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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: OCT 01 2008
WAC 07 045 50009

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, 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. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition, or that the petitioner qualifies as a *bona fide* tax-exempt nonprofit religious organization.

On appeal, the petitioner submits additional statements and documents.

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).

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 December

5, 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 2002, 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 \$15,693 in 2004 and \$23,892 in 2005.

On March 14, 2007, the director issued a request for evidence (RFE), instructing the petitioner to submit additional evidence regarding the beneficiary's work history and compensation. The director instructed the petitioner to submit financial documents establishing the beneficiary's receipt of the claimed payments.

In response to the RFE, the petitioner submitted a letter from [redacted] identified, like the beneficiary, as a "Minister Ordained" of the petitioning church. [redacted] stated:

[The beneficiary] became [a] member of [the petitioning church] on November 11, 2003. Approximately 5 months later he proposed herself [sic] to be youth counselor of biblical studies. . . . There was the need for a Men's Ministry. . . . [The beneficiary] was chosen to [lead] the Men's Ministry. Later, he was ordained on February 22, 2004.

The above chronology is internally inconsistent, because February 22, 2004 was less than four months after the beneficiary supposedly joined the petitioner's congregation.

Ms. [redacted] provided the following claimed work schedule for the beneficiary:

| | | |
|-----------------|-----------------------|---|
| Tuesday | Friday | Sunday |
| Praying 6:00 pm | Youth Service 6:00 pm | Sunday School 10:30 am General worship 6:00 pm |

██████████ asserted that the beneficiary, one of “only two members who receive payment,” “will be paid \$280.00 per week.” ██████████ acknowledged that the beneficiary lacks “legal status,” thus contradicting the prior claim that the beneficiary has never worked in the United States without authorization.

The petitioner submitted new copies of IRS Forms 1099-MISC, indicating that the petitioner purportedly paid the beneficiary \$5,775 in 2004, \$7,248 in 2005 and \$14,560 in 2006. The amounts on the 2004 and 2005 forms contradict the amounts shown on the forms submitted earlier. The petitioner did not acknowledge this major discrepancy, much less explain it.

An accompanying “Summary of Compensations” purports to indicate that the petitioner paid the beneficiary twice a week (Fridays and Sundays in 2004-2005, Tuesdays and Thursdays in 2006). In 2006, each of these payments was said to be \$140. The claimed payments in 2004 and 2005 varied widely, with some payments below \$40 and others approaching \$100. Each page of the “Summary of Compensations” lists the days of a given month, with a column for the amount (if any) paid each day, and a space for the beneficiary’s signature corresponding to each day. A portion of one page is reproduced below:

| FEBRUARY 2005 | | | | |
|---------------|------------------|----|-------|----------------------|
| Wednesday | 25 th | \$ | | x _____ |
| Thursday | 26 th | \$ | | x _____ |
| Friday | 27 th | \$ | 73.00 | x <u>[signature]</u> |
| Saturday | 28 th | \$ | | x _____ |
| Sunday | 29 th | \$ | 66.00 | x <u>[signature]</u> |

The format of the “Summary of Compensations” leads to inconsistent conclusions about the timing of their preparation. The beneficiary signed each page several times, once for each day he purportedly received payment, which implies that the beneficiary signed the document at the time of each payment. But because the amounts paid (which, on the 2004 and 2005 forms, vary unpredictably from day to day) were printed as part of the document, rather than added later, each page could not have been printed until after the end of the month in question.

Furthermore, the days of the week listed throughout 2005 do not correspond to the dates shown (they actually correspond to dates in 2004, not 2005). The documents list January 1, 2005 as a Thursday; it was, in fact, a Saturday. Also, because 2005 was not a leap year, there was no February 29, 2005. Nevertheless, the beneficiary supposedly signed a receipt for \$66 received on that day.

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. Also, the annual totals quoted above are too low to be consistent with full-time employment, even at the legal minimum wage. They are certainly inconsistent with the first set of Forms 1099-MISC included in the initial filing.

Rather than clarifying matters, this submission, like many others in the record, only undermines the petitioner’s credibility. 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.

The director denied the petition on June 5, 2007, in part because the beneficiary's claimed three-day work week is not consistent with full-time employment. The director also cited discrepancies in the various claims regarding the beneficiary's work history past compensation.

On appeal, [REDACTED] states that, in addition to the work hours claimed earlier, the beneficiary "also work[s] Monday evangelizing 8 hours a day and Wednesday 8 to 9 hours a day," and that the beneficiary's total work week exceeds 40 hours. [REDACTED] does not explain why this information was omitted from the petitioner's previous description of the beneficiary's work. Furthermore, the record contains no documentary evidence to support this claim, and given the many discrepancies and contradictions in the record, the petitioner is owed no presumption of credibility in this matter.

[REDACTED] asserts that the beneficiary began receiving a regular salary in January 2006, receiving in "previous years . . . compensation for his food, since he had help from our church as Board and room, clothes, transportation, working such years as volunteer without payment established." The new claim that the beneficiary worked "without payment" in 2004-2005 contradicts the previously submitted "Summary of Compensations," which purported to show payments that the beneficiary supposedly acknowledged with his signature.

More often than not, the petitioner has contradicted its own prior claims and submissions, and as such the petitioner's credibility is negligible in this matter. The AAO affirms the director's finding that the petitioner has not established that the beneficiary possesses the required two years of continuous experience.

NON-PROFIT STATUS

The second 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 petitioner submitted a copy of a letter purportedly signed by “[REDACTED]” of the United Evangelist Association, Torrance, California. The letter indicated that the petitioner “is affiliated with the United Evangelist Association.” The petitioner also submitted a copy of a March 7, 2006 letter from the IRS, acknowledging the tax-exempt status of the United Evangelists [*sic*] Association in Torrance, California. The letter does not identify the United Evangelists Association as a church, as described at section 170(b)(1)(A)(i) of the Internal Revenue Code (the Code). Rather, the Association was described as a “public charity” under section 170(b)(1)(A)(vi) of the Code. Also, the letter did not indicate that the Association held a group exemption that applied to subsidiaries, subordinates, or affiliates. The Federal Identification Number (also known as Employer Identification Number) shown on the IRS’s letter does not match the number shown for the petitioner on the Form I-360 petition, indicating that the petitioner and the Association are not the same corporate entity.

A Fictitious Business Name Statement identified the petitioner’s “Principal Place of Business” as [REDACTED] Los Angeles, California. The petitioner’s initial submission did not identify any other address where the petitioner was said to operate or conduct business.

In the RFE, the director requested “evidence to show how [the petitioner] is connected with **United Evangelists Association**” (director’s emphasis). In response, [REDACTED] stated “United Evangelist Association, we don’t have any relation with this ministry,” thereby contradicting the documents in the petitioner’s initial submission.

The director also requested “documentary evidence to prove religious activity at [REDACTED]” In response, [REDACTED] stated: “Our services are performed at [REDACTED] See letter from Landlord, and City of Inglewood Business Tax Renewal form.”

A “Business Tax Certificate / Renewal Delinquent Notice” issued by the City of Inglewood identified the business at [REDACTED] as a “Religious/Charitable Org[anization]” called “Monte Cavasio.” The form named United Evangelists Association under “Owners, Partners, or Corporate Officers.” The petitioner submitted a May 10, 2007 letter, purportedly from [REDACTED] on the letterhead of “Monte Calvario [*sic*],” stating:

This letter is to confirm that the premise located in [REDACTED] 90303. Is being used for religious services by the next religious organizations:

- Monte Calvario
- Ministerios Unidos Galatas 5:16 [the petitioning entity]

These religious organizations perform their religious services in different days as well as different hours. They also have their own congregations.

The monthly rent is \$600.00 a month.

(*Sic.*) The petitioner also submitted color photographs of the interior of a church, along with a sign reading [REDACTED] / Church Entrance.” The petitioner also indicated that its monthly budget includes \$600 for the aforementioned rent payments. None of these materials demonstrate that the petitioner is a *bona fide* tax-exempt organization.

In the denial notice, the director noted the contradictory assertions regarding the United Evangelists Association, and concluded: “the petitioner has not established that [it] is exempt from taxation” as required by statute and regulation.

On appeal, [REDACTED] states that the petitioner submitted the letter purportedly from the United Evangelist Association because of that organization’s ties to Monte Calvario Church, which, in turn, purportedly rents space to the petitioner. This does not explain why [REDACTED] specifically stated that the petitioner “is affiliated with the United Evangelist Association.” Thus, one of several contradictions and inconsistencies in the record remains unresolved.

[REDACTED] also stated that the petitioner had already filed IRS Form 1023, Application for Recognition of Exemption. The petitioner submits this form on appeal. The document submitted on appeal is an original form, with [REDACTED] original signature in black ballpoint ink, rather than a photocopy, and the petitioner submits no evidence that it actually filed the form with the IRS.

Information in Part IX, Financial Data, does not fully match the petitioner’s claims on other documents in the record. For example, the petitioner previously claimed to pay \$600 per month (\$7,200 per year) in rent, but the Form 1023 shows rent payments of \$5,564 in 2003, \$5,600 in 2004, \$6,525 in 2005 and \$4,258 as of mid-June 2006. The petitioner claimed to have paid, in 2005, \$11,498 in “Compensation of officers, directors, and trustees,” and \$11,978 in “Other salaries and wages,” together totaling \$23,476, but the petitioner had previously submitted a copy of an IRS Form 1099-MISC showing a higher amount - \$23,892 - paid to the beneficiary that same year. The petitioner neither acknowledged nor explained the discrepancies, and submitted no first-hand documentary evidence to show which of the conflicting claims more accurately reflects the petitioner’s actual expenditures.

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.

Attempts to verify the petitioner's claims, and review of other petitions, have raised additional issues of concern. On its IRS Form 1023, under "Date incorporated," the petitioner wrote "02/15/2003." The beneficiary was identified as the petitioning organization's president. The petitioner, however, did not file its articles of incorporation until June 2, 2006, only six months before the petition's filing date and ten days before the petitioner executed the IRS Form 1023. The petitioner's bylaws are dated May 30, 2006. These dates show that a number of the petitioner's foundational documents came into existence shortly before the filing of the petition, consistent with the AAO's position that the petitioner created those documents specifically for the purpose of supporting immigration petitions.

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 response, [REDACTED] states: "we believed 'Date Incorporated' meant the date we began our organization meaning the day we official[ly] open[ed] our doors for service." Absent evidence to support this claim, the assertion rests entirely on [REDACTED]'s credibility. As we will now demonstrate, [REDACTED] latest letter contains yet another contradiction to further undermine the reliability of the claims put forth in support of the petition.

In its notice, the AAO advised the petitioner that the telephone number shown on its bylaws also appears on the bylaws of another purported church, Genesis 1:27. The two sets of bylaws are virtually identical, even including the same typographical errors (such as "Dismiss ion of Inactive member" and "Vacancies occurring during the year may be fillet until the next election by Board appointment"). These similarities, beyond the realm of reasonable coincidence, indicate a common creation of documents for a number of purported churches.

[REDACTED] asserted that officials of Genesis 1:27 assisted the petitioner in the preparation of the petitioner's documentation, and that the petitioner "simply made copies" of the bylaws and failed to change the telephone number due to "an error." This explanation does not account for the dates of the respective sets of bylaws. The bylaws of Genesis 1:27 are dated June 12, 2006. The petitioner's bylaws, signed by [REDACTED], supposedly copied later, are dated two weeks earlier, May 30, 2006. The petitioner's explanation, therefore, simply adds yet another contradiction into the record.

The AAO, in its August 4, 2008 notice, also stated:

On March 14, 2007, you were instructed to submit photographs of your church. Subsequently, you submitted photographs of Monte Calvario church located at [REDACTED] Inglewood, California, and claimed that this was the location of your church, even though you had not previously given this address. The AAO is in possession of materials showing that another church, Hechos 2:19 Ministries, has also submitted photographs of 10600 S. Prairie Ave. after claiming a different address. (The bylaws of Hechos 2:19 Ministries are virtually identical to your organization's bylaws, even including the same typographical errors.) The record contains no credible evidence that your organization conducts church services at 10600 S. Prairie

Ave., and your repeated and consistent use of a different address prior to the submission of the photographs does not make your claims more credible.

The record of proceeding includes a letter, purportedly from Monte Calvario Church, stating that the church shares space with your organization. The letter does not mention Hechos 2:19, even though identical photographs have been submitted relating to that organization. The letterhead of the purported Monte Calvario letter shows a telephone number, (213) 353-4646, that matches the telephone number claimed for Hechos 2:19. The AAO is not persuaded that the Monte Calvario letter in the record is authentic.

The petitioner's response to the AAO's notice does not address this issue at all.

The petitioner's response to the AAO's latest notice serves only to reinforce the conclusion that the petitioner's claims are inconsistent, lack credibility, and do not conform to reality. Because the petitioner has compromised its own credibility through an uninterrupted string of inconsistent or contradictory claims, the AAO can have little confidence in the alleged documentary evidence submitted on appeal.

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.

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.