



U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: JUN 04 2008

WAC 06 245 50046

IN RE:

Petitioner:

[REDACTED]

Beneficiary:

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 (AAO) 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 petitioner is a Romanian Pentecostal 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 a music director. The director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary.

On appeal, the petitioner submits copies of previously submitted documents and a brief from counsel.

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)(4) requires the prospective employer to explain how the alien will be paid or remunerated. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support.

In a letter accompanying the initial filing, [REDACTED], Senior Pastor of the petitioning church, stated: "Our church is offering [the beneficiary] the weekly salary of \$432.00, excluding housing and transportation." [REDACTED] did not specify whether or not the petitioner had already been paying the beneficiary that amount since the beneficiary began working for the petitioner in 2004. An employment agreement, dated July 11,

2006, indicated that the petitioner “shall pay [the beneficiary] the annual salary of \$22,464.00,” an amount equal to 52 weeks’ pay at \$432.00 per week. The agreement stipulates that the beneficiary “will not be engaged in any employment outside of the” petitioning church. The agreement does not mention any arrangements for the beneficiary’s housing or transportation. The initial submission does not describe the employment arrangements that were in place from 2004 to 2006. [REDACTED] added: “Our Church has two full-time pastors, seven other pastors and deacons,” although he did not specify how many of those positions were salaried. In a letter dated March 7, 2007, [REDACTED] stated that the church employs one full-time paid pastor, one full-time music director (the beneficiary), and one full-time janitor.

The petitioner submitted copies of “Financial Reports” for calendar years 2004 and 2005, both of which contain sections labeled “Expenses Incurred in 2004.” It appears that this section in the 2005 report has been mislabeled. Much of the 2004 report is in the Romanian language, with no certified translation as required by 8 C.F.R. § 103.2(b)(3). The English-language 2005 report showed a total of \$407,048 in expenses, including \$18,000 for “Music, choir, orchestra.” The 2005 report indicated “inflows” of \$472,432, leaving a net surplus of \$65,384 after expenses and total cash reserves in excess of \$160,000.

The beneficiary’s 2004 income tax return shows \$5,089 net profit remaining from gross receipts of \$9,000 as a “Muzi Profesor” (*sic*). The beneficiary indicated that transportation expenses were among the expenses subtracted from the gross receipts. Tax documents identify the petitioner as the source of the \$9,000. In 2005, the beneficiary claimed \$18,000 in gross receipts as a “Muscian” (*sic*), with net profit of \$9,506 after these expenses:

Car and truck expenses	\$4,510
Office expense	2,964
Telephone	1,020

These tax documents indicate that the beneficiary, not the church, was responsible for the beneficiary’s transportation expenses.

The beneficiary’s total itemized deductions for 2005 were \$9,926, which exceeded his reported net income of \$9,506. Of these itemized deductions, the largest by far was \$9,225 in home mortgage interest, indicating that the beneficiary, not the petitioner, pays for the beneficiary’s housing. The 2004 and 2005 income tax returns both indicate that the beneficiary’s home address was in Glendale, Arizona.

The director conducted a routine check of public records to verify aspects of the petitioner’s claims. On January 11, 2007, the director issued a request for evidence which took the findings of that records check into account. The request for evidence reads, in part:

Ability to Pay: The 2005 financial report . . . did not allocate a salary for the music director. [REDACTED]’s letter indicated that the church had 2 full-time pastors and 7 other pastors. The 2005 financial report reflects a pastor’s salary in the amount of \$49,200 and a janitor’s salary in the amount of \$19,600. Provide an explanation for the lack of allocation of the beneficiary’s salary.

Remuneration: [REDACTED] indicated that the beneficiary would be paid \$432.00 weekly, excluding housing and transportation for his duties as music director (\$24,192/yearly). A search of public records reflects that the beneficiary purchased [a] residence . . . [in] Peoria, AZ . . . on April 5, 2006. Greenpoint Mortgage Funding issued a 30 year loan in the amount of \$352,000. **The beneficiary's church salary is \$24,192 yearly. Explain what housing remuneration the petitioner provides and if none, then explain how the beneficiary is able to afford this mortgage and daily living expenses without having an additional source of employment. State all terms of remuneration.**

While the aforementioned public records show a "Sale Date" of April 5, 2006, prior deed transfers showing the beneficiary's name go back to 2005, always naming the beneficiary as the "Primary Buyer" of the Peoria property. The multiple "sales" in a short period appear to relate to construction and refinancing; the property did not actually change hands. The 2005 purchase date is consistent with the beneficiary's deduction of mortgage interest on his 2005 income tax return.

In response to the request for evidence, the petitioner submitted copies of Internal Revenue Service (IRS) Form W-2 Wage and Tax Statements, showing that the petitioner paid the beneficiary \$19,491.07 in 2005. The petitioner submitted a new copy of the 2005 financial report. The figures remain the same, but the phrase "Music, choir, orchestra" has been changed to "Music director, choir, orchestra." [REDACTED] apologized for "a regrettable clerical error" on the earlier version of the report. [REDACTED] did not explain why the \$18,000 "Music director" amount on the amended report does not match the \$19,491.07 on the Form W-2.

The beneficiary stated that he rents out the home in Peoria and resides with a family of parishioners in Glendale. The beneficiary indicated that the rental of the Peoria home covers nearly the entire mortgage payment. The petitioner submitted a copy of a one-year rental agreement, dated September 1, 2006, between the beneficiary and one [REDACTED] a. [REDACTED] and [REDACTED] of Glendale stated that the beneficiary "has been living with us since his arrival in the United States . . . and will continue to live with us," without paying rent or other consideration to the Ionutescus.

The director denied the petition on May 9, 2007, stating that the petitioner's 2005 financial report did not match the beneficiary's 2005 tax documents, and that "the church does not pay the beneficiary a housing remuneration as they initially indicate[d]." The director concluded that these discrepancies raised unresolved questions of credibility, and therefore "the evidence is insufficient to establish that the petitioner has demonstrated a qualifying job offer and that the beneficiary will not be solely dependent on supplemental employment or solicitation of funds for support." The director, in the denial notice, noted the petitioner's initial statement that the petitioner would "pay the beneficiary a weekly salary of \$432.00."

On appeal, counsel states: "The petitioner provided a letter explaining that the beneficiary's salary is \$18,000 per year. The fact that the beneficiary was paid more . . . evidences that the petitioner has the ability to pay." The petitioner may have paid the beneficiary more than \$18,000 in 2005, but the amount paid to the beneficiary was substantially less than the proffered wage of \$22,464 per year. In a subsequent brief, counsel

acknowledges the proffered “weekly salary of \$432,” but counsel does not acknowledge that the petitioner has never paid the beneficiary that amount.

The petitioner claims to have paid the beneficiary less than \$432 a week in 2004 and 2005, but this is not fatal to the petition. The agreement from July 11, 2006, discussed what the petitioner *will* pay the beneficiary upon approval of the petition, and should not be construed as a description of the terms of employment in effect in 2004 or 2005, before the execution of the 2006 agreement. Whether or not the petitioner has the beneficiary the beneficiary in the past, the petitioner’s financial documents do not indicate that the petitioner will have difficulty paying the beneficiary’s annual salary, and the director, in the denial notice, did not question the petitioner’s ability to do so.

The director evidently predicated the denial of the petition on credibility questions arising from discrepancies in the petitioner’s and the beneficiary’s financial documents. Counsel states that the beneficiary’s 2005 Form W-2 shows \$18,000 in salary plus reimbursement for various expenses. Whether or not such a practice is sound or widely accepted, the record consistently indicates that the petitioner has paid the beneficiary for his work in the petitioning church. The director claimed that the petitioner has made contradictory claims regarding payment of the beneficiary’s transportation and housing expenses, but review of the record reveals no contradiction. At most, the petitioner’s initial statement contained ambiguous statements that *could be* construed as meaning that the church would pay the beneficiary’s transportation and housing costs over and above his base salary. These statements, however, can also be interpreted to mean simply that the beneficiary’s salary does not include specific allowances for transportation and housing, and that the beneficiary would therefore be responsible for handling those expenses himself.

Upon consideration of the available evidence, the AAO concurs with counsel’s assertion that the petitioner has credibly shown that a valid and viable job offer exists. The petitioner has, therefore, overcome the sole stated basis for the denial of the petition.

The AAO agrees with the director that the petition cannot be approved as it now stands, but on different grounds. 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 10, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a music director throughout the two years immediately prior to that date.

The petitioner has claimed past salary payments to the beneficiary, but the documentation provided is not definitive. The petitioner has not provided wage transmittal documents to show that the IRS Forms W-2 are reliable, contemporaneous records of payment. The copies of the beneficiary’s tax returns were not certified by the IRS, and therefore it is not certain that the returns shown in the record match those filed with the IRS (if they were in fact filed). Also, the returns are marked as having been prepared by a paid preparer, but the preparer’s signature does not appear on the copies of the returns. Therefore, the returns do not comply with

26 C.F.R. § 1.6695-1(b)(1), which generally provides that an income tax return preparer must manually sign the return in the appropriate space provided on the return after it is completed and before it is presented to the taxpayer (or nontaxable entity) for signature. Finally, the reliability of the beneficiary's tax returns is questionable. According to the beneficiary's own account of events, he claimed a deduction for "home mortgage interest" on a property that is not his home, and while the beneficiary states that he pays the mortgage by renting out the home, he did not report this rental income on his tax return. Therefore, whether inadvertently or by design, the beneficiary's tax returns do not appear to be a wholly reliable gauge of the beneficiary's actual income.

The petitioner has submitted copies of twelve checks payable to the beneficiary, dated between November 2005 and June 2006 and numbered between [REDACTED] and [REDACTED]. Some of the checks are marked as twice-monthly \$750 salary payments, and others show odd amounts at irregular intervals (perhaps for reimbursement for expenses). The copies, however, do not show that any of the checks had been processed. The petitioner also submitted copies of bank statements for January 2006 through July 2006 for two accounts, including the Business Economy Checking account identified on the checks. These bank statements should, therefore, show the salary checks. The petitioner, however, submitted only partial copies of the bank statements, omitting the portions that would have shown check numbers and amounts. Accordingly, none of the evidence provided by the petitioner establishes that the beneficiary was paid between November 2005 and 2006, and the record lacks contemporaneous evidence to corroborate the amounts reported on IRS Form W-2.

Because of the deficiencies in the petitioner's evidence of past payments to the beneficiary, further evidence (such as copies of the missing pages from the bank statements) is necessary before we can conclude that the petitioner did, in fact, compensate the beneficiary as the petitioner claims to have done. Because the petitioner has claimed to have compensated the beneficiary in specific ways during the two-year qualifying period, serious questions about the beneficiary's employment during that period would arise if the petitioner is unable to corroborate that employment.

Therefore, this matter will be remanded for a new decision. 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.