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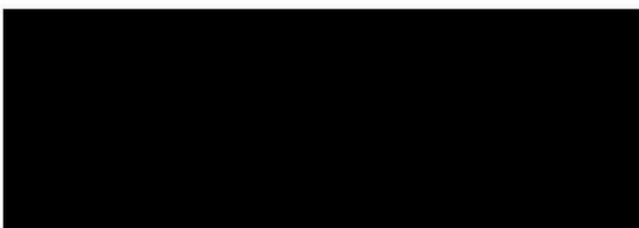
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
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U.S. Citizenship  
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **AUG 20 2008**  
SRC 06 224 53519

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

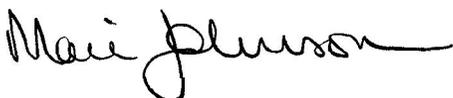
PETITION: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

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.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a 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 an associate pastor.

The director determined that the petitioner had not established that the beneficiary has been a member of a religious denomination for at least two years and engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

On appeal, the petitioner submits a brief disputing the director's findings.

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 first issue is whether the petitioner established that the beneficiary had the required membership in the denomination for two full years immediately preceding the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious

organization in the United States.” The regulation 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.”

The petition was filed on July 19, 2006. Therefore, the petitioner must establish that the beneficiary was a member of a qualifying denomination for two full years immediately preceding that date.

The petitioner submitted a Certificate of Ordination, which indicates that the beneficiary was ordained on October 16, 2001 by its organization along with a diploma in the degree of Bachelor of Church Ministry issued on March 19, 2000 from Jubilee College International. In response to a Request for Additional Evidence, the petitioner submitted the beneficiary’s membership renewal cards from 2004 through 2007.

The petitioner had submitted sufficient evidence establishing that the beneficiary has been a member of its denomination for two full years immediately preceding that date. Accordingly, the director’s finding that the petitioner had not established the beneficiary’s membership within its denomination is hereby withdrawn.

The second issue is whether the petitioner established that the beneficiary had been continuously employed in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition.

The regulation at 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.

As the petition was filed on July 19, 2006, the petitioner must establish that the beneficiary was continuously performing the duties of an associate pastor throughout the two years immediately preceding that date.

Along with the Form I-360, the petitioner submitted a letter dated July 12, 2006, indicating that the beneficiary has been affiliated with its organization “for the past fifteen years both in Brazil and here in Pensacola.” The petitioner further indicated, in pertinent part:

Since [the beneficiary] has already been working with Jubilee International Ministries informally for nearly ten years, date of formal employment with us will begin immediately upon receipt of INS authorization of residency status. Pay scale is based on a \$20,000 per year salary package with supplemental income coming from itinerate [sic] ministry and missionary contributions. Solicitation of funds will not be a part of [the beneficiary’s] remuneration.

[The beneficiary’s] job description includes the development and administration of the Latin American arm of our subsidiary, Jubilee Global Outreach. His work also includes counseling and pastoral duties for both Brazilian and Latin American families here in the greater Pensacola area, along with the development and support of current Latin American and Brazilian missions in Northeast Oklahoma, Northern Louisiana, and the New England states, and in other areas as they are developed and funded.

On December 11, 2006, the director issued a Request for Evidence (RFE) and instructed the petitioner to submit evidence establishing: 1) whether a connection existed between the petitioner and any other church

the beneficiary had worked for during the last two years; 2) how the beneficiary had been supporting himself for the last two years; and 3) the beneficiary's work history for 2004, 2005 and 2006.

In response, counsel asserted that the petitioning organization is affiliated with religious denominations abroad. The petitioning organization is a subsidiary of Jubilee Global Outreach (JGO) in Brazil and JGO is a south affiliate of Igreja Comunidade Evangelica de Libertacao Church also located in Brazil.

Counsel asserted that the beneficiary has been a member of the fellowship church in Brazil since prior to 1997 and has been an active member of the petitioner's subsidiary, JGO, for the past five years. Counsel asserted that because the beneficiary has H-4 status (valid since June 13, 2005) and is awaiting the adjudication of his R-1 visa petition (filed September 28, 2006), the beneficiary "has and will continue to be supported by his spouse." Counsel provided the 2004 and 2005 Internal Revenue Service (IRS) Forms 1040, joint income tax returns along with corresponding IRS Forms W-2, wage and tax statements.

Counsel stated that the beneficiary has been a pastoral assistant since October 2001 and has been participating with the petitioning organization since his entry in the United States on June 13, 2005. Counsel stated, "[d]uring this time he has been providing services for the organization. He is not, nor has he has been, employed by the organization." Counsel asserted that he is providing letters from the petitioner which addresses the beneficiary's affiliation with its organization and work history for the last two years.

Counsel provided a letter from the petitioner dated August 30, 2006. This letter, however, reiterated much of the information submitted in the petitioner's earlier letter of July 12, 2006, and appeared to relate to the filing of the beneficiary's R-1 visa petition.

Regarding the religious affiliation, the petitioner, in its letter dated September 15, 2006, indicated that the beneficiary has been affiliated with its organization since January 1997 and that he currently serves as an ordained minister of the Gospel and a spiritual brother. The petitioner further indicated:

He [the beneficiary] has been operating in ministry through our international ministry subsidiary, Jubilee Global Outreach in Brazil, South America until arriving here to complete his ministry training and work with us here at our home and church in Pensacola, Florida. One of our church affiliates there in which he has served is Igreja Comunidade Evangelica de Libertacao and its senior pastor is [REDACTED] (no relation.).

He is experienced in church administration, teaching, and counseling. He has held the titles of reverend, associate Pastor, administrative pastor, elder, and brother during his five-year ministry history.

The petitioner, in its letter dated December 28, 2006, indicated, in pertinent part:

[The beneficiary] has been working with Jubilee International Ministries for the past few years in multiple capacities. He has been compensated indirectly [sic] by missionary contributions sent through Igreja Comunidade Evangelica de Libertacao, one of our affiliate churches in Londrina, Brazil for more than two years.

\* \* \*

My understanding is that the INS requirement states that the petitioner *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. This implication as defined to me is that the applicant (i.e. the beneficiary) cannot be functioning in a “volunteer” capacity in regards to his religious vocation. This has been the case for the past several years both here and abroad without question.*

\* \* \*

Since [the beneficiary] is already informally working with Jubilee International Ministries, date of formal employment with us will begin immediately upon receipt of INS authorization of residency status or work permit. Solicitation of funds will not be a part of [the beneficiary's] remuneration. He has not yet been nor will be a public charge or burden, as our organization assumes full responsibility.

I respectfully request that you consider this conflict and understand that [the beneficiary] is not working as a volunteer and that his pay currently comes through free-will gifts and other missionary support until such time as we receive the permit to place him legally on staff here in the United States. Check stubs or financial information for the past few years is either impossible or would potentially incriminate our dear brother during this transition.

In our interpretation of your description, [the beneficiary] more than meets the standards requirements for “previous work experience” both for the proffered position and work performed directly with our organization.

The petitioner indicated that the job title, Associate Pastor for Latin Mission Development, is “a position we are currently creating to meet the growing [sic] need for our Latin American community here and abroad.” The petitioner described the beneficiary's duties and responsibilities as follows:

#### *DUTIES*

- Development and administration of the Latin American arm of our subsidiary, Jubilee Global Outreach (JGO).
- Translations of administrative work locally, extra-locally, and internationally. Translations of liturgy and other miscellaneous church documents as necessary.
- Management of said administrative work, liturgy, and formal church functions in the Latin American outreach arm.
- Some general pastoral ministry with a target on the furtherance of Latin American outreach, local church support, and counseling.
- Active work in the development and administration of programs to our Brazilian and Hispanic sub-communities in the Greater Pensacola area, Northeastern Oklahoma, Northern Louisiana and the New England states.
- Note: Work primarily includes, but is not limited to, people-based programs, humanitarian outreach, and human resources. Some budgetary [sic] administrative work and office management may also be included as necessary.

#### *RESPONSIBILITIES*

- Sunday: Active involvement in the multiple services of our local church. This includes some teaching, administrating liturgy, one-to-one ministry involvement, etc.
- Monday: Day off.
- **Tuesday, Wednesday and Thursday:** Work in office, handle correspondence (paper and electronic), communicate with local leaders in various areas by phone, build integration and follow-up strategy with Brazilian and Hispanic contacts, visit prospects, and other miscellaneous duties.
- Friday: Handle counseling and assist local pastor with our growing Latin and Brazilian outreaches. Prepare for evening services. Assist in ministry as needed.
- Saturday: (half day) Tie up loose ends form the week and fulfill miscellaneous ministry responsibilities as needed to prepare for Sunday.

The petitioner indicated that the above activities may change as the ministry of its organization is often fluid, and regular travel both in the United States and abroad is expected for relational development, oversight, and administrative duties for the church. The petitioner indicated that the beneficiary works 40 to 50 hours each week including time spent in church services and travel and will receive a salary of \$20,000.00 each year including salary and housing expense.

In a Notice of Intent to Deny issued on April 24, 2007, the petitioner was advised that the evidence submitted in response to the RFE did not establish that the beneficiary had received remunerations for the proffered position and, therefore, the petitioner had not established that the alien had the required two years of experience in the religious vocation or occupation.

In response, the petitioner asserted that the beneficiary cannot be placed on its payroll legally in the United States until he receives permission to immigrate or obtains a work visa. The petitioner asserted:

This conflict makes fulfilling the requirement as it is described seemingly unattainable for anyone. However, we know realistically this is not unattainable as our organization has brought in other immigrants successfully (currently serving on our staff) to help us here with similar endeavors and with the same documentation we are providing for [the beneficiary] as support.

If the previous nonimmigrant petitions were approved based on the same evidence and unsupported assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that Citizenship and Immigration Services or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

The petitioner indicated that it was providing “selected copies of contribution stubs which show compensation to [the beneficiary] for his ministry work. These are not payroll checks and do not serve to implicate [the beneficiary] as performing illegal work in the United States, but are sufficient according to religious tradition to prove compensation for ministerial work.”

As evidence, the petitioner provided four “contribution” stubs issued to the beneficiary by the Bank of Pensacola JG. The four check stubs, issued in the amount of \$500.00 each for missionary support, are dated

November 22, 2004, May 20, 2005, October 28, 2005, and May 19, 2006. The check stubs, however, do not establish that the beneficiary received compensation from the petitioning entity for his services. For example, the name of the entity or individual who allegedly issued the payment was not listed on the check. Further there is no independent evidence showing that the beneficiary received these payments. The beneficiary's joint tax returns for 2004 and 2005, which are signed under penalty of perjury as true, correct and complete, reflect only the income that his wife received from her employment.

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).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals 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 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore, that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

An alien seeking classification as a special immigrant minister must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought, and must intend to be engaged solely in the work of a minister of religion in the United States. See *Matter of Faith Assembly Church*, 19 I&N 391, 393 (Commr. 1986). If an individual receives no compensation for religious work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712, 713-14 (Reg. Commr. 1963) and *Matter of Sinha*, 10 I&N Dec. 758, 760 (Reg. Commr. 1964). As discussed, the Ninth Circuit Court of Appeals has upheld the AAO's interpretation of the two-year experience requirement. See *Hawaii Saeronam Presbyterian Church v. Ziglar*, 2007 WL 1747133 (9<sup>th</sup> Cir. 2007). If the petitioner did not support the beneficiary during part or all of the two-year qualifying period, the burden is on the petitioner

to demonstrate that the beneficiary did not have to rely on outside employment to support himself during that time.

The petitioner asserts that prior to entering the United States on June 14, 2005, the beneficiary had been operating in ministry through its subsidiary in Brazil. The claims put forth regarding the beneficiary's past work is unsupported as the record lacks evidence from an authorized official of the religious organization in Brazil establishing that the beneficiary was employed in a religious occupation and was compensated for his services from July 19, 2004 through the date he entered the United States. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The fact that no earnings were reported, at item 46 (foreign tax credit), on the 2004 joint income tax return for the beneficiary's overseas employment tends to support that the beneficiary did not receive any income in Brazil.

Counsel has clearly stated that the beneficiary is not on the petitioning organization's payroll and "is not, nor has he been employed" by the petitioning organization. The petitioner, in several of its letters, has stated that the beneficiary is "informally" working for its organization and that "formal employment" will commence once residence status or a work permit has been approved. The only indication that the beneficiary had been paid for his services came in the form of four check stubs that are contradicted by other evidence in the record and simply do not establish payment to the beneficiary. The record does not contain any documentary evidence to establish that the beneficiary received any remuneration or compensation from Igreja Comunidade Evangelica de Libertacao in Brazil while he was in the United States or from the petitioning organization. *Id.*

Therefore, the petitioner has not established that the beneficiary was continuously employed in a qualifying religious vocation or occupation for two years immediately preceding the filing date of the petition, and the petition must be denied for this reason.

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.