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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

C,

[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: JUL 07 2008

WAC 06 279 52085

IN RE:

Petitioner:

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:

[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 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 Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, indicates that the petitioner is Iglesia Aposento Alto Asambleas de Dios, Inc. in Los Angeles, California. The beneficiary signed the Form I-360 on behalf of the organization. The record reflects, however, that the alien's prospective employer is Centro Cristiano Aposento Alto Asambleas de Dios, Inc. in Las Vegas, Nevada. Therefore, the beneficiary will be considered as the self-petitioner.

The self-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 minister. The director determined that the petitioner had not established that he had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

On appeal, counsel asserts that the director erred in determining that the petitioner failed to submit "documented proof" that he had been paid as a full-time employee or that he has not been employed in a professional capacity. Counsel stated that he would submit a brief and/or additional documentation to the AAO within 30 days of filing the appeal. However, as of the date of this decision, more than ten months after the appeal was filed, the AAO has received no further documentation. Therefore, the record will be considered complete as presently constituted.

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 issue presented on appeal is whether the petitioner has established that he 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)(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 regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on January 23, 2007. Therefore, the petitioner must establish that he was continuously working as a minister throughout the two-year period immediately preceding that date.

In a January 3, 2007 letter, Reverend [REDACTED], the general superintendent of the Assemblies of God in El Salvador, stated that the petitioner is a registered pastor in the Assemblies of God in El Salvador, and had 14 years experience in the ministry. Reverend [REDACTED] stated that the petitioner was currently the pastor of an affiliated church in Las Vegas, whose main branch was in Los Angeles. In a December 23, 2006 letter accompanying the petition, the pastor of Iglesia Aposento Alto Asambleas de Dios, Inc. in Los Angeles, Dr. [REDACTED] stated that the petitioner had been licensed as a minister of the church since August 2, 2004. Dr. [REDACTED] also stated that the petitioner was presently working at a church located at 871 N. Nellis Boulevard in Las Vegas, which was considered as a daughter church of the Los Angeles church. However, Dr. [REDACTED] did not indicate the date that the petitioner began working at the church, and provided no other terms and conditions of the petitioner’s employment.

The petitioner also submitted a copy of his Form 1040, U.S. Individual Income Tax Return, for the year 2005, which he filed jointly with his wife. The petitioner reported income of approximately \$7,000 from his business as a handyman.

In a request for evidence (RFE) dated March 2, 2007, the director instructed the petitioner to:

Provide evidence of the beneficiary’s work history from January 23, 2005 to the present. Provide experience letters written by previous and current employers that include a breakdown of duties performed in the religious occupation for an average week. Include the employer’s name, specific dates of employment, specific job duties, number of ours worked per week, form and amount of compensation, and level of responsibility/supervision. In addition, submit evidence that shows monetary payment, such as pay stubs or other items showing the beneficiary received payment. If any work was on a volunteer basis, provide

evidence to show how the beneficiary supported himself during the two-year period or what other activity the beneficiary was involved in that would show support.

In response, the petitioner submitted an undated, unsigned letter in which he stated that he became a minister in 1990, and that he has been involved in planting new churches in different countries. The petitioner stated that he served as a youth and children pastor and an instructor in foreign missions and gospel music. The petitioner outlined his work with his prospective employer as follows:

- Monday Day Off
- Tuesday **From 9Am** to 4Pm Office paper work and reports  
And from 7:30 Pm to 9:30 Pm Service of Prayers
- Wednesday From 9Am to 6 Pm Counseling and Family Prayer
- Thursday From 9Am to 4Pm Office paper work and reports,  
And setting on appointments and any clerical duties.  
From 7:30 Pm to 9:30 Pm Bible Studies Service.
- Friday From 9Am to 4Pm Counseling and Family Prayer.  
From 7:00 Pm to 9:00 Pm Family Groups in an  
Assign [sic] Church Members Homes.
- Saturday From 10 Am to 4 Pm Family Activities at the  
Church were [sic] we celebrate Birthdays, Anniversaries,  
Graduations etc, etc.  
From 5 Pm a [sic] 7 Pm Children Services and from  
7 Pm to 9 Pm choir and musical training
- Sunday From 3 Pm to 4 Pm Prayer  
From 4 Pm to 5 Pm Bible School for Children,  
Teenagers and New members.  
From 5Pm to 7:30 Pm Gospel and Rejoice Service.

The petitioner also submitted copies of transcripts of his tax returns filed with the Internal Revenue Service (IRS), including his return for 2006, on which he reported self-employment income of \$8,000. In a May 23, 2005 affidavit, the petitioner stated that when he first arrived at the church in Las Vegas, the church was completely without resources, and the funds he received from the church were insufficient to cover all of his expenses. Therefore, he had to work outside the church as a handyman. The petitioner did not indicate when, or if, he discontinued his work as a handyman.

The petitioner provided copies of checks made payable to him during the qualifying period dated January 28, 2005 in the amount of \$400; October 6, 2005 in the amount of \$3,000; and December 25, 2005 in the amount of \$2,000. We note that the December check was unprocessed. The record also contains a check from Banco Salvadereno, SA in El Salvador made payable to the petitioner in the amount of \$5,000 U.S. An annotation on the check indicates that it was for missionary support. There is no indication that this check was processed. Additionally, the record is not clear as to the identity of the sender or whether the check was meant to be for the personal support of the petitioner or of the church at which he worked.

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 (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.

By his own admission, the petitioner worked outside of the church as a handyman. On his 2005 federal tax return, filed jointly with his wife, the couple reported wages of approximately \$11,100 and gross income from his handyman business of approximately \$7,000.<sup>1</sup> The transcript of the Schedule SE shows \$0 under “tentative church earnings.” On his 2006 federal tax return, filed jointly with his wife, the couple reported no wages, and he reported self-employment income of \$8,000.<sup>2</sup> The transcript is unclear as to the nature of this self-employment income, as the petitioner entered his business activity code as [REDACTED]

On appeal, counsel asserts that the petitioner provided copies of checks made payable to him and that “[t]he fact that at the beginning of the opening of the Church in Las Vegas, Petitioner worked temporarily as [a] handyman, does not alter the fact he has been receiving full time pay as a Minister of his church for over 2 years.”

As previously discussed, however, the petitioner submitted copies of three checks made payable to him during the qualifying period by the Iglesia Aposento Alto Asambleas de Dios, Inc. in Los Angeles. These checks were dated January 28, 2005 for \$400; October 6, 2005 for \$3,000; and December 25, 2005 for \$2,000. Also as previously noted, the December 2005 check was not processed. Therefore, during the two-year qualifying period, the petitioner received only \$3,400 in payment from Iglesia Aposento Alto Asambleas de Dios, Inc. in Los Angeles. This payment of \$3,400 over a 24-month period is not evidence that the petitioner “has been receiving full time pay as a Minister . . . for over 2 years,” as alleged by counsel.

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<sup>1</sup> The petitioner’s wife reported self-employment income from babysitting of \$16,801.

<sup>2</sup> The petitioner’s wife reported self-employment income of \$32,000.

The evidence submitted by the petitioner does not establish that he worked full time as a minister, or that he was paid for his services, throughout the two-year period immediately prior to the filing of the visa petition.

Beyond the decision of the director, the petitioner has not established that his prospective employer is a bona fide nonprofit religious organization.

The regulation at 8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

(3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with § 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 § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

In his May 9, 2007 letter, Dr. ██████ stated that the petitioner was working at a church “considered a daughter church of Iglesia Aposento Alto, located at 3230 E. Charleston Blvd., Las Vegas NV 89104, which was previously located at 871 N. Nellis Blvd. Ste. 3, Las Vegas, NV.” The petitioner submitted a copy of an August 31, 1964 letter from the Internal Revenue Service (IRS) to the General Council of the Assemblies of God in Springfield, Missouri granting group tax-exempt status to the organization’s subordinate units. The petitioner also submitted a copy of a May 10, 2007 letter from ██████, General Secretary of the General Council of the Assemblies of God, in which he certified that the Iglesia Aposento Alto in Los Angeles was “an official church” recognized by the council and covered under the Council’s group tax-exemption granted by the IRS. However, Mr. ██████ did not certify that the Centro Cristiano Aposento Alto in Las Vegas was covered by the organization’s group exemption. We note that the record contains a copy of an SS-4, Application for Employer Identification Number (EIN), signed by the petitioner as “owner” of Centro Cristiano Aposento Alto in Las Vegas.

The petitioner also submitted a copy of an April 30, 2000 letter from the IRS to the Iglesia Aposento Alto Asambleas de Dios Inc. in Los Angeles, notifying the organization that it was exempt from federal income taxes as an organization described in sections 509(a) and 170(b)(1)(A)(i) and 509(a) (1) of the Internal Revenue Code (IRC). The letter does not state that the exemption applies to any subordinate units of the organization. There is no evidence that the Iglesia Aposento Alto Asambleas de Dios Inc. in Los Angeles sought or obtained a group exemption. Therefore, the record does not establish that the petitioner’s prospective employer is covered under a group exemption granted to either Iglesia Aposento Alto Asambleas de Dios Inc. in Los Angeles or to the subordinate units of the General Council of the Assemblies of God.

Under IRS regulations, churches that meet the requirements of section 501(c)(3) of the IRC are automatically considered tax exempt and are not required to obtain recognition of its tax-exempt status from the IRS. Nonetheless, for the purpose of this visa petition, the petitioner must provide establish that his prospective employer is tax-exempt as a religious organization. The petitioner can do this pursuant to 8 C.F.R. § 204.5(m)(3)(i)(B) by submitting the documentation that the IRS would require to determine his prospective employer is a tax-exempt religious organization. The necessary documentation is described in a memorandum from William R. Yates, Associate Director of Operation for Citizenship and Immigration Services (CIS), *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003):

- (1) A properly completed IRS Form 1023,
- (2) A properly completed Schedule A supplement, if applicable,
- (3) A copy of the organizing instrument of the organization that contains he appropriate dissolution clause required by the IRS and that specifies the purposes of the organization, and
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The above list is consistent with the regulatory requirement at 8 C.F.R. § 204.5(m)(3)(i)(B), cited above. The memorandum specifically states that the above materials are, collectively, the “minimum” documentation that can establish “the religious nature and purpose of the organization.” Thus, for example, a petitioner cannot meet this burden by submitting only its articles of incorporation. Also, obviously, it is not enough merely for the petitioner to submit the documents listed above. The content of those documents must establish the religious purpose of the organization.

The petitioner submitted a copy of a corporate charter for Centro Cristiano Aposento Alto, Asambleas de Dios, Inc., his prospective employer, issued by the State of Nevada on April 7, 2006. The charter indicated that articles of incorporation for the organization were on file with the office of the Nevada Secretary of State; however, the petitioner submitted only a copy of the State of California articles of incorporation for Iglesia Aposento Alto Asambleas de Dios, Inc. The petitioner submitted none of the documentation specified in the Yates memorandum and no other documentation required by 8 C.F.R. § 204.5(m)(3)(i)(B) to establish that his prospective employer is exempt from taxation as a religious organization.

The evidence submitted therefore does not establish that the petitioner’s prospective employer is a bona fide nonprofit religious organization. This constitutes an additional ground for dismissal of the appeal.

The petitioner has also failed to establish that he has received a qualifying job offer from his prospective employer.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

*Job offer.* The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other

religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

In response to the RFE, the petitioner submitted a statement outlining his weekly work schedule; however, the petitioner submitted nothing from his prospective employer that sets out his specific job responsibilities or the remuneration for the position. Given his past outside employment, which he described as necessary to meet his expenses, the petitioner has not submitted sufficient evidence to establish that he will be solely carrying on the vocation of minister and has failed to submit evidence of the compensation that he will receive in the position. Accordingly, he has failed to establish that he has received a qualifying job offer from his prospective employer.

Additionally, the petitioner has failed to establish that his prospective employer has the ability to pay a wage. The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

As discussed immediately above, the petitioner submitted no evidence to establish that he has received a job offer that will pay him specific compensation. However, as evidence of the prospective employer's ability to pay a wage, the petitioner submitted copies of monthly bank statements of Iglesia Aposento Alto Asambleas de Dios, Inc. in Los Angeles for the months of March and April 2007.

The evidence submitted by the petitioner is not in the form required by the above-cited regulation, which provides that evidence of ability to pay "shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements." The petitioner has therefore failed to establish that his prospective employer has the ability to pay a wage.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa application proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.