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U.S. Department of Homeland Security  
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U.S. Citizenship and Immigration Services

PUBLIC COPY

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[Redacted]

FILE: [Redacted]  
WAC 07 001 54257

Office: CALIFORNIA SERVICE CENTER

Date: JUN 10 2008

IN RE: Petitioner:  
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:

[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 on appeal. The appeal will be dismissed.

The petitioner is a Christian church of the Assemblies of God denomination. 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 educational evangelist. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as an educational evangelist immediately preceding the filing date of the petition, or that the beneficiary's position qualifies as a religious occupation.

On appeal, the petitioner submits arguments from counsel and new exhibits.

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 under consideration concerns the beneficiary's past 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 September 28, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an educational evangelist throughout the two years immediately prior to that date.

In a letter accompanying the initial petition, [REDACTED] Pastor of the petitioning church, stated:

From September 2000 to March 2004, [the beneficiary] served as an Educational Evangelist with Mexico Tampico Korean Presbyterian Church. In January 2004 she entered the U.S. on a vacation. [The petitioner] offered her a position as an Educational Evangelist, and she accepted it. She . . . began her employment with [the petitioner] in R-1 status in June 2004.

The record confirms that the beneficiary entered the United States on January 3, 2004 as a B-2 nonimmigrant visitor.

The petitioner submitted copies of Internal Revenue Service (IRS) Form W-2 Wage and Tax Statements, indicating that the petitioner paid the beneficiary \$2,840 in 2004 and \$17,040 in 2005. The petitioner has stated that the beneficiary's salary is \$1,500 per month, equivalent to \$18,000 per year.

On December 11, 2006, the director issued a request for evidence (RFE), instructing the petitioner to submit additional documentation regarding the beneficiary's experience and compensation. In response, counsel stated: "The petitioner has been paying the beneficiary's salary for the past two years, as shown by the previously submitted W-2s" and by the beneficiary's 2006 Form W-2, which, like the 2005 form, shows \$17,040 paid to the beneficiary. Counsel did not address the lower amount shown on the 2004 form.

The petitioner submitted copies of the beneficiary's 2004 and 2005 IRS Form 1040A federal income tax returns, which reflect no income apart from the sums shown on the corresponding IRS Forms W-2. The 2004 return is dated March 8, 2006, nearly a year after the filing deadline.

Copies of paychecks (supplied by the issuing bank) indicate that the petitioner paid the beneficiary \$1,202.74 per month in 2006. There are nine such checks reproduced in the record; the checks for January, March and November are missing. \$1,202.74 per month equals \$14,432.88 per year. The 2006 Form W-2 indicates \$1,303.56 was withheld from the beneficiary's salary, but this amount accounts for only half the difference between the \$14,432.88 extrapolated from the checks and the \$17,040.00 shown on the Form W-2.

The petitioner's response to the 2006 RFE also included a translated copy of a "Certificate of Appointment" issued by the petitioning church. The translation reads, in part, that the beneficiary "has qualified as education evangelist in 2004 for this church." The document is dated December 28, 2003. The Korean-language original shows the dates in numeral form, confirming the dates shown in the translation.

The director issued a second RFE on March 9, 2007, instructing the petitioner to submit further documentation, including IRS transcripts of the beneficiary's tax returns for 2004, 2005 and 2006, and to "ensure that the evidence answers the following questions":

- What [were] the beneficiary's wages when she began working at the petitioner's organization?

- Was the beneficiary employed full time by the petitioner's organization for the whole period beginning 9-28-04 and ending 9-28-06?

In response, [redacted] stated: "When [the beneficiary] first began to work for us, her salary was \$1420/month. We have now raised it to \$1600/month."

The petitioner submitted IRS transcripts of the beneficiary's 2004-2006 income tax returns, which match the information shown on the previously submitted copies of those returns.

Documentation from MetroBank indicates that the beneficiary received several wire transfers, in amounts between \$285 and \$6,095, totaling \$4,960 in late 2004, \$29,235 in 2005 and \$21,685 in 2006. Counsel stated that the transfers, originating from Korea, are "monthly contributions to family income" from "the beneficiary's husband." The beneficiary listed her filing status as "head of household," not "married," on her tax returns. Most of the transfers do not identify the remitter, but those that do identify more than one such individual. A \$5,045 transfer on September 16, 2005 identifies the remitter as [redacted]. A number of later transfers are attributed to the beneficiary's spouse, [redacted].

The director denied the petition on July 13, 2007, noting that the beneficiary's tax documents from 2004 show only two months' salary for that year at the original rate of \$1,420 per month. The director noted an overseas wire transfer on October 1, 2004, in the amount of \$2,840, which matched the amount reported on the beneficiary's taxes. The director concluded: "No explanation has been given by the petitioner to explain the discrepancy between [the petitioner's] account of the beneficiary's salary and length of employment in 2004 and the beneficiary's actual earnings in 2004. As such, the petitioner has failed to establish that the beneficiary was performing full-time work from September 29, 2004 to December 31, 2004."

On appeal, counsel states: "The petitioner paid [the beneficiary] in cash from June through October 2004 because this was a probationary period." The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Even setting aside this case law, the explanation is not persuasive. The director had repeatedly instructed the petitioner to provide a full accounting of its compensation of the beneficiary during the qualifying period. At no time prior to the denial did the petitioner indicate that the beneficiary was "paid . . . in cash" during a "probationary period."

Furthermore, "probationary" compensation remains subject to taxation and withholding. If the petitioner paid the beneficiary between June and October 2004, but did not report this compensation to the IRS, then the petitioner violated tax laws, as did the beneficiary by failing to report such income on her 2004 tax return. It remains that the petition has not submitted any documentary evidence (such as bank documents showing withdrawals commensurate with cash payments to the beneficiary) to establish cash payments to the beneficiary before November 2004.

In a subsequent brief, counsel states: "Beneficiary is paid once per month. Petitioner issues Beneficiary's paychecks around the middle of each month for the previous month's work. Thus, the November 14, 2006 paycheck [reproduced on appeal] was actually for services rendered in October 2004." This assertion is

facially plausible but, once again, not documented by evidence, and even then it does not demonstrate compensation for work performed in September 2004, which is the month that the statutory and regulatory two-year qualifying period began. If, as the petitioner has claimed, the beneficiary worked in September 2004, then by counsel's reasoning the petitioner should have paid the beneficiary for that work in October 2004. The record contains no evidence of such a payment. It is conceivable that the petitioner illegally paid the beneficiary in cash without reporting the payments to tax authorities, but simply claiming that to be the case cannot satisfy the petitioner's burden of proof.

We note that the two 2004 paychecks reproduced on appeal are in the amounts of \$1,420.00 (November 16) and \$1,311.37 (December 12). These amounts add up to \$2,731.37. According to the 2004 Form W-2, the petitioner paid the beneficiary \$2,840.00, of which \$217.26 was withheld in taxes, leaving a net total of \$2,622.74. The information on the checks, therefore, does not appear to match the information on the Form W-2. The Form W-2 indicates \$108.63 was withheld each month, whereas only the December paycheck reflects such withholding.

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.

Further doubts arise from examination of the petitioner's evidence and statements. [REDACTED] had stated: "In January 2004 the beneficiary entered the U.S. on a vacation," a date confirmed by the beneficiary's passport as reproduced in the record. The "Certificate of Appointment," however, is dated December 28, 2003, nearly a week before the beneficiary is known to have entered the United States. Because the date on the certificate is not consistent with the petitioner's narrative of events, the certificate and the narrative cannot both be regarded as fully accurate and credible; possibly, neither can be so regarded. Section 204(b) of the Act, 8 U.S.C. § 1154(b), provides for the approval of immigrant petitions only upon a determination that "the facts stated in the petition are true." False, contradictory, or unverifiable claims inherently prevent a finding that the petitioner's claims are true. See *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Systronics Corp. v. I.N.S.*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988).

The AAO affirms the director's finding that the petitioner has not credibly established that it employed the beneficiary full-time throughout the entire two-year qualifying period.

The next and final issue is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) defines "religious occupation" as:

an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not

include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined at 8 C.F.R. § 204.5(m)(2). The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

Citizenship and Immigration Services therefore interprets the term “traditional religious function” to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

█'s initial letter contained this description of the beneficiary's duties:

[The petitioner] wishes to employ [the beneficiary] permanently as an Educational Evangelist. As an Evangelist, [the beneficiary] will oversee our religious education programs. She will teach Bible and doctrine classes. She will provide spiritual and moral guidance and assistance to church members, including counseling members who request it. She will conduct or assist at worship services and preach when I request her to. . . .

[The beneficiary] will work around 38 hours per week. Her work schedule will be 12:00pm to 4:00pm on Tuesday and Thursday, 12:00pm to 9:00pm on Wednesday and Friday, and 9:00am to 9:00pm on Sunday. She will have Saturday and Monday off.

The director, in the December 2006 RFE, the director requested a detailed description of the beneficiary's position and work schedule. The director instructed the petitioner to “explain how the duties of the position relate to a traditional religious function.” In response, the petitioner submitted a translated excerpt from the Bylaws of the Korean District Council of the Assemblies of God, indicating that an Evangelist in a “Specialized Ministry” must show “[a]n evident purpose to devote one's time to a specialized ministry such as Christian education.”

In the second RFE, issued in March 2007, the director asked: “Has the church always had the services of an Educational Evangelist to perform the duties that the beneficiary will be undertaking? If not, what circumstances created a need for the beneficiary's services?” The director also requested a detailed listing of the beneficiary's duties.

In response, █ stated:

[The beneficiary's] specific duties are to oversee our religious education programs. She teaches Bible and doctrine classes to the members of our congregation. These are duties that no one else on our staff performs. In addition, [the beneficiary] provides spiritual guidance and counseling to congregation members who request it. At my request, she conducts or assists at worship services and also preaches sermons that specifically encourage evangelism.

Our church decided to add an Educational Evangelist to our staff because of the growth of the congregation.

The petitioner submitted a "Work Schedule" containing the following information:

Tuesday, Thursday:	12 pm – 4 pm Counseling members by phone and visiting
Wednesday, Friday:	12 pm – 9 pm Preparing Wednesday and Friday worship services
Sunday:	9 pm – 9 pm [ <i>sic</i> ] Assisting Kindergarten & Elementary group worship service Managing and preparing night worship service Preparing and arranging fellowships
Total:	38 hours per week

The above work schedule was changed to the following.

Tuesday, Thursday:	12 pm – 5 pm Counseling members by phone and visiting
Wednesday, Friday:	12 pm – 10 pm Preparing and managing Wednesday and Friday worship services Assisting Friday House church
Sunday:	8 am – 5 pm Preparing, managing, and arranging the Sunday – 1 <sup>st</sup> worship (beginning at 8:30) Assisting Kindergarten & Elementary worship service Arranging fellowships Bible quiz
Total:	39 hours per week

In denying the petition, the director stated:

It is clear from the beneficiary's work schedule that although her stated duty is to verse the petitioner's religious education programs, she spends only one day a week involved in education programs. The rest of the week the beneficiary is involved in duties that do not specifically relate to the petitioner's church's education programs. These other duties take up nearly three quarters of the beneficiary's work each week. As such, the proffered position appears to be a hodgepodge of different, unrelated duties put together by the petitioner to create a full-time position for the beneficiary. The petitioner has not provided any evidence that the beneficiary's position is traditionally a permanent, full-time, salaried occupation within their religious denomination.

On appeal, counsel asserts that the petitioner had already established that “Christian Education is one of the specialized ministries to which an Evangelist may be devoted.” Furthermore, the various duties described are all apparently religious in nature. The performance of more than one traditional religious function should not be a disqualifying factor.

As discussed elsewhere in this decision, troubling questions of credibility arise from the record, but there is no indication that the beneficiary’s actual duties differ substantially from those described by the petitioner, or that the beneficiary’s duties are normally the province of unpaid and/or part-time workers. The AAO withdraws the director’s finding that the beneficiary’s position, as described, does not qualify as a religious occupation. The denial of the petition stands, however, based on the AAO’s affirmation of the director’s other finding regarding the beneficiary’s past experience.

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.