

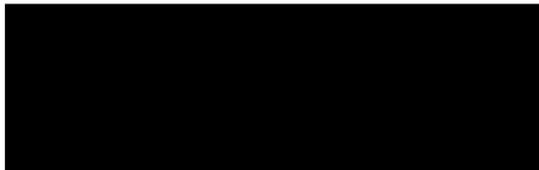
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 20 2008
WAC 07 045 50148

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.

A handwritten signature in black ink that reads "Mai pluson".

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 AAO will withdraw the director's decision; however, because the petition is not approvable, it is remanded for further action and consideration.

The beneficiary seeks classification 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 minister of the Hispanic Mission El Radil in Lawrenceville, Georgia. The mission belongs to the Tennessee-Georgia Presbytery of the Cumberland Presbyterian Church. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition.

Part 1 of the Form I-360 petition effectively identifies two petitioners: the alien beneficiary as an individual, and [REDACTED] as a "Company or Organization." Review of the petition form, however, indicates that the alien beneficiary is the petitioner. An applicant or petitioner must sign his or her application or petition. 8 C.F.R. § 103.2(a)(2). In this instance, Part 9 of the Form I-360, "Signature," has been signed not by any official of the church, but by the alien beneficiary herself. Thus, the alien, and not the church, has taken responsibility for the content of the petition. This will not affect the adjudication of the appeal, because the record contains a Form I-290B Notice of Appeal signed by the self-petitioning alien beneficiary and timely filed. There is also a second Form I-290B, signed by a church official, but this second form is without effect, as only the beneficiary has standing to file an appeal or motion in this proceeding.

On appeal, the petitioner submits copies of church, bank, and tax documents and asserts that she worked full-time during the period in question.

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 . . . ; 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 December 1, 2006. Therefore, the petitioner must establish that she was continuously performing the duties of a minister throughout the two years immediately prior to that date.

The director devoted two paragraphs of the July 12, 2007 denial notice to a substantive discussion of the petitioner's evidence, stating:

The petitioner submitted the beneficiary's tax documents for years 2005 and 2006. However, no evidence was submitted to show that the beneficiary has been paid in [the] year 2004. Furthermore, it appears that the beneficiary has been employed on a part-time basis. A copy of the petitioner's Continuing Mission Design in October 2006 stated "On January 1, 2003, Tennessee/Georgia (TN/GA) Presbytery employed a part-time Hispanic Pastor. . . ."

As such, the petitioner has failed to establish that the beneficiary has been performing full-time work as a pastor for the two-year period immediately preceding the filing of the petition.

The denial rests on two claims of fact: a lack of evidence of payment in 2004, and a reference to the petitioner as a "part-time Hispanic Pastor." Neither of these claims, however, survives close scrutiny.

The petitioner's initial submission included a photocopy of the petitioner's Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, for 2005, issued by "TN-Georgia Hispanic Outreach." The director acknowledged this document. The same page of the record, however, also included a copy of the petitioner's 2004 IRS Form W-2 from the same employer. That form indicates that the petitioner received \$25,435.08 in 2004, an amount that is facially compatible with full-time employment. This document refutes the director's claim that the petitioner submitted "no evidence" of payment during 2004.

As for the "part-time" reference, the director quoted a short passage from a long document out of context. A partial copy of the *Tennessee-Georgia Presbytery Minutes* for fall 2006 includes a section headed "Continuing Mission Design / October, 2006," which stated that the petitioner was "employed as a part-time Hispanic Pastor" in January 2003. It is this passage that the director quoted as a basis for denial. The next page of the same document, however, indicated that the petitioner had initially been hired "to help the presbytery determine where the best places would be to start Hispanic CP Churches," and "later decided to dedicate herself full-time to the Hispanic project." This indicates that, while the petitioner may have started as a part-time pastor, her duties later shifted to full-time. The document, therefore, cannot reliably be cited as evidence that the beneficiary was a part-time worker throughout the two-year qualifying period, or that she remains as such today.

Because the record of proceeding contradicts both of the specific grounds for denial stated in the director's decision, that decision cannot stand. Nevertheless, issues remain that demand resolution before the petition can be approved.

The petitioner has submitted copies of IRS Forms W-2, purporting to indicate that the church paid her \$25,435.08 in 2004, \$30,750.24 in 2005 and \$37,249.92 in 2006. The petitioner also submitted copies of

bank statements dated between November 2004 and November 2006, showing more or less regular deposits into her account. In late 2004, the deposits were \$879.01 twice a month, increasing to \$1,041.25 in January 2005 and then to \$1,062.08 in March 2006. The petitioner states on appeal that these deposits represent her salary payments, and that no pay stubs or canceled checks exist because the petitioner received the funds by direct deposit.

There is nothing facially implausible about the petitioner's account, but the petitioner did not submit all of her bank statements from the period in question. If we extrapolate from the amounts shown on the bank statements provided, the deposits show a salary rate (after withholding) of \$21,096.24 in 2004, \$24,990.00 in 2005 and \$25,421.00 in 2006. Those amounts do not add up to the yearly after-tax totals shown on the petitioner's IRS Forms W-2: \$23,489.29 in 2004, \$25,110.24 in 2005 and \$31,489.92 in 2006.

Furthermore, nothing in the bank statements identifies the source(s) of the deposits. Because the amounts of the deposits do not appear to match the totals on the Forms W-2, there is no evidentiary basis to assume that the church is the source of the deposits. Further documentation is needed, such as bank documents showing transfers from the church that match the deposits into the petitioner's account. If the petitioner received her salary by direct deposit, and received a Form W-2 at the end of each year, then documentation and records ought to exist to show that the transactions took place and that the sums that the church provided to the petitioner match the amounts shown on the respective Forms W-2.

Finally, there is a discrepancy relating to the petitioner's housing arrangements. The October 2006 report (quoted by the director in the decision) stated that the petitioner "has been living in the manse located next to the church property since 2004. . . . TN-GA presbytery has provided a house for the mission pastor . . . rent free." The church in question is apparently located in Lawrenceville, Georgia. Materials in the record cite two [REDACTED] addresses: [REDACTED] and [REDACTED]. The Forms W-2 issued to the petitioner, for instance, all stated the petitioner's address as [REDACTED] Lawrenceville; the petitioner's personal bank statements show the [REDACTED] address. The two [REDACTED] addresses are separated by more than a mile, and are each more than nine miles away from the [REDACTED] address. Therefore, none of the three addresses are "next to" one another.

The petitioner submitted a copy of her 2005 federal income tax return, dated March 9, 2006.¹ On that form, the petitioner stated her home address as [REDACTED]. On Schedule A – Itemized Deductions, the petitioner stated that she had paid \$11,157 in "Home mortgage interest." Public records confirm that the petitioner is the owner of the property at [REDACTED] having purchased it in 2005.

The tax information indicates that the petitioner resides at the [REDACTED] address, and that she purchased it herself, and holds the mortgage. If the petitioner had purchased the house on behalf of the church, such that the house was the church's property rather than the petitioner's property, then the petitioner would not be entitled to deduct the mortgage interest from her personal income taxes. This information indicates that the

¹ The tax return identifies the petitioner's occupation as "Labor." This, by itself, is not strong evidence of ineligibility; it is not as serious a discrepancy as the identification of a specific secular occupation (such as "farmer" or "office clerk" would be.

petitioner does not reside in housing provided by the church. This contradicts presbytery documentation from as late as October 2006 that the petitioner is “living in the manse located next to the church property,” and that the presbytery “has provided a house for the mission pastor . . . rent free.” 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). 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. *Id.* at 582, 591-92.

The record, therefore, contains a very significant discrepancy: contradictory documents indicate that the petitioner lives “rent-free” in church-provided housing, but at the same time she also resides several miles away, in a house she bought herself. The petitioner must provide verifiable, objective, documentary evidence to resolve this serious contradiction. The director must also ascertain exactly what church activities take place at each of the three different addresses used in the record, and solicit documentation to show that the church owns or otherwise exercises control over the properties listed.

We note that, when the petitioner first prepared her Form I-290B Notice of Appeal, she wrote her [redacted] on the form. She then obscured that address with correction fluid and replaced it with the [redacted] address in Lawrenceville.

The contradictory claims regarding the petitioner’s housing, coupled with the fragmentary and inconsistent evidence regarding the petitioner’s compensation in 2004-2006, prevent approval of the petition at this time. If the petitioner is not able to provide credible, objective documentation to overcome these issues, then these discrepancies warrant denial of the petition. The director is instructed to take appropriate action to permit the petitioner a final opportunity to address these concerns.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director’s decision is withdrawn; however, the petition is currently unapprovable for the reasons discussed above, and therefore the AAO may not approve the petition at this time. Because the petition is not approvable, the petition is remanded to the director for issuance of a new, detailed decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.