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U.S. Citizenship
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Services

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FILE: WAC 06 225 53385 Office: CALIFORNIA SERVICE CENTER Date: OCT 01 2008

IN RE: Petitioner:
Beneficiary:



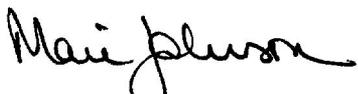
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

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 (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, counselor and teacher. 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 petitioner is able to pay the beneficiary's salary; (3) a valid job offer exists; or (4) 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 July 18, 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 1991, 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 \$3,282 in 2004 and \$3,591 in 2005. An accompanying "Summary of Compensations" purports to indicate that the petitioner paid the beneficiary twice a week (Sundays and Fridays), with most payments between \$25 and \$50 each, between January 2004 and December 2005. 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	\$ 30.00	x <u>[signature]</u>
Saturday	28 th	\$	x _____
Sunday	29 th	\$ 34.00	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 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.

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 \$34 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.

On January 3, 2007, 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 "Pastor" of the petitioning church. The petitioner is identified as a Christian church, but the petitioner's letterhead depicts a Star of [REDACTED] and a menorah, which are both Jewish religious symbols.

[REDACTED] stated that the beneficiary "was ordained on February 14, 2004." [REDACTED] then acknowledged that the beneficiary lacks "legal status," thus contradicting the prior claim that the beneficiary has never worked in the United States without authorization.

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	\$24.25
Food	110.00
Rent	130.00
Telephone	15.00
<u>Water and Electricity</u>	<u>20.00</u>
<u>Monthly Total</u>	<u>299.25</u>
Year Total	3,591.00

While the \$3,591 annual total is consistent with the beneficiary's 2005 Form 1099-MISC, the table, which shows the beneficiary receiving material support in fixed monthly amounts, is entirely inconsistent with the "Summary of Compensations," which showed the beneficiary receiving payments on Fridays and Sundays that varied significantly from month to month. It is also inconsistent with a statement by [REDACTED] that the beneficiary "will be paid weekly a variable amount." 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 petitioner did not submit the requested financial documents or IRS transcripts of the beneficiary's tax returns. [REDACTED] in his letter, did not even acknowledge the director's request for such documentation, much less explain the petitioner's failure to submit requested documentation. 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 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 concluded: "the evidence is insufficient to establish that the beneficiary has been performing full-time work as Counselor and Teacher for the two-year period immediately preceding the filing of the petition."

On appeal, [REDACTED] states: "I devoted 40 hours of labor per week during this two-year period." He may have meant to state that the beneficiary worked 40 hours per week, but this is not clear. Mr. [REDACTED]

The Beneficiary worked in a voluntary basis for the [petitioner] from 07/18/2004 until 08/02/2006. She was supported by a[n] affiliate of the Ministry during the two-year voluntary period. No other activity was involved. **IRS documentation provided Upon Request.** The Beneficiary and Petitioner had an oral agreement [for the beneficiary] to receive compensation for her expenses in a variable amount until 07/19/2006. She is currently earning \$200 dollars a week in gross salary. . . . As of today, she is currently employed for 40 hours a week.

The petitioner then contradicted itself yet again, submitting what purport to be weekly earnings statements indicating that the petitioner has paid the beneficiary \$200 per week, by check, since January 2006. These fixed weekly checks are in direct opposition to the petitioner's claim that the beneficiary "worked [on] a voluntary basis . . . until 08/02/2006." The petitioner's statements and submissions on appeal also fail to account for the petitioner's original claim to have paid the beneficiary about \$25 to \$50 every Friday and Sunday in 2004 and 2005 – payments which the beneficiary supposedly acknowledged with her 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.

JOB OFFER

The second issue concerns the adequacy and validity of the petitioner's job offer to the beneficiary. 8 C.F.R. § 204.5(m)(4) requires the petitioner to state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration). Because the petitioner claims to intend to employ the beneficiary as a minister, the beneficiary must seek to be employed solely as a minister. See 8 C.F.R. § 204.5(m)(1).

██████████ brief introductory letter did not outline the purported terms of employment, and the “Summary of Compensations” document did not establish any fixed pattern of payment.

The director, in the RFE, asked: “How will the beneficiary be paid for his or her services? Include the terms of payment for services or other remuneration.” In response, ██████████ stated that the beneficiary “will be paid weekly a variable amount . . . [a]ccording to the number of hours invested by hi[m] for the church.”

The director denied the petition, stating “the beneficiary’s wage as well as work schedule is variable and without any stipulated minimum. As such, the current offer fails to establish that the beneficiary will not be dependent on supplemental employment or the solicitation of funds for support.” On appeal, as noted above, ██████████ claims: “The Beneficiary will earn an income in the amount of \$200 dollars a week.” The petitioner submits what purport to be pay stubs showing weekly \$200 payments to the beneficiary from January 2006 through March 2007. According to this information, the beneficiary was supposedly earning a fixed and steady salary, and had been doing so for more than a year, when ██████████ claimed in March 2007 that the beneficiary “will be paid weekly a variable amount.”

The petitioner failed to set forth specific job offer terms when requested to do so, and later, on appeal, set forth terms that contradict the petitioner’s prior claims. The AAO affirms the director’s finding that the petitioner has not credibly set forth a specific job offer.

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.

We note that the petitioner cannot establish its ability to pay the proffered wage (or salary) without first specifying the amount of the beneficiary’s proffered compensation. At the time the director denied the petition, the petitioner had not specified the proffered level of compensation.

The petitioner’s initial submission did not address the petitioner’s ability to compensate the beneficiary, except for the monthly “Summary of Compensations” statements already described above. 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).

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, 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 \$59,962 in gross receipts in 2005, \$10,652 of which went to "Salaries, other compensation, and employee benefits." On a copy of IRS Form 1023 (more about which later), the petitioner indicated that [REDACTED] earned \$5,200 per year, and [REDACTED] earned \$5,360 per year. These amounts are, together, within a few dollars of the \$10,652 claimed as salaries on the Form 990-EZ return. The Form 1023 identified the beneficiary as the petitioner's "treasure[r]" and specified that she received no compensation.

The petitioner also submitted a Profit and Loss Statement for 2006, containing the following information:

Gross Income		\$69,846.00
Deductions:		
Minister Ordained Fees	14,570.00	
Professional Fees	3,150.00	
Occupancy	<u>5,683.00</u>	
TOTAL DEDUCTIONS		<u>23,583.00</u>
NET PROFIT		46,263.00

In an accompanying letter, [REDACTED] claimed that the petitioner had three paid employees. This appears to contradict the documents described earlier, identifying two paid employees and specifying that the beneficiary received no compensation.

In denying the petition, the director noted the discrepancies in the petitioner's various documents.

On appeal, the petitioner submits the aforementioned earnings statements, supposedly indicating that the beneficiary, by herself, earned \$10,400 in 2006. The petitioner also submits a copy of an IRS Form W-2 Wage and Tax Statement and a Form 1040 income tax return signed by the beneficiary, also indicating that the petitioner paid the beneficiary \$10,400 in 2006. The petitioner also submitted other tax documents, such as quarterly returns, intended to establish salary payments to the beneficiary in 2006. As with the other tax-related documents in the record, there is no evidence that the petitioner actually filed these papers.

[REDACTED] claims on appeal that "[t]he Profit and Loss Statement does not reflect the Beneficiary's position since she was a volunteer until July of 2006." This assertion, if true, would explain why the Profit and Loss Statement does not account for three salaries, but the petitioner has submitted a substantial number of exhibits that contradict this new claim. The appeal itself includes what purport to be the beneficiary's pay stubs going back to January 2006, months before the beneficiary supposedly ceased to be "a volunteer." Earlier submissions show the beneficiary purportedly signing receipts for payment as early as January 2004. 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.

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 petitioner's initial submission did not address the issue of the petitioner's tax status. Accordingly, in the RFE, the director listed the documentation required to comply with the above regulations. In response, the petitioner submitted an unsigned IRS Form 1023 Application for Recognition of Exemption. (Information in Part IX, Financial Data, does not fully match the petitioner's claims on other documents in the record. The petitioner claimed to have paid only \$2,150 in officer compensation and \$5,648 in salaries in 2006, whereas the petitioner claims to have paid the beneficiary alone more than \$10,000 that year.)

In the denial notice, the director stated: "the petitioner submitted an incomplete IRS Form 1023 and incomplete Schedule A supplement. . . . Therefore, the petitioner has not established that [it] is exempt from taxation" as required by statute and regulation.

On appeal, the petitioner submits another copy of IRS Form 1023, which conflicts with the copy submitted previously. Financial data for 2006, for example, has been changed to bring it into greater conformity with

the petitioner's other submissions. The petitioner offered no explanation for why the two versions of Form 1023 disagree with one another, and no first-hand documentary evidence to show which of the two more accurately reflects the petitioner's actual financial standing.

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 "01/25/2004." The beneficiary was identified as the petitioning organization's treasurer. The petitioner, however, did not file its articles of incorporation until May 19, 2006, only two months before the petition's filing date and eight days before the petitioner executed the IRS Form 1023. The petitioner's bylaws are dated June 12, 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 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 to the AAO's notice, [REDACTED] states: "we believed 'date incorporated' signified . . . the date when our organization first got together and began service."

[REDACTED] assertion that the petitioner was merely mistaken about the meaning of "date incorporated" would have been more plausible if it were not for the persistent pattern of inconsistent and contradictory claims throughout this proceeding. Even then, his latest explanation is, once again, contradicted by the record. The "Summary of Compensations" alleged that the beneficiary received a \$31 payment on January 2, 2004. By January 24, supposedly "the date when [the petitioner] began service," the petitioner had allegedly paid the beneficiary seven times, a total of \$213.

The AAO also advised the petitioner that the telephone number shown on its bylaws also appears on the bylaws of another purported church, Ministerios Galatas 5:16. 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").

In response to the AAO's notice, [REDACTED] stated: "Ministerios Galatas 5:16 asked for our permission to have the same bylaws as our congregation. . . . An electronic copy was issued to them and they in return must have forgotten to update their organization's information." This explanation does not account for the dates of the respective sets of bylaws. The petitioner's bylaws, signed by [REDACTED] are dated June 12, 2006. The bylaws of Ministerios Galatas 5:16, supposedly copied later from the petitioner, are dated May 30, 2006.

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. The AAO will therefore enter a finding of fraud and willful misrepresentation of a material fact.

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.

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.

ORDER: The appeal is dismissed.

FURTHER ORDER: The AAO finds that the petitioner and the beneficiary 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.