

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



C1

FILE: WAC 06 203 51283 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.

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 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 women's minister and youth 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 is able to pay the beneficiary's salary.

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 . . . ; 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 June 19, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a women's minister and youth minister throughout the two years immediately prior to that date.

The Board of Immigration Appeals (BIA) 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 2000, 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.

██████████, identified as General Pastor of the petitioning organization, stated that the beneficiary "was ordained on January 29 2004 . . . after she completed her Biblical studies at Nuevo Amanecer Hispanic Biblical [I]nstitute."

The petitioner submitted copies of Internal Revenue Service (IRS) Form 1099-MISC Miscellaneous Income statements, purporting to indicate that the petitioner paid the beneficiary \$4,360 in 2004 and \$4,720 in 2005. Both of these Forms 1099-MISC show the beneficiary's nine-digit "identification number" ending in 5640.

Accompanying documents, each labeled "Record of Compensations," purport to indicate that the petitioner paid the beneficiary twice a week (Saturdays and Sundays), with most payments between \$30 and \$100 each, between January 2004 and December 2005. Each page of the "Record of Compensations" follows the format below:

WEEK	WEEK							TOTAL	SIGNATURE
	S	M	T	W	T	F	S		
1 st									
2 nd									
3 rd									
4 th									

The above format appears to be based on the false assumptions that each month begins on Sunday and is exactly four weeks long. The format allows only 48 weeks per year, whereas each year is actually 52 weeks plus one day (two days on leap years). Also, the format of the "Record of Compensations" leads to inconsistent conclusions about the timing of their preparation. The beneficiary signed each page several times, once for each day she purportedly received payment, which implies that the beneficiary signed the document at the time of each payment. But because the amounts paid (which 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.

The records said to relate to July 2004 and July 2005 both contain arithmetical errors. The July 2005 statement reads as follows:

WEEK	S	M	T	W	T	F	S	TOTAL	SIGNATURE
1 st	41						41	82.00	[signature]
2 nd	32						38	70.00	[signature]
3 rd	47						42	89.00	[signature]
4 th	48						66	241.00	[signature]
								482.00	[signature]

The total for week four should be \$114.00, and the monthly total \$355.00. Instead, the petitioner added the totals for weeks one through three, placed that total on the line for week four, and then added those four numbers together for the monthly total. By a similar error, the July 2004 total is shown as \$428.00, when it should read \$290.00. The IRS Forms 1099-MISC correspond to the erroneous, inflated totals rather than the weekly amounts added correctly.

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.

On December 13, 2006, the director issued a request for evidence (RFE), instructing the petitioner to submit additional evidence regarding the beneficiary’s work history and compensation. Noting the petitioner’s purported issuance of IRS Forms 1099-MISC to the beneficiary, the director instructed the petitioner to submit IRS transcripts of the beneficiary’s income tax returns for the corresponding years (2004 and 2005), as well as financial documents establishing the beneficiary’s receipt of the claimed payments.

In response to the RFE, the petitioner submitted a letter from [REDACTED] identified as a “Minister Ordained” and Vice President of the petitioning entity, who stated that the beneficiary “has served in this church since the date of her ordination on January 29, 2004.” In a separate letter, [REDACTED] acknowledged that the beneficiary lacks “legal status,” thus contradicting the prior claim that the beneficiary has never worked in the United States without authorization.

Ms. Barrera provided the following claimed work schedule for the beneficiary:

<u>Monday</u>	<u>Friday</u>	<u>Saturday</u>	<u>Sunday</u>
House by house Preaching	House by house Preaching	House by house Preaching	House by house Preaching
Biblical studies	Youth Service	Ladies night	General services

The petitioner submitted tax transcripts showing that she reported “partnership income” in amounts matching those shown on the IRS Forms 1099-MISC for 2004 and 2005. The transcripts do not establish when the

beneficiary filed those income tax returns. Copies of the beneficiary's purported federal income tax returns are unsigned and undated, and do not match the transcripts. On the tax returns, the beneficiary claimed her reported income under "Business income," whereas the transcripts show nothing reported under that category. The returns and transcripts each show a "Taxpayer Identification Number" ending in 9099, which does not match the number shown on the IRS Forms 1099-MISC. An unsigned copy of the beneficiary's California state income tax return for 2004 is dated December 18, 2006, five days after the date of the RFE. The timing of these filings, just after the petitioner received the RFE, does not appear to be a coincidence. The beneficiary's untimely filing of tax returns days after the issuance of the RFE raises serious questions regarding the truth of the facts asserted therein. *Cf. Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991) (discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings).

Another contradiction can be found in a table bearing the heading "Means Support" (*sic*). According to this document, the beneficiary received the same support every month, itemized as follows:

Clothes	\$50.00
Food	140.00
Rent	150.00
Telephone	25.00
<u>Water and Electricity</u>	<u>28.33</u>
<u>Monthly Total</u>	<u>393.33</u>
Year Total	4,720.00

The table, which shows the beneficiary receiving material support in fixed monthly amounts, is entirely inconsistent with the "Record of Compensations," which showed the beneficiary receiving payments on Saturdays and Sundays that varied significantly from month to month. 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 May 8, 2007, in part because the beneficiary's claimed payments "are low and are not indicative of full-time work." The director also found that the petitioner had not adequately documented even those low claimed payments. The director further noted that the "Taxpayer Identification Number" shown on the beneficiary's income tax returns does not match the "Identification Number" shown on the Forms 1099-MISC, and that the tax transcripts show partnership income rather than business income. The director concluded: "the evidence is insufficient to establish that the beneficiary has been performing full-time work as Minister Ordained for the two-year period immediately preceding the filing of the petition."

On appeal, [REDACTED] states: "Beneficiary has been working thirty-five to forty hours per week." The petitioner submits a letter from the IRS, indicating that the IRS had assigned the beneficiary an Individual

Taxpayer Identification Number (ITIN), a nine-digit number ending in 9099. This is the number shown on the beneficiary's tax transcripts but not on the IRS Forms 1099-MISC. The IRS letter is dated June 6, 2006, nearly two months after the April 15 filing deadline for 2005 income tax returns. This proves that the beneficiary did not timely file her 2004 or 2005 income tax returns, as she did not yet have the ITIN ending in [REDACTED] until after their filing deadlines had passed.

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.

ABILITY TO PAY

The second 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.

The petitioner's initial submission did not address the petitioner's ability to compensate the beneficiary, except for the purported payroll documents already described above. Also, the petitioner did not specify the proffered wage or salary in the initial submission. The director, in the RFE, instructed the petitioner to submit "copies of annual reports, signed copies of federal tax returns, or audited financial statements," in keeping with 8 C.F.R. § 204.5(g)(2).

In response, [REDACTED] stated that the beneficiary "will be working full time with a Minimum of 40 hrs per week [at] \$393.33 per month. . . . She will be paid weekly at the minimum wage in cash." In 2006, the minimum wage in California was \$6.75 per hour, which extrapolates to \$270 for a 40-hour week.¹ \$393.33 per month would, therefore, fall substantially below the legal minimum wage.

The petitioner's response did not include any of the requested documentation. The petitioner submitted a copy of an IRS Form 990-EZ return for 2005, analogous to an income tax return (prepared by the beneficiary), but the copy was unsigned and there is no evidence that the petitioner actually filed the return. The Form 990-EZ indicated that the petitioner took in \$72,980 in gross receipts in 2005, \$22,324 of which went to "Salaries, other compensation, and employee benefits." On a copy of IRS Form 1023 Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code (more about which later),

¹ All cited California minimum wage figures are taken from <http://www.dir.ca.gov/Iwc/MinimumWageHistory.htm> (visited September 30, 2008).

the petitioner indicated that [REDACTED] earned \$7,204 per year, the beneficiary earned \$4,720 per year, and [REDACTED] each earned \$5,200 per year. A fifth named official, [REDACTED] was said to be uncompensated. The amounts claimed for the four paid officers total \$22,324. The Form 1023 lists an additional \$11,526 in "Other salaries and wages" beyond the aforementioned officer compensation. The Form 990-EZ entirely omits these "Other salaries and wages." As a result, while the Form 1023 indicates that the petitioner's total expenses in 2005 amounted to \$42,330, the Form 990-EZ reflected only \$30,804 in total expenses for 2005.

The petitioner also submitted a purportedly audited profit and loss statement signed by the beneficiary and by [REDACTED] identified as an accountant. The document lacks many of the details typically found in an audited financial statement. The record contains no evidence of [REDACTED] 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.

In denying the petition, the director found that the petitioner had failed to submit the required evidence to establish its ability to compensate the beneficiary.

On appeal, the petitioner submits quarterly wage and withholding reports from 2007, purporting to show that the petitioner paid the beneficiary \$2,210.00 per quarter (\$170.00 per week, or about \$736.67 per month). The petitioner's accountant, [REDACTED], affirmed that the petitioner began paying the beneficiary \$170 per week in January 2006. This amount falls short of the minimum wage by \$100 per week in 2006, and more in 2007 (when the California minimum wage increased to \$7.50 per hour). The record contains no processed checks or comparable first-hand financial documentation to show that the purported salary ever changed hands.

The AAO notes that the earliest quarterly return shows the beneficiary's ITIN ending in 9099. That return, however, is dated April 30, 2006, more than a month before the IRS assigned the beneficiary that ITIN on June 6, 2006. Therefore, the date on the quarterly return is in doubt. [REDACTED] claims that the IRS provided its June 2006 letter in response to a request for confirmation of the beneficiary's ITIN, but the letter does not support this claim. The introduction of the letter indicates that the ITIN was newly assigned: "Thank you for your Form W-7, Application for IRS Individual Taxpayer Identification Number."

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.

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 "01/17/2004." The beneficiary (who prepared the Form 1023) was identified as the petitioning organization's secretary. The petitioner, however, did not file its articles of incorporation until April 26, 2006, less than two months before the petition's filing date and less than two weeks before the petitioner executed the IRS Form 1023 on May 8, 2006. The petitioner's bylaws (signed by the beneficiary) are dated May 10, 2006. These dates show that a number of the petitioner's

foundational documents came into existence just 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 18, 2008, the AAO issued a notice of intent to dismiss the appeal with a finding of willful misrepresentation of a material fact. In its notice, the AAO discussed the date of incorporation and also advised the petitioner that another church, Ministerios Unidos Galatas 5:16, claimed to have performed services at [REDACTED], the same address as the petitioning church. The bylaws of the two claimed churches 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.

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's claims throughout this proceeding are inconsistent, lack credibility, and do not conform to reality.

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 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.