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

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[REDACTED]

FILE: [REDACTED]
WAC 07 019 51103

Office: CALIFORNIA SERVICE CENTER Date: **AUG 04 2008**

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. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a member congregation of Every Nation Churches. 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 campus minister. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a campus minister immediately preceding the filing date of the petition.

On appeal, the petitioner submits a brief from counsel and documentation regarding tax filings.

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 October 26, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a campus minister throughout the two years immediately prior to that date.

In a letter accompanying the initial filing, [REDACTED], Treasurer of the petitioning organization, stated:

Since July of 2003, [the beneficiary] has been a full-time employee of Every Nation Ministries in the religious position of Campus Minister under R-1 visa status . . . at various colleges and universities. In January of 2005, he was assigned to minister exclusively at the colleges and universities in the New York City area. During this placement, he has also been supporting the staff at [the petitioning organization].

The petitioner submitted copies of Internal Revenue Service (IRS) Form W-2 Wage and Tax Statements and Form 1040A income tax returns for 2004 and 2005. A Form W-2 indicates that Morning Star International, Inc., of Torrance, California, paid the beneficiary \$21,769.10 in wages in 2004, plus \$108.88 for health benefits, consistent with a copy of an accompanying IRS Form 1040A Income Tax Return prepared by H & R Block Tax Services, Inc. The beneficiary's 2005 tax documents indicated that that Every Nation Ministries, Inc., of Palos Verdes Peninsula, California, paid the beneficiary \$14,653.00 in salary, in addition to \$19,899.00 for "Housing" and \$758.22 for "Health." The 2005 income tax return also showed \$266 in taxable interest. The tax returns identified the beneficiary's occupation as that of a "Minister," and that of his spouse as a "House Wife." The 2004 Form W-2 shows a Greensboro, North Carolina address for the beneficiary. The 2005 Form W-2 shows a New York address, but reflects withholding of state taxes in North Carolina as well as New York.

A résumé submitted with the initial filing lists employment as a campus minister from September 2003 onward, but also indicates that, since January 2005, the beneficiary has served as an "Administrative Assistant" at the petitioning church, in which capacity the beneficiary has "Organized and planned church meetings and events" and undertaken "Bookkeeping" and "Website Management." The beneficiary's résumé placed him in the Los Angeles area during the first half of 2004, but there is no indication of his whereabouts between June 2004 and January 2005. North Carolina is mentioned only in reference to the beneficiary's activities during his master's studies at the University of North Carolina, Greensboro, from 2001 to 2003.

Minutes of a corporate meeting addressed "2006 salaries & housing allowances for pastoral staff" and listed nine individuals by name. The beneficiary's name does not appear on this list. The list shows a total of \$445,440 in annual salaries and housing allowances, of which \$215,760 is specifically designated for housing, leaving a remainder of \$229,680 for salaries. A separate list of "pastoral & other staff" names the beneficiary and his spouse (identified as a "house wife" on the 2004 and 2005 tax returns). This document suggests that the petitioner classifies the beneficiary under "other staff" rather than under "pastoral staff."

The proposed budget for 2006 does not match the "2006 salaries & housing allowances for pastoral staff" described above; the budget document allocated \$300,000 for "Pastoral Staff Salaries" and \$168,000 for "Pastoral Housing Allowances." The budget does not show any salaries for other staff.

The petitioner's proposed budget for 2005 showed \$20,000 for "Non-pastoral salaries," a line item missing from the 2006 budget. Like the 2006 budget, the 2005 budget does not match the itemized list of "2005 salaries & housing allowances for pastoral staff." The 2005 list names five individuals; the beneficiary is not among them. The list allocated a total of \$186,000, of which \$108,000 was for housing allowance, leaving

\$78,000 earmarked for salaries. The 2005 budget, however, showed \$200,000 for "Pastoral Staff Salaries" and \$110,000 for "Pastoral Housing Allowances."

On December 11, 2006, the director issued a request for evidence (RFE), instructing the petitioner to provide details and evidence regarding the beneficiary's employment experience from October 2004 to October 2006. The director specified: "Each experience letter must be written by an authorized official from the specific location at which the experience was gained."

In response, the petitioner submitted a letter from [REDACTED] Human Resources at Every Nation Ministries' Nashville Office. [REDACTED] essentially repeated the figures cited on the beneficiary's 2004 and 2005 tax documents described above, but provided no new information or further details. Materials submitted in response to the RFE indicated that the beneficiary performed much of his work on "campus" but the petitioner did not identify the campus(es) or provide any confirming letters or evidence therefrom.

On June 14, 2007, the director issued a second RFE, instructing the petitioner to submit "official IRS printouts" of the beneficiary's income tax returns for 2004 through 2006. Once again, the director instructed the petitioner: "Each experience letter must be written by an authorized official from the specific location at which the experience was gained." In response, the petitioner submitted IRS transcripts showing the content of IRS Forms W-2 and 1099, but not that of the beneficiary's tax returns. The only 2004 income identified on the transcript consisted of \$35 in interest income. The transcripts for 2005 and 2006 included Forms W-2 from Every Nation Ministries.

The director denied the petition on November 5, 2007, stating: "The beneficiary's tax documents clearly illustrate that he worked for the petitioning organization in 2005 and 2006. But according to the IRS tax records the beneficiary never reported any income besides interest earned in 2004. Therefore, it appears that the beneficiary was not a full-time paid employee from October 27, 2004 to December 31, 2004." The director added that the IRS transcript conflicted with the copy of the 2004 Form W-2 submitted previously.

On appeal, the petitioner submits an IRS transcript of the beneficiary's 2004 income tax return, showing that the beneficiary filed that return in April 2005 and that the information therein is consistent with the previously submitted photocopy of that return. [REDACTED] Controller of Every Nation Churches in Nashville, states: "we discovered that past accounting personnel did not file forms W-2 and W-3 for the 2004 tax year. We are in the process of rectifying this error."

The gaps in the evidence of the beneficiary's past employment go beyond Every Nation Ministries' claimed failure to file tax forms for 2004. As noted above, the beneficiary did not work for the petitioner during the first several months of the 2004-2006 qualifying period. As such, the petitioner is not in a position to attest, first-hand, to the beneficiary's experience prior to his early 2005 arrival in New York. The director twice informed the petitioner that evidence of the beneficiary's past employment must originate "from the specific location at which the experience was gained." Both times, the petitioner failed to comply with this request. As a result, the record does not even establish exactly where the beneficiary was from October 2004 to January 2005, much less what he was doing and whether he was doing so on a continuous, full-time basis. Based solely on the petitioner's failure to provide the requested evidence, the petition may not be approved.

Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Furthermore, the IRS Forms W-2 from 2004 and 2005 raise further questions about the relationship between Morning Star International, Inc. of Torrance, California, which employed the beneficiary in 2004, and Every Nation Ministries, Inc., of Palos Verdes Peninsula, California, which employed the beneficiary in 2005. The petitioner has claimed that Morning Star International is the former name of Every Nation Ministries, but the two entities show different federal and state employer identification numbers (EINs) on their respective IRS Forms W-2. A March 12, 2005 letter from the IRS acknowledged “the name change” from Morning Star International to Every Nation *Churches* (not Every Nation *Ministries*). The 2005 letter used the federal EIN assigned to Morning Star International, as did further IRS correspondence dated as late as July 18, 2007.

The 2007 letter, showing the same federal EIN as the 2004 Form W-2, is once again addressed to “Every Nation Churches” rather than “Every Nation Ministries.” The record includes a list of Every Nation Churches’ subsidiary organizations, arranged in numerical order by federal EIN. The petitioning church is on this list, but Every Nation Ministries is not. The relationship between Every Nation Ministries and Every Nation Churches remains unclear; the different EINs indicate that the two entities are not one and the same, and the record shows that the IRS did not assign a new EIN to Morning Star International when that entity changed its name in 2005.

Also, the Forms W-2 indicate that the beneficiary earned compensation worth \$35,310.22 in 2005, but only \$21,877.98 in 2004. This difference of more than 60% suggests a significant change in the beneficiary’s duties or a major increase in the amount of work performed. Furthermore, because the 2004 Form W-2 reflects only an annual total, we cannot determine how much, if any, of the beneficiary’s compensation was earned during the last ten weeks of that year. As noted previously, the petitioner did not submit any first-hand information relating to the beneficiary’s 2004 employment that might settle this issue. Little can be said about the beneficiary’s employment in 2004 and early 2005 except that North Carolina taxes were withheld from his wages.

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).

Based on the above discussion, the AAO affirms the director’s finding that the petitioner has not established that the beneficiary continuously performed the duties of a campus minister throughout the two years immediately preceding the filing of the petition.

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.