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FILE: LIN 05 234 51013 Office: NEBRASKA SERVICE CENTER Date: JAN 08 2008

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

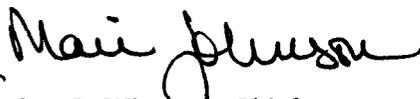
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

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.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska 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 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 a youth minister at Vineyard Community Church in Reynoldsburg, Ohio. The director determined that the petitioner had not established that he had the requisite two years of continuous work experience as a youth minister immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established the qualifying tax-exempt status of Vineyard Community Church.

On appeal, the petitioner submits additional documents and a letter from the church pastor.

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).

8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization seeking to employ the beneficiary qualifies as a non-profit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

In a letter submitted with the petition, [REDACTED], Senior Pastor of Vineyard Community Church, stated that Vineyard Community Church's "federal ID number is [REDACTED]." The printed letterhead indicates that Vineyard Community Church is located at 15187 Palmer Road, Reynoldsburg.

On January 10, 2006, the director instructed the petitioner to submit evidence of the church's tax-exempt status. In response, the petitioner submitted a copy of a determination letter issued by the Internal Revenue Service (IRS) on October 23, 1984. The letter shows the Employer Identification Number, [REDACTED] listed in Pastor [REDACTED] prior letter. The letter, however, is addressed not to Vineyard Community Church at 15187 Palmer Road, Reynoldsburg, but to Faith Chapel at 7361 Main Street, Reynoldsburg.

The submission also included an IRS Form W-2 Wage and Tax Statement for 2004, issued by Faith Chapel at 15187 Palmer Road, using the same Employer Identification Number. A pay receipt dated December 2, 2005 also places Faith Chapel at the Palmer Road address. The Main Street address does not appear on any documents in the record after 1984.

The director denied the petition on March 10, 2006, stating: "the petitioner has not submitted any documentation to establish that [Vineyard Community Church and Faith Chapel] are one and the same."

On appeal, Pastor [REDACTED] states that Vineyard Community Church "join[ed] a new association of churches, Vineyard Association," which precipitated the name change to Vineyard Community Church. Pastor [REDACTED] states: "Faith Chapel is currently in the process of refile[ing] all of its papers with the proper government organizations." Organizational documents submitted on appeal corroborate the claim that Faith Chapel and Vineyard Community Church are the same entity, and everything submitted previously is entirely consistent with the pastor's explanation. The petitioner also submits a copy of a "Trade Name and Trademark License Agreement" between the Association of Vineyard Churches USA and Vineyard Community Church. We find that the petitioner has satisfactorily established that Vineyard Community Church is the same entity as Faith Chapel, which the IRS has duly recognized as a tax-exempt non-profit religious organization, and that the church has not changed its functions in any way that would alter or forfeit its tax-exempt status.

The AAO withdraws the director's finding regarding the church's tax-exempt status. There remains, however, the question of the petitioner's experience. 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 5, 2005. Therefore, the petitioner must establish that he was continuously performing the duties of a youth minister throughout the two years immediately prior to that date.

In his April 11, 2005 letter accompanying the initial filing, Pastor [REDACTED] stated that the petitioner “started working for Vineyard Community Church on February 16, 2003. He is being paid \$50,310 a year for his services by Vineyard Community Church as a full time minister.”

The director requested a copy of the beneficiary’s certificate of ordination. In response, the petitioner submitted a copy of a certificate of ordination that Vineyard Community Church issued to the petitioner on November 28, 2004. As noted above, the petitioner also submitted a copy of the beneficiary’s 2004 IRS Form W-2. The form shows \$32,816.40 in wages and \$442.80 under “Other.”

In denying the petition, the director stated that the petitioner was evidently not a minister for part of the two-year qualifying period, because the ordination certificate is dated less than nine months before the filing date.

On appeal, Pastor [REDACTED] states:

When Faith Chapel hired [the petitioner] he was already licensed as a minister with the Assembly of God churches in Australia. He was hired to perform the sacerdotal rights [*sic*] as a minister on staff at Faith Chapel. . . . As a minister [the petitioner] has preached, baptized, and performed weddings as a minister since he arrived on February 16, 2003. . . . It was decided that since the church, Faith Chapel, was going to join a new association of churches, Vineyard Association, that it would be best to ordain [the petitioner] in the new association. [The petitioner] was ordained with the Vineyard Association of Churches on November 28, 2004. This in no way changed [the petitioner’s] duties here at the church. . . . The new ordination was merely a formality.

The petitioner submitted no documentary evidence to corroborate Pastor [REDACTED]’s explanation. On September 10, 2007, the AAO issued a request for evidence, instructing the petitioner to submit the following:

- Copies of *all* ministerial credentials (certificates of ordination, minister’s licenses, etc.) issued to the petitioner
- Denominational publications or other information, explaining the distinction between an ordained minister and a licensed minister, including any differences in duties, responsibilities, privileges, etc.
- Copies of documents (for example, marriage certificates) showing that the petitioner performed the duties of clergy between August 2003 and November 2004.

The AAO advised the petitioner that if the AAO received no response within 87 calendar days (*i.e.*, no later than December 6, 2007), then the AAO may dismiss the appeal. To date, several weeks after the response period elapsed, the AAO has no record of receiving any response from the petitioner. 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).

Pastor [REDACTED]’s claims remain unsubstantiated. Despite the pastor’s April 2005 claim that the petitioner “is being paid \$50,310 a year for his services,” the Form W-2 in the record shows that the petitioner received

substantially less than that amount in 2004. This gap in the petitioner's earnings suggests three possibilities. If a lengthy interruption in the petitioner's work prevented him from being paid, then the petitioner did not work continuously throughout the 2003-2005 qualifying period. Steady work on a part-time basis would also explain the lower pay. Alternatively, if the petitioner began 2004 earning a much lower rate of pay and then received a significant increase in his pay rate, this would be consistent with a major promotion. When discussing the possibility of a promotion with pay raise during 2004, it is relevant to revisit the petitioner's November 2004 ordination certificate and the lack of documentation to show that the petitioner had previously been ordained or otherwise authorized to conduct the duties of clergy. Any of the preceding circumstances would disqualify the petitioner for the requested classification. See *Matter of Varughese*, 17 I&N Dec. 399, 402 (BIA 1980) (part-time work is not sufficient to accumulate qualifying experience); *Matter of Faith Assembly Church*, 19 I&N 391, 393 (Commr. 1986) (an alien seeking classification as a minister must have worked exclusively as a minister throughout the two years prior to filing).

For the above reasons, the petitioner has not shown that he accumulated the necessary two years of continuous experience in the position sought between August 2003 and August 2005. We affirm the director's finding in this regard.

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.