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U.S. Citizenship
and Immigration
Services

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FILE: WAC 06 238 52890 Office: CALIFORNIA SERVICE CENTER Date: OCT 01 2008

IN RE: Petitioner:
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:

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, appearing to read "Robert P. Wiemann".

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 appeal will be dismissed. The AAO will also enter a finding of fraud and willful misrepresentation of a material fact.

The petitioner purports to be a 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 minister and director. The director determined that the petitioner had not established that: (1) the beneficiary had the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition; (2) the beneficiary is a qualified minister; (3) the petitioner is able to compensate the beneficiary; or (4) the petitioner qualifies as a *bona fide* tax-exempt nonprofit religious organization.

On appeal, the petitioner submits various documents and a statement from the beneficiary.

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).

PAST EXPERIENCE

The first issue concerns the beneficiary's claimed work 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 2, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a minister throughout the two years immediately prior to that date.

The Board of Immigration Appeals has held 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, 402 (BIA 1980). In line with case law 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. We note that the Ninth Circuit Court of Appeals, within whose jurisdiction this proceeding arose, has upheld the AAO's interpretation of the two-year experience requirement. See *Hawaii Saeronam Presbyterian Church v. Ziglar*, 2007 WL 1747133 (9th Cir., June 14, 2007).

On the Form I-360 petition, asked whether the beneficiary had "ever worked in the U.S. without permission," the petitioner answered "no." The petitioner also indicated that the beneficiary has been in the United States since 1992, and therefore was in the United States throughout the entire two-year qualifying period. Asked to specify the beneficiary's current nonimmigrant status, the petitioner wrote "Applicant I-360." This is not a nonimmigrant status; rather, it indicates only that the beneficiary *seeks* a particular status.

The petitioner submitted copies of Internal Revenue Service (IRS) Form 1099-MISC Miscellaneous Income statements, purporting to indicate that the petitioner paid the beneficiary \$4,988 in 2004 and \$5,110 in 2005. Accompanying the Forms 1099 are original pay receipts, indicating that the beneficiary was paid every two weeks. The pay receipts state the beneficiary's wage as \$6.75 per hour, and each receipt states the number of hours purportedly worked during a particular two-week period.

The information on the pay receipts indicates that the beneficiary worked between 22 and 37 hours each two-week pay period, with one exception (to be discussed below). If these receipts are accurate, then the beneficiary did not work full-time as a minister during the qualifying period. If, on the other hand, the receipts are not accurate, then obvious questions of credibility arise which raise further obstacles to the approval of the petition. 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).

There is reason to doubt the authenticity and reliability of the purported pay receipts. The record contains no contemporaneous financial documents (such as copies of processed checks) showing the actual transfer of funds from the petitioner to the beneficiary. Examination of the receipts themselves raises further questions. The receipts are printed three to a page, and the beneficiary has signed each receipt, so that her original (not photocopied) signature appears three times on each page. This suggests that the receipts were printed not one at a time, every two weeks, but rather in groups of three, if not in larger groups (or all at once).

The receipt for December 20 to December 31, 2005 shows 30 hours worked at \$6.75 per hour, which equals \$202.50. The receipt, however, gives the total as \$202.84, a figure that appears three times on the document.

Significant questions arise from the following sequence of alleged pay receipts:

Period from	to	Hours worked	Gross
12/7/2004	12/20/2004	22	\$148.50
12/21/2004	12/31/2004	37	249.75
1/1/2005	1/3/2005	26	175.50
1/4/2005	1/17/2005	28	189.00

The pattern in the consecutive receipts excerpted above appears, at first glance, to be consistent with the overall range of 22 to 37 hours per pay period. Closer examination, however, shows that the two week period from December 21, 2004 to January 3, 2005 has been split into an eleven-day period at the end of 2004 and a three-day period at the beginning of 2005. The three-day period from January 1 to January 3, 2005, shows 26 hours worked, a total that exceeds the beneficiary's claimed hours in many two-week periods. This is consistent with the arbitrary assignment of claimed "Hours worked" on each pay receipt, without attention to whether a given receipt covered a full pay period.

The petitioner submitted a copy of IRS Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, signed by the beneficiary. On Part V, line 1a of the Form 1023, instructed to "[l]ist the names, titles, and mailing addresses of all your officers, directors, and trustees," the beneficiary listed two names: herself, as "President," and [REDACTED] "Secretary." The beneficiary indicated that she drew no compensation as **President, but [REDACTED] earned \$3,378 as Secretary.**

On Part I, line 11 of the Form 1023, "Date incorporated," the beneficiary wrote "02/27/2001." A stamped copy of the petitioner's Articles of Incorporation, included in the initial filing, shows that the Articles were filed with the State of California on July 13, 2006, roughly three weeks before the petition was filed. The beneficiary herself signed the Articles, acting as the "Incorporator." On California Form 3500, the state equivalent of IRS Form 1023, the petitioner acknowledged the July 13, 2006 incorporation date, but claimed that the petitioning entity was "organized" on February 27, 2001. The record, however, contains no first-hand evidence that the petitioning entity existed in 2001.

On January 11, 2007, the director issued a request for evidence (RFE), instructing the petitioner to provide additional information and evidence regarding "the beneficiary's work history beginning August 2, 2004 and ending August 2, 2006." In response, [REDACTED] **claimed that the beneficiary has been "the woman minister of [the petitioning] church since March, 2004,"** the month of her claimed ordination. The beneficiary's purported pay receipts date back to January 2004; the petitioner did not specify what duties the beneficiary supposedly performed between January and March 2004.

The petitioner also submitted a revised IRS Form 1023. Like the earlier version, the revised form showed the beneficiary as the petitioner's uncompensated President, and [REDACTED] as the Secretary earning \$3,378 per year. The revision added a third officer, [REDACTED] named as the petitioner's uncompensated Treasurer. We note that, according to Form I-360, the beneficiary has a son named Jonathan [REDACTED], who was 17 years old at the time the petitioner submitted the revised IRS Form 1023. It appears that the beneficiary is the mother of both [REDACTED]

The director denied the petition on July 17, 2007, stating that the low amount of the beneficiary's claimed compensation "does not reflect full-time continuous employment as a minister." The director stated that the petitioner's 2006 incorporation date "raises doubt whether the petitioner has been a viable entity for the required two year period."

On appeal, writing about herself in the third person, the beneficiary claims to have worked for the petitioner in an unspecified capacity since 2002, and states: "Since becoming ordained in 2004, she has worked 35 to 40 hours a week in our church." The petitioner submits copies of the previously submitted pay receipts, which allege less than 20 hours of work per week and, thus, contradict the new claim of full-time employment. The petitioner did not address the questions raised by its 2006 incorporation.

The AAO affirms the director's finding that the petitioner has not established that the beneficiary possesses the required two years of continuous experience.

MINISTERIAL QUALIFICATIONS

The second issue concerns the beneficiary's qualifications as a minister. 8 C.F.R. § 204.5(m)(3)(ii)(B) requires the petitioner to establish that an alien seeking entry as a minister is, in fact, qualified to serve in that capacity (through ordination or comparable means according to the religious denomination). The petitioner's initial submission includes a certificate issued by the petitioner, signed by [REDACTED] and dated March 17, 2004, indicating that the beneficiary "has been duly accepted as Minister Ordained and is entitled to all rights and privileges provided under the Constitution and By-Laws" (emphasis in original). The petitioner's by-laws, signed by the beneficiary, are dated July 3, 2006, meaning that they did not exist on March 17, 2004.

The director, in the RFE, instructed the petitioner to submit additional information regarding the beneficiary's proposed position. In response, [REDACTED] stated that the beneficiary "was ordained on March 17, 2004 according with the scriptures in the 1 Book of Timothy Cha[p]ter 3:1-6." The petitioner provided no other information relating to the beneficiary's qualifications. As noted above, the date of the petitioner's by-laws casts doubt on the beneficiary's purported ordination date.

The director, in denying the petition, observed that the beneficiary's claim of ordination rests entirely on a certificate apparently signed by the beneficiary's own daughter. The director found that this certificate lacks credibility. On appeal, the beneficiary states: "Since the family of the Beneficiary is so active and so influential in our church, they must each sign their own certificates because it is their Ministry to do so." The petitioner submits a copy of an undated "Certificate of Completion," purportedly issued by the petitioner's "Hispanic Bible Institute." This certificate appears to be the first indication that the petitioner has a "Hispanic Bible Institute," and the record contains no reliable evidence that such an entity actually exists.

Given the pervasive pattern of contradictory and unverified submissions, the AAO can give little credence to the various certificates issued by the petitioner. 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 shown that the beneficiary possesses legitimate, authentic ministerial credentials.

ABILITY TO PAY

The third issue is the petitioner's ability to compensate the beneficiary. 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 above, the petitioner's initial submission indicated that the beneficiary purportedly received \$6.75 per hour in 2004 and 2005.

In the RFE, the director instructed the petitioner to submit documentary evidence that conformed to the regulation at 8 C.F.R. § 204.5(g)(2), quoted above. In response, [REDACTED] stated that the beneficiary "will be working full time with a minimum of 40 hours per week. . . . She will be paid weekly at the minimum wage in cash." The minimum wage in California, \$6.75 per hour at the time of filing, increased to \$7.50 per hour on January 1, 2007, and to \$8.00 per hour on January 1, 2008.¹ Thus, at 40 hours per week and 52 weeks per year, the petitioner must have been able to pay the beneficiary \$14,040 in 2006, \$15,600 in 2007 and \$16,640 in 2008.

The petitioner submitted what purports to be an audited profit and loss statement for 2006, signed by the beneficiary and by accountant [REDACTED] reading as follows:

Gross Income		\$62,020.00
Deductions:		
Minister Ordained Fees	11,254.00	
Professional Fees	2,278.00	
Accounting fees	-	
Legal fees	-	
Supplies	-	
Occupancy	<u>3,932.00</u>	
TOTAL DEDUCTIONS		<u>17,464.00</u>
NET PROFIT		44,556.00

¹ Source: <http://www.dir.ca.gov/Wage.htm>, visited September 25, 2008.

A "Projected Profit and Loss Statement" indicated that the petitioner had budgeted for "Minister Ordained Fees" for future years: \$13,323 in 2007, \$14,600 in 2008, \$17,300 in 2009 and \$19,300 in 2010. The figures cited for 2007 and 2008 both fall below California's minimum wage for a 40-hour week, as cited above.

The document lacks many of the details typically found in an audited financial statement. The record contains no evidence of [REDACTED]'s credentials as an accountant, and no primary documentation to show that any of the cited figures are reliable or based in fact. Given the petitioner's numerous contradictory statements on other matters, the petitioner is not entitled to any presumption of credibility in this matter.

The petitioner submitted an unsigned, undated copy of an IRS Form 990-EZ, analogous to an income tax return, for 2005. The return indicated that the petitioner took in \$59,265 in contributions, from which it paid \$8,488 in salaries, \$4,189 in "Professional fees," and \$8,984 in rent, utilities, and related expenses. There is no evidence that the petitioner filed this return.

The petitioner submitted copies of claimed pay receipts from 2006, which follow the same format as the 2004-2005 receipts submitted earlier. These receipts purport to show 35 to 48 hours worked per pay period. Because each pay period is two weeks, not one week, the receipts continue to show part-time work, as does an accompanying IRS Form 1099-MISC shows only \$7,006.50 paid to the beneficiary in 2006. Thus, even if these materials were of unquestioned credibility, they would not show that the beneficiary worked full-time for the petitioner either before or after the petition's August 2006 filing date.

In the denial notice, the director found "the evidence is insufficient to establish that the prospective employer can pay the beneficiary's proffered wage." On appeal, the beneficiary stated: "The church provides housing and any living accommodations I need to sustain myself. All monetary compensation is for my private expenses. In 2005, the amount of \$5,110.00 dollars was not for my living expenses or my accommodations as they were provided by the Ministry. The same is [true] for the year 2004." This explanation is inconsistent with the allegedly audited "Profit and Loss Statement," signed by the beneficiary herself, which listed no expenses except for "fees" and "occupancy." If the petitioner were responsible for the beneficiary's basic material support, expenses associated with that support would have appeared on a properly audited financial statement.

NON-PROFIT STATUS

The fourth issue raised by the director concerns the petitioner's tax status.

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.

The documentation described at 8 C.F.R. § 204.5(m)(3)(i)(B) is described in a memorandum from William R. Yates, Associate Director of Operations, *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 the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization;
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The above information indicates that it cannot suffice for an entity to simply execute IRS Form 1023. The entity must also establish that it engages in qualifying religious activities. The petitioner's initial submission included an IRS Form 1023 signed by the beneficiary and dated July 29, 2006 (at Part X) and June 29, 2006 (at Part XI). The application has been largely but not fully completed. The petitioner provided incomplete information regarding its religious activities on Schedule A. The Form 1023 is one of several documents in the record that lists the petitioner's nine-digit Employer Identification Number (EIN). There is no evidence that the petitioner filed the Form 1023 application with the IRS.

In the RFE, the director stated that the petitioner's claimed EIN could not be verified, and the director instructed the petitioner to submit documentation establishing that the IRS had, in fact, assigned that EIN to the petitioning entity. The director also requested "documentary evidence to prove religious activity at [the petitioner's claimed address]," "color photographs of the petitioner's location," and other evidence to confirm that a church operates at the address claimed. The petitioner's response to the RFE did not acknowledge or address these issues. The petitioner submitted further documents showing its claimed EIN, but nothing from the IRS to establish that the petitioner was, in fact, entitled to use that EIN.

In denying the petition, the director found that the petitioner had failed to submit the required evidence to establish that the petitioner is "a viable church" that is recognized, or qualifies for recognition, as a tax-exempt non-profit religious organization under section 501(c)(3) of the Internal Revenue Code.

On appeal, the beneficiary claims that the petitioner has filed its Form 1023 application and is "awaiting and expecting certified approval from the IRS." This unsupported claim cannot overcome the deficiencies in the record. The petitioner has continued to use its claimed EIN, but the petitioner has failed to show that the EIN was legitimately assigned to the petitioner, or that the petitioner existed in any legally recognized form prior to 2006.

The credibility issues which have surfaced throughout this proceeding lead the AAO to affirm the director's finding that the petitioner has failed to establish that it qualifies as a *bona fide* tax-exempt, non-profit religious

organization. It appears, instead, that the petitioner has sought to cultivate the appearance of such an organization in order to secure immigration benefits for aliens including the beneficiary. The AAO is not persuaded that the petitioner exists as a functioning church, or that the beneficiary holds legitimate credentials as a minister. The AAO shares the director's conclusion that the petitioning church appears to exist primarily as a means for family members to obtain immigration benefits for one another.

On August 4, 2008, the AAO issued a notice of intent to dismiss the appeal with a finding of willful misrepresentation of a material fact. In the notice, the AAO reiterated the director's observation that the petitioner was not incorporated until less than a month before the petition was filed.

The record contains no response to the AAO's notice, and therefore the AAO renders its decision based on the record as it now stands. The petitioner has provided no reliable, independent evidence to show that the petitioning entity is, in fact, a real church, operating and conducting services at the address claimed. All the evidence of record is consistent with a finding that the petitioning church exists only "on paper." The petitioner and the beneficiary have repeatedly claimed that the petitioner is an operating church, but the petitioner has refused to address the director's specific requests for credible evidence that the petitioning entity is, in fact, a *bona fide* church. The 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). The petitioner's claims throughout this proceeding are inconsistent, lack credibility, and do not conform to reality. The AAO will therefore enter a finding of fraud and willful misrepresentation of a material fact.

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Under Board of Immigration Appeals (BIA) precedent, a material misrepresentation is one which "tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded." *Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1961).

For the reasons discussed above, the AAO finds that the petitioner has sought to procure on behalf of the beneficiary a benefit provided under the Act through fraud and willful misrepresentation of a material fact in an effort to mislead Citizenship and Immigration Services (CIS) and the AAO on an element material to the beneficiary's eligibility for a benefit sought under the immigration laws of the United States. See 18 U.S.C. §§ 1001, 1546. By signing the alleged pay receipts and other documents in furtherance of the instant petition and submitting the evidence described above, the beneficiary has actively participated in this fraud and willful misrepresentation of a material fact. This finding of fraud shall be considered in any future proceeding where admissibility is an issue.

If CIS is not persuaded that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery*

Shop, Inc. v. Nelson, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. I.N.S.*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). Moreover, the petitioner's submission of a fraudulent document brings into question the reliability and sufficiency of the remaining evidence offered in support of the visa petition. See *Matter of Ho* at 591.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition 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. **The petitioner has not sustained that burden.** The AAO finds that the petitioner knowingly submitted documents containing false statements in an effort to mislead CIS and the AAO on an element material to the beneficiary's eligibility for a benefit sought under the immigration laws of the United States. See 18 U.S.C. §§ 1001, 1546. The AAO will enter a finding of willful misrepresentation of a material fact.

ORDER: The appeal is dismissed.

FURTHER ORDER: The AAO finds that the petitioner knowingly submitted documents containing false statements in an effort to mislead CIS and the AAO on an element material to the beneficiary's eligibility for a benefit sought under the immigration laws of the United States.