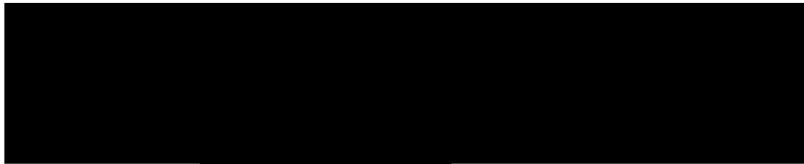




U.S. Citizenship
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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: **SEP 12 2007**
WAC 06 251 54941

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:

SELF-REPRESENTED

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.

An official of the petitioning entity describes the petitioner as “a religious benevolence, development and church planting organization that operates in the US as Vineyard Community Church.” The petitioner 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 assistant pastor of [REDACTED], a Hispanic church operated by the petitioner. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as an assistant pastor immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary.

On appeal, the petitioner submits copies of church publications and other materials.

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 August 18, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an assistant pastor throughout the two years immediately prior to that date.

In a letter submitted with the initial filing, [REDACTED], Senior Pastor of Vineyard Community Church and President of the petitioning entity, stated that the beneficiary's "initial compensation package will be \$2320.00 per month plus full health insurance. . . . These funds will come out of the [petitioner's] general budget." Pastor [REDACTED] did not state or imply that the petitioner had already begun to compensate the beneficiary.

[REDACTED], [REDACTED], stated:

[The beneficiary] has been an active member of Comunidad Cristiana [REDACTED] since January, 2002. He has served on our leadership team for the past several years. He currently leads our junior high age group, leads a weekly home Bible study, and oversees different ministries during our Sunday services (ushers, greeters, recording, etc.) He also has technical and computer skills and puts together the church bulletin and power point presentations. . . . I would like to take him on as my assistant pastor, working part time with us in [REDACTED] and part time with Vineyard Community Church.

On December 20, 2006, the director issued a request for evidence (RFE), instructing the petitioner to submit "evidence of the beneficiary's work history beginning August 18, 2004 and ending August 18, 2006. . . . Ideally, this evidence should come in a way that shows monetary payment. . . . If any work was on a volunteer basis, provide evidence to show how the beneficiary supported him or herself (and family members, if any) during the two-year period."

In response, [REDACTED], the petitioner's Administrative Director, stated: "To our knowledge . . . any work . . . [the beneficiary] performed while in the US has been performed legally. . . . During the last two or more years that we have been associated with the beneficiary he has served on a volunteer basis performing the same duties and services he will be performing as an employee."

The petitioner submitted copies of tax documents showing that Wescom Credit Union has employed the beneficiary, paying him \$25,416.41 in 2004, \$30,977.31 in 2005 and \$35,443.15 in 2006.

The petitioner also submitted documents pertaining to a previous petition. Vineyard Christian Fellowship Anaheim had filed a prior Form I-360 petition on the beneficiary's behalf in 1997, which the director approved but subsequently revoked. The August 8, 2005 notice of intent to revoke, reproduced in the petitioner's response to the RFE, indicated that the beneficiary worked only intermittently for the church, while also working at a string of secular jobs. The beneficiary himself referred to his church employment from 1996 to 1998 as "Maintenance," which is not a religious occupation pursuant to 8 C.F.R. § 204.5(m)(2). The director, in the notice of intent to revoke, found: "The petitioner failed to establish the intent to engage the beneficiary in accordance with the terms of the job offer."

The petitioner's response to the RFE does little to indicate that this situation has changed. The tax documents appear to indicate that the beneficiary supported himself entirely through secular employment in 2004, 2005 and 2006, and the petitioner admitted that the beneficiary was not yet a paid employee, even though the beneficiary possessed a valid employment authorization card that would have permitted him to work for the

church as a paid employee. The petitioner did not explain why it did not pay the beneficiary, even though the petitioner claims to be willing to pay the beneficiary to perform that very same work in the future.

The record of proceeding now before the AAO does not contain the other documents from the record pertaining to the 1997 petition, but the petitioner, in its response to the RFE, did not contest any of the allegations in the notice of intent to revoke.

The director denied the present petition on May 3, 2007, stating that the beneficiary's past work for the petitioner is non-qualifying because it was not "full-time salaried employment." The director also found that the beneficiary's prior employment history "does not establish the petitioner has a valid job offer or [that] the beneficiary [has the] intent to work full-time for the petitioner."

On appeal, Pastor [REDACTED] contests the director's "decision that the code allows only full time, paid, vocational religious work experience. . . . This would preclude seminary experience, internships and other such experience that may be with in [*sic*] the normal prior experience path allowed by an organization in considering any person for vocational religious work." The statute and regulations require two years in the occupation or vocation; they do not indicate that pre-employment training or preparation constitute qualifying experience. Section 101(a)(27)(C)(iii) of the Act, 8 U.S.C. § 1101(a)(27)(C)(iii) (2007); 8 C.F.R. § 204.5(m)(1). See *Hawaii Saeronam Presbyterian Church v. Ziglar*, 2007 WL 1747133 (9th Cir. June 14, 2007) (upholding AAO's adoption of full-time, two-year employment requirement); *Matter of Faith Assembly Church*, 19 I&N 391, 393 (Commr. 1986) (part-time ministerial employment was insufficient to qualify the alien as a special immigrant minister). Furthermore, this argument does not apply here because the petitioner does not claim that the beneficiary's duties in the near future will differ significantly from those that he has performed as a volunteer.

The petitioner asserts that the beneficiary's eventual goal is ordination as a minister, and that the beneficiary's experience is consistent with "many formal tracks to ordained ministry (which the beneficiary is on)." Nevertheless, the beneficiary's past duties, and those of the proffered position, are not ministerial in nature. If it is the petitioner's position that the petition should be approved based on the beneficiary's claimed intent to be a minister, then additional obstacles surface. An alien seeking classification as a special immigrant minister must have worked solely as a minister throughout the two-year qualifying period, which is clearly not the case here. *Id.* Also, at the time of filing, the beneficiary was not yet an ordained minister. 8 C.F.R. § 204.5(m)(3)(ii)(B) requires alien ministers to possess the necessary qualifications of ministers, including ordination, and the beneficiary of an employment-based immigrant visa petition must possess the necessary qualifications as of the petition's filing date. See *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). It may be that the beneficiary intends, one day, to become a minister, but he is not a minister yet, and it is not certain that the beneficiary will eventually achieve ordination. It obviously would be premature to confer upon the beneficiary an immigration benefit for which he might, possibly, qualify some years in the future. The visa classification is for religious workers, not for potential or aspiring religious workers.

We also note that the experience issue would have been moot if the petitioner, during the two years prior to the filing date, had employed the beneficiary full-time instead of having him, for reasons unexplained,

perform the same tasks for no pay. This leads us to the discussion of the validity of the job offer. The petitioner, on appeal, argues that its job offer is valid, and the petitioner provides additional details regarding terms of compensation. The petitioner does not, however, directly address the director's expressed concerns about the beneficiary's and the petitioner's intentions. The beneficiary purports to have been working without pay for the petitioner for some time. The petitioner claims that it will eventually pay the beneficiary to do this same work – but only after the beneficiary has received an approved petition for immigrant classification. Because the beneficiary has already had authorization to work in the United States, and the petitioner has claimed ample income and cash reserves to pay the beneficiary's salary, the petitioner could have hired the beneficiary as a paid employee all along, but for reasons unexplained the petitioner did not do so. The record shows that the beneficiary, for years, has supported himself mostly – at times entirely – through secular employment, even after a prior religious worker petition was approved on his behalf. The beneficiary's documented pattern of secular employment, even when religious employment was readily available, supports the director's conclusion.

We agree with the director's unrebutted finding that the petitioner has not persuasively established a *bona fide* intent to employ the beneficiary. We also affirm the director's finding that the beneficiary lacks the required continuous experience during the two-year qualifying period.

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.