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



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

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FILE:

WAC 07 007 50572

Office: CALIFORNIA SERVICE CENTER

Date: **OCT 15 2008**

IN RE:

Petitioner:

Beneficiary:

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.

  
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 a pastor. The director determined that the petitioner had not established 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, that the beneficiary is qualified for the position, or that the petitioner has the ability to pay the proffered wage.

On appeal, the petitioner asserts that the beneficiary “is well qualified for and has been practicing his vocation as a musical worship leader/minister for the last 15 years.” The petitioner submits a brief and additional documentation 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 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:

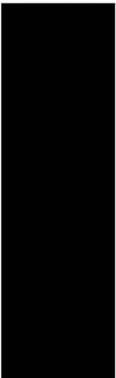
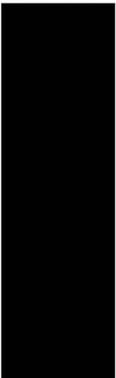
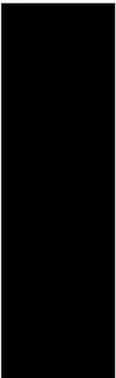
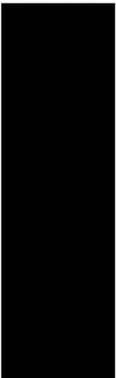
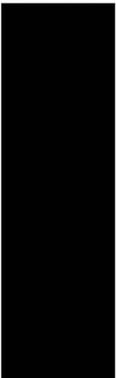
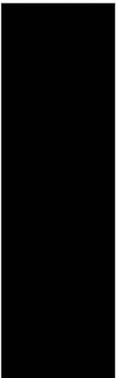
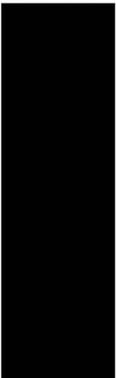
(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(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 October 10, 2006. 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 its July 26, 2007 letter accompanying the petition, the petitioner stated that it has employed the beneficiary in an R-1 nonimmigrant religious worker status in excess of two years. The petitioner stated, “As our pastor, [the beneficiary’s] duties have been and will continue to be: preaching and teaching at our Sunday services, leading Bible studies, overseeing our church’s evangelism and prayer ministries, organizing and leading our weekly worship meeting, and counseling and visiting our members.” The petitioner further stated that the beneficiary would “continue to be paid \$30,000 a year for this full time position.” The petitioner submitted a copy of a certificate of ordination indicating that the petitioner ordained the beneficiary “as a Minister of the Gospel” on July 18, 2006, less than three months before it filed the petition.

The petitioner did not state the specific date that it employed the beneficiary but submitted copies of the beneficiary’s 2004 and 2005 Internal Revenue Service (IRS) Form 1099-MISC, Miscellaneous Income, which indicated nonemployee compensation of approximately \$10,507 and \$26,357, respectively. We note that the 2004 IRS Form 1099-MISC does not reflect the beneficiary’s social security number. The petitioner also submitted copies of monthly bank statements, which included the following checks issued to the beneficiary:

Check No.	Date	Amount
	2/26/06	\$ 1,211.54
	3/12/06	1,687.75
	3/26/06	1,211.54
	3/23/06	100.00
	4/9/06	1,211.54
	4/24/06	1,211.54
	5/7/06	1,211.54
	5/11/06	270.00
	5/21/06	1,211.54
	6/4/06	1,211.54
	6/8/06	<u>1,211.54</u>
Total		\$11,750.07

In a request for evidence (RFE) dated December 11, 2006, the director instructed the petitioner to:

Provide evidence of the beneficiary's work history for the years 2004, 2005, and 2006. Provide experience letters written by the previous and current employers that include 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, number of hours worked per week, form and amount of compensation, and level of responsibility/supervision. In addition, submit evidence that shows monetary payment, such as pay stubs or other items showing the beneficiary received payment. If any work was on a volunteer basis, provide evidence to show how the beneficiary supported himself during the two-year period or what other activity the beneficiary was involved in that would show support.

The petitioner further instructed the petitioner to submit copies of the beneficiary's IRS Form 1040, U.S. Individual Income Tax Return, for the years 2004 through 2006.

In its February 20, 2007 response, the petitioner stated that the beneficiary had been working "in an R-1 status for the last two years and eight months." The petitioner further stated that the beneficiary was an ordained minister and had been "serving in a leadership capacity specifically within the Vineyard denomination for the past seven years." The petitioner stated that the beneficiary serves as "Associate Pastor of Worship, which includes the leading of the worship ministry of the church, teaching as required by the senior pastor, and providing supporting leadership within the church council." According to petitioner, the beneficiary's weekly schedule is as follows:

- Leading the weekly worship ministry: 5 hours
- Preparation for the worship celebration: 6 hours
- Planning meeting with the senior pastor: 2 hours
- Mentoring young adults: 3.5 hours
- Church council leadership: 1 hour
- House church involvement: 2.5 hours
- Mid week worship responsibilities with preparation: 1 hour
- Outreach and evangelistic events: 1 hour
- Pastoral care: 2 hours

The petitioner provided a copy of the beneficiary's 2006 IRS Form 1099-MISC, which listed \$30,777 in "other income." The petitioner also resubmitted the certificate of ordination indicating that it had ordained the beneficiary "as a Minister of the Gospel" on July 18, 2006. However, it also provided a statement dated the same date, in which it "confirmed" that the beneficiary had been ordained as a "full-time" minister. The petitioner stated that, during this period:

[The beneficiary] has served in this capacity for the past two years. He has held the office of interim Senior Pastor for 18 months of this period, as well as that of Associate Pastor of Worship and Adult Education.

His responsibilities and experience within the church have included, but have not been limited to; teaching, worship ministry, pastoral care, and the officiating of the Christian ordinances of marriage, funerals, and baptisms.

In a second RFE dated May 31, 2007, the director instructed the petitioner to submit copies of the beneficiary's tax transcripts from the IRS for the years 2004 through 2006, and again requested information about the beneficiary's work history.

In its August 5, 2007 response, the petitioner stated that the beneficiary had been employed by the church since mid-2004, and reiterated that his duties were those previously discussed in this decision. The petitioner further stated, "The qualifications for the position of Associate Pastor within the Vineyard denomination depend significantly on the area of ministry being specialized in, such as worship, teaching, evangelism, etc. An appropriate level of training, study, and experience is sought by the employing church in question." The petitioner's requirements for ordination provide:

[The petitioner] may ordain ministers upon the recommendation of the Senior Pastor and approval of the Elders. A person may be ordained upon being hired as a full-time minister and/or at least one year of volunteer service within the church, assuming they meet qualifications for an elder as outlined in 1 Timothy chapter 3. Such a candidate, upon being recommended by the Senior Pastor and approved by the Elders, would be ordained during a public worship service of [the petitioning church].

In describing the beneficiary's duties, the petitioner stated that the beneficiary "is employed by the church at 28 hours/week, with the intent to expand his service along with church growth."

In denying the petition, the director noted that the beneficiary was ordained only a few months prior to the filing of the visa petition and the petitioner had not established that the beneficiary worked as an associate minister throughout the qualifying period.

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 asserts that it has clearly demonstrated that the beneficiary “has been practicing his vocation as a musical worship leader/minister for the last 15 years,” and that “as such, the full-time conventional employment standard you reference does not apply. We believe that [the beneficiary] clearly meets the standard of practicing his vocation as one called by God to do so and therefore should be accepted as a permanent resident.” The petitioner further asserts:

[The beneficiary’s] calling is to worship the Lord, Jesus Christ through music and leading others in their worship through music. [He] does NOT have classical training as a preaching minister and has not applied for residency as one. [He] has a true calling to honor God and serve Him through music. He committed his life to answering this calling by serving as a (music) worship leader as his primary focus and from time to time serving as a teaching pastor when called upon by man or God to do so. His history of associations with various Vineyard churches over the last 7 years has all been focused on worshipping God through music. Music is his gift and leading others to worship through music is his calling. Learning from Holy Scripture and Worship through music are central pillars of our faith and have been through history. [Emphasis in original.]

Nonetheless, in its July 27, 2006 letter, the petitioner stated, “As our pastor, [the beneficiary’s] duties have been and will continue to be: preaching and teaching at our Sunday services, leading bible studies, overseeing our church’s evangelism and prayer ministries, organizing and leading our weekly worship meeting, and counseling and visiting members.” The petitioner also noted that the beneficiary was an ordained minister within the denomination. In describing the beneficiary’s duties, the petitioner stated that he was responsible for “teaching, worship ministry, pastoral care, and the officiating of the Christian ordinances of marriage, funerals, and baptisms.” Officiating at marriage, funerals and baptisms is a duty normally limited to an ordained minister, and the petitioner provided no evidence that the beneficiary was qualified to perform these sacerdotal duties prior to his ordination. Further, the petitioner stated that the beneficiary served as interim senior pastor for 18 months, thus implying that he was a fully qualified and ordained minister. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

Additionally, the petitioner admits that it employed the beneficiary for only 28 hours per week. Thus, the petitioner has not established that the beneficiary worked on a full-time basis as a minister during the two-year period immediately preceding the filing of the visa petition. Although the petitioner alleged that the beneficiary would “continue to be paid \$30,000 a year” for his services, documentation submitted indicates that the petitioner paid the beneficiary \$10,507 in 2004 and \$26,357 in 2005. The petitioner failed to submit copies of the beneficiary’s tax transcripts from the IRS as directed by the IRS. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The petitioner further asserts that the “full-time conventional employment standard” does not apply to the beneficiary, and that it believes the beneficiary “clearly meets the standard of practicing his vocation as one called by God to do so.” Nonetheless, while the determination of an individual’s status or duties within a religious organization is not under purview of CIS, the determination as to the individual’s qualifications to receive benefits under the immigration laws of the United States rests with CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

In a 1980 decision, the Board of Immigration Appeals held that part-time ministerial work is not continuous for the purposes of special immigrant classification. *See Matter of Varughese* at 402. An alien seeking classification as a special immigrant minister must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought, and must intend to be engaged solely in the work of a minister of religion in the United States. *See Matter of Faith Assembly Church*, 19 I&N 391, 393 (Comm. 1986).

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 the director rendered the denial decision, has upheld the AAO’s interpretation of the two-year experience requirement. *See Hawaii Saeronam Presbyterian Church v. Ziglar*, 2007 WL 1747133 (9<sup>th</sup> Cir., June 14, 2007).

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 second issue on appeal is whether the petitioner established that the beneficiary is qualified for the proffered position.

The regulation at 8 C.F.R. § 204.5(m)(2) defines minister as:

[A]n individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

The regulation at 8 C.F.R. § 204.5(m)(3)(ii)(B) provides that if the alien is a minister, the petitioner must provide evidence that “he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy.”

As previously discussed, the beneficiary’s certificate of ordination indicates that he was ordained on July 18, 2006, less than three months before the petition was filed. In her December 11, 2006 RFE, the director instructed the petitioner to “Submit evidence to show that the beneficiary has been ordained and the requirements for ordination.” In response, the petitioner resubmitted the beneficiary’s ordination certificate and provided a statement dated July 18, 2006 and signed by the senior pastor and an elder of the church confirming the beneficiary’s ordination. The petitioner did not provide any information on the requirements for ordination within the denomination.

In her May 31, 2007 RFE, the director again instructed the petitioner to

Provide a detailed explanation of the requirements for becoming an Associate Pastor of Worship and Pastor. Include information on the various stages, as appropriate, and the dates on which the beneficiary advanced through such stages. Submit documentary evidence to support such claims.

In response, the petitioner stated:

[The petitioner] may ordain ministers upon the recommendation of the Senior Pastor and approval of the Elders. A person may be ordained upon being hired as a full-time minister and/or at least one year of volunteer service within the church, assuming they meet qualifications for an elder as outlined in 1 Timothy chapter 3. Such a candidate, upon being recommended by the Senior Pastor and approved by the Elders, would be ordained during a public worship service of [the petitioning church].

The director determined that the petitioner had failed to establish that the beneficiary was qualified for the position because it did not provide evidence that the beneficiary was qualified as an elder or evidence of the recommendation for ordainment by the pastor and elders. The petitioner's failure to submit the requested evidence is grounds for denial of the petition. 8 C.F.R. § 103.2(b)(14).

As discussed above, the petitioner states on appeal that the beneficiary was not applying for permanent residence as a "preaching minister" but as a minister of music. The petitioner further asserts that for "over the last 7 years," the beneficiary has "focused on worshipping God through music," and that the evidence establishes that he is qualified for the position.

Despite assertions to the contrary, the petitioner stated in its July 27, 2006 letter accompanying the petition that:

As our pastor, [the beneficiary's] duties have been and will continue to be: preaching and teaching at our Sunday services, leading Bible studies, overseeing our church's evangelism and prayer ministries, organizing and leading our weekly worship meeting, and counseling and visiting our members.

[The beneficiary] is well qualified to serve in this capacity As mentioned, he has worked for our church in R-1 status the last two+ years . . . He is an ordained pastor in the Vineyard Churches, and has met all of our denomination's requirements for ordination.

The petitioner also submitted a copy of the beneficiary's ordination certificate and evidence that he had officiated at a funeral service. The petitioner did not indicate that the beneficiary's duties during his tenure with the petitioner included those of "music minister." It is therefore clear that the proffered position at the time the petition was filed was that of a "preaching minister."

In a February 20, 2007 letter, the petitioner again stated that the beneficiary was "an ordained minister and has been serving in a leadership capacity specifically within the Vineyard denomination for the past seven years." The petitioner's first indication that the beneficiary's duties involved music was in response to the director's second RFE. In its letter dated May 31, 2007, the petitioner stated that the beneficiary's duty as an associate pastor and elder was to lead "the worship ministry of the [petitioning church]. In

addition, his responsibilities include training and coaching worship musicians, teaching, serving as a ministry leader of the church council, and a church elder.”

As noted, a visa petition may not be approved after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. at 49. The petitioner has not established that the beneficiary is qualified for the position of pastor within its denomination. Not only did the petitioner fail to submit evidence requested by the director, but it also changed the description of the duties performed by the beneficiary in the past and those of the proffered position in an attempt to make the beneficiary eligible for the visa petition.

The final issue presented on appeal is whether the petitioner has 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.

The petitioner stated that the beneficiary would be compensated at the rate of \$30,000 per year. The petition was filed on October 10, 2006, therefore, the petitioner must establish that it had the continuing ability to pay the beneficiary the proffered wage as of that date. The petitioner provided a copy of an IRS Form 1099-MISC issued to the beneficiary in 2006, which shows that the petitioner reported to have paid the beneficiary \$30,777 in “other income.” However, the petitioner failed to provide a copy of the beneficiary’s IRS tax transcripts as directed by the director. Therefore, the evidence is insufficient to establish that the petitioner paid the beneficiary the proffered wage in the past.

In an effort to establish its ability to pay the proffered wage, the petitioner submitted copies of its monthly bank statements for January through December 2006, January 2007, and April through July 2007. On appeal, the petitioner submits a copy of its profit and loss statement for the period January 1, 2004 through November 29, 2007, a copy of its November 29, 2007 balance sheet, a copy of payments that it stated it made to the beneficiary from January 1, 2005 through November 29, 2007. The latter document lists check numbers, dates and amounts. However, the petitioner only provides copies of checks issued in February through June 2006, listed previously in this decision. 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 petitioner failed to submit any of the evidence required by the regulation cited immediately above. Therefore, it has failed to establish that it has the ability to pay the proffered wage.

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.