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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: OCT 15 2008  
WAC 07 139 50288

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: 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.

*fr* *Maura Deadrick*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is 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 an associate pastor. The director determined that the petitioner had not established that it qualifies as a tax-exempt religious organization or that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

On appeal, the petitioner states that it falls under the group exemption granted to the Alaska Baptist Convention. The petitioner further asserts that the director erred in her determination that because the petitioner had not paid the beneficiary, it had not established that the beneficiary worked continuously during the two years immediately preceding the filing of the visa petition. The petitioner stated that it had provided evidence that the beneficiary had been employed by the Philippine Southern Baptist National Assembly of Churches, Inc. The petitioner submits a brief and an additional document in support of the appeal.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The first issue on appeal is whether the petitioner has established that it is a bona fide nonprofit religious organization.

The regulation at 8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

(3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with § 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 § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

The petitioner must either provide verification of individual exemption from the Internal Revenue Service (IRS), proof of coverage under a group exemption granted by the IRS to the denomination, or such documentation as is required by the IRS to establish eligibility as a tax-exempt nonprofit religious organization. Such documentation to establish eligibility for exemption under section 501(c)(3) includes: a completed Form 1023, a completed Schedule A attachment, if applicable, and a copy of the articles of organization showing, *inter alia*, the disposition of assets in the event of dissolution.

The petitioner failed to submit any evidence of its tax-exempt status with the petition. In response to the director's request for evidence (RFE) dated September 7, 2007, the petitioner submitted a copy of an October 30, 1997 letter from the IRS addressed to the Alaska Baptist Convention, Inc. in Anchorage, confirming that organization's status, and that of its subordinate units, as tax exempt under section 501(c)(3) of the Internal revenue Code. The petitioner also submitted an October 21, 1999 letter from the Alaska Baptist Convention, confirming the petitioner's coverage under the group exemption granted to the Convention. The petitioner also submitted a copy of a December 15, 1997 letter from the IRS to the Convention that does not indicate it is a group exemption.

In denying the petition, the director stated that the IRS letter does not indicate that the tax-exemption applied to the group. However, it appears that the director only considered the December 1997 letter. Both of the letters from the IRS reference the initial ruling granted to the Convention in December 1963 and both included the same Federal identification number for the organization. We find that the October 1997 letter sufficiently establishes that the Alaska Baptist Convention received a group exemption from the IRS, and that the petitioning organization is covered under that group exemption.

The evidence submitted therefore sufficiently establishes that the petitioner is a bona fide nonprofit religious organization. We withdraw the director's determination to the contrary.

The second issue on appeal is whether the petitioner established that the beneficiary had been continuously employed in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker.” The regulation 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.”

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on April 26, 2007. Therefore, the petitioner must establish that the beneficiary was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

In an April 4, 2007 letter accompanying the petition, the petitioner stated that the beneficiary was ordained on April 10, 1986 and had “been extended a call” to work for the petitioning organization as an associate pastor. The petitioner provided no evidence of the beneficiary’s prior work experience, however, it stated that the beneficiary’s duties as an associate pastor would be as follows:

[H]is focus will be working with the Filipino population of the community. He will be responsible for conducting all services as assigned by [ ] the senior pastor. The following is a detailed description of those duties: [He] will be charged with the establishment of a Filipino Baptist Church in Ketchikan which will include conducting all the religious services related to that including the ordinances of Baptism and the Lord’s Supper.

In her RFE, the director instructed the petitioner to:

Provide evidence of the beneficiary’s work history beginning April 26, 2005 and ending April 26, 2007 only. Provide a breakdown of duties performed in the religious occupation for an average week. Include the employer’s name, specific dates of employment, specific job duties, the number of hours worked remuneration, level of responsibility and who supervised the work. Ideally, this evidence should come in a way that shows monetary payment, such as W-2 forms, pay stubs, or other items showing the beneficiary received payment. Documentation showing the withholding of taxes is good evidence. However, you may also show payment through other forms of remuneration. If any work was on a volunteer basis, provide evidence to show how the beneficiary supported himself or herself (and family members, if any) during the two-year period and any other activity with which the beneficiary was involved in that would show financial support.

In its response, the petitioner stated that the beneficiary “has and continues to serve as an evangelist with the Philippine National Assembly of Churches, Inc. since 1993. Additionally, he has served as pastor since 1988 in a number of churches.” The petitioner further stated that the beneficiary’s duties in his current position as a “pastor/evangelist” included:

Administrative duties: Scheduling of ministerial activities of the week, month and year, handle all correspondence for the week, review the financial accountability of the church, recruit leaders for various jobs and activities of the church, ensure the maintenance of the church facility.

Shepherding duties: Visit the sick and imprisoned, counsel the discouraged and troubled, ensure the needy are fed and clothed, care for the widows and orphans, pray with the church family.

Exhortation duties: Study the Bible to be prepared and deliver[] sermons and lessons for the congregation, share the good news of salvation through Jesus Christ with the “lost”, live a life that demonstrates Jesus Christ is the Lord of your life.

According to the petitioner, the beneficiary worked as an evangelist with the Philippine National Assembly, Inc. from 1993 to the “present,” as a pastor with The Great Commission of Jesus Christ from 1997 to 2002, and as a pastor with the Payocpoc Baptist Church from 1988 to 1991. The petitioner submitted a copy of an April 10, 1986 certificate certifying that the beneficiary was “ordained to the work of the gospel ministry.” The petitioner submitted no documentary evidence to verify the beneficiary’s work experience. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of “a number of safeguards . . . to prevent abuse.” See H.R. Rep. No. 101-723, at 75 (1990).

Section 101(a)(27)(C)(iii) of the Act provides that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged “principally” in such duties. “Principally” was defined as more than 50 percent of the person’s working time. Under prior law a minister of religion was required to demonstrate that he/she had been “continuously” carrying on the vocation of minister for the two years immediately preceding the time of application. The term “continuously” was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

The term “continuously” also is discussed in a 1980 decision where the Board of Immigration Appeals determined 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 (BIA 1980).

In line with these past decisions 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. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious

worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

On appeal, the petitioner submits a July 25, 2006 "certification" from the Philippine Southern Baptist National Assembly of Churches, Inc. in Northern Samar, Philippines. The document certifies that the beneficiary has been working as an evangelist for the organization since August 1993 and that he "receives a monthly gift of \$480 from our sponsoring Churches." The petitioner submitted no documentation to corroborate any compensation paid to the beneficiary. *Matter of Soffici*, 22 I&N Dec. at 165. Further, the petitioner submitted no documentation to establish that the beneficiary worked full time as an evangelist or pastor during the two years preceding the filing of the petition.

The director also determined that the petitioner had failed to submit sufficient evidence that the duties of evangelist are the same as that of the proffered position of associate pastor.

The petitioner indicated that duties of the proffered position include:

Administrative duties: Scheduling of ministerial activities, handle correspondence for the week, recruit leaders for various jobs and activities of the church. He will also conduct the ordinances of the church  
Shepherding duties: Visit the sick and imprisoned, counsel the discouraged and troubled, ensure the needy are fed and clothed, care for the widows and orphans, pray with the church family.  
Exhortation duties: Study the Bible to be prepared and deliver[] sermons and lessons for the congregation, share the good news of salvation through Jesus Christ with the "lost", live a life that demonstrates Jesus Christ is the Lord of your life.

On appeal, the petitioner asserts that the duties of the proffered position and that of pastor/evangelist are similar and that the duties currently performed by the beneficiary as a pastor/evangelist are the same as those that would be required of him as an associate pastor.

However, the record is not clear that the duties of an evangelist with the Philippine Southern Baptist National Assembly of Churches entail the same job duties as those of an associate pastor of a church. The petitioner's enumeration of the beneficiary's employment history indicates that it distinguishes between the position of evangelist and that of pastor. It is unclear whether the petitioner's description of the beneficiary's current work is a composite of his work as a pastor of the churches identified and those of his work as an evangelist with the Philippine Southern Baptist National Assembly of Churches. The petitioner submitted no documentation from the Philippine Southern Baptist National Assembly of Churches that outlined the beneficiary's duties as an evangelist with the organization.

The evidence therefore does not establish that the beneficiary was continuously engaged in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition. The petitioner submitted no documentary evidence to corroborate the beneficiary's employment and no evidence that he had worked in a full-time compensated position during the qualifying period.

Beyond the decision of the director, the petitioner has not established that it has the ability to pay the proffered wage.

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.

In the letter submitted at the time of filing, the petitioner stated that the beneficiary would be paid a salary of \$1,000 per month, provided housing valued at \$1,200 per month and provided \$50 per month in travel expenses. In response to the director's RFE, the petitioner contradictorily stated that the beneficiary would receive \$2750 per month for "Salary/Housing."

As evidence of its ability to pay the proffered wage, the petitioner submitted a copy of its unaudited financial statements for 2006, a copy of an IRS Form W-2, Wage and Tax Statement, that issued to its senior pastor in 2005, and a copy of an IRS Form W-3, Transmittal of Wage and Tax Statements, by which it submitted the IRS Form W-2 to the Social Security Administration. These tax documents show only that the petitioner had the ability to pay its senior pastor and is not evidence of its ability to pay additional wages.

The petitioner did not submit an audited financial statement and indicated that it did not, and was not required to, file an IRS Form 990, Return of Organizations Exempt from Income Tax. The evidence submitted therefore does not establish that the petitioner has the ability to pay the proffered wage.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied 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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.