,” and “visiting congregants in hospitals and convalescent facilities or at their homes to offer spiritual guidance.” Counsel cites no source for the additions to the list of the beneficiary’s duties. Again, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N at 534 n.2; *Matter of Laureano*, 19 I&N at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N at 506.

In denying the petition, the director found the description of the beneficiary’s work to be “vague and nonspecific,” and the director determined “[t]he petitioner failed to explain how [the beneficiary’s work] relates to the traditional religious functions” of the denomination. The director determined, therefore, that the petitioner had failed to establish that the beneficiary’s position as a deacon qualifies as a religious occupation.

On appeal, counsel contends that the “Deacon has such an indispensable role in the liturgy that a Priest is not allowed to celebrate the Eucharist without one.” Documents submitted on appeal show that the petitioner offers “The Divine Liturgy” four mornings a week (Saturday, Sunday, Wednesday and Friday) beginning at

8:00 a.m. and concluding no later than 11:30 a.m. Counsel had previously claimed that the beneficiary works weekday evenings from 5:00 p.m. to 10:00 p.m., and Saturdays from 4:00 p.m. to 4:00 a.m. These claimed work hours do not coincide at all with any of the petitioner's liturgical services.

We note also that the petitioner conducts two simultaneous liturgical services on Sunday mornings, one in English and the other in Arabic. If a deacon *must*, as counsel claims, assist in each of these services, then the petitioner must have at least two deacons so that the church can have two services at the same time. Supporting this conclusion is a new letter from [REDACTED], who refers to "the deacons of the church" and indicates "there are a lot of liturgies during the week which need the help of deacons and servants as well."

Tax documents show that the petitioner has paid the beneficiary \$12,000 per year, including in 2004. A financial statement submitted with the petition indicates that the petitioner spent a total of \$12,000 on "Deacon" in 2004. If the beneficiary received this entire amount, but the church has multiple deacons, then we must conclude that the beneficiary is the only *paid* deacon. If deacons in the petitioner's denomination are not routinely compensated for their diaconal work, then the position of a deacon is not traditionally an *occupation within the denomination*. [REDACTED] asserts that not only deacons, but "servants as well," participate in the liturgy, but there is no indication that the "servants" receive any compensation. Clearly, not every active participant in the liturgy is employed or compensated by the church, and therefore such involvement is not definitive evidence that the diaconate is an occupation rather than an unremunerated activity performed by dedicated volunteers.

The petitioner cannot qualify a beneficiary for immigration benefits merely by compensating him for duties that are typically performed by volunteers. The Board of Immigration Appeals has cautioned that "Congressional policy in the field of immigration could be readily circumvented by accommodating religious organizations" whose documentary evidence is not subjected to scrutiny. *Matter of Rhee*, 16 I&N Dec. 607, 610 (BIA 1978).

The petitioner has not credibly shown that the beneficiary, who appears to hold at least three other jobs, worked or works a full-time schedule at the petitioning church. The record also indicates that the petitioner has numerous deacons but, for reasons unexplained, pays none of them except the beneficiary. Therefore, the petitioner has not credibly shown that the petitioning denomination traditionally employs paid deacons, or that a *bona fide* offer of employment exists for the beneficiary. 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 not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.