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[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 17 2008
WAC 07 059 50072

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:

[Redacted]

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 separate finding of fraud and willful misrepresentation of a material fact.

The petitioner is identified as a church affiliated with Immanuel Evangelical Holiness 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 evangelist. The director determined that the petitioner had not established: (1) its status as a qualifying tax-exempt religious organization; (2) that the beneficiary had the requisite two years of continuous work experience as an evangelist immediately preceding the filing date of the petition; or (3) that the beneficiary's position qualifies as a religious occupation.

On appeal, the petitioner submits various letters 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).

Before we discuss, in detail, the stated grounds for denial and the petitioner's response thereto, we shall set forth the basis for our finding of fraud, because the facts underlying that finding necessarily color our interpretation of the claims and evidence set forth by the petitioner in support of the petition.

The Form I-360 petition shows the petitioner's address as [REDACTED]. That same address appears on the printed letterhead of a December 22, 2006 letter from [REDACTED], who stated "[o]ur church is located at the owned premises of [REDACTED]." We note that,

despite this reference to “the owned premises of [REDACTED] the petitioner’s financial documents in the record do not list any real estate or building(s) among the petitioner’s assets.

A lease agreement dated March 25, 2005 indicates that the petitioner leased the property in Freehold from [REDACTED]. A worship program dated October 8, 2006 shows the Freehold address; there is no mention of the North Brunswick address. A promotional flier for a November 2005 “Youth Winter Festival” (*sic*) also shows only the Freehold address. The petitioner submitted a photograph that shows a blue and white church and a sign that reads: “New Anointing Church / [REDACTED]. This is the same telephone number shown on the petitioner’s printed letterhead, alongside the Freehold address. [REDACTED] is a Freehold telephone exchange. These materials indicate that the petitioner has represented the Freehold address not merely as a business or mailing address, but as the actual, physical site of church functions.

Because the director’s denial of the petition rested, in part, on the issue of the petitioner’s physical location, the AAO conducted a search of publicly available documents and records. That search revealed that the structures at [REDACTED] New Jersey, and [REDACTED], New Jersey are single-family houses, not churches; the records include photographs of both dwellings.¹ The beneficiary has listed the Freehold address as her home address on tax documents. There is no credible evidence that [REDACTED] ever owned the property or acted as the landlord thereof. Therefore, the above information indicates that the purported March 2005 lease agreement is not authentic. Furthermore, the structure shown in the submitted photograph is clearly a purpose-built church, not the five-bedroom house that is known to be located at the Freehold address. The church shown in the photograph, therefore, is not located at the Freehold address, and the AAO construes the petitioner’s submission of that photograph as an attempt to defraud Citizenship and Immigration Services (CIS).

The petitioner has provided two addresses for the petitioning church, in Freehold and in North Brunswick. Because the structures at both of those addresses are known to be single-family dwellings rather than churches, the AAO has little reason to believe that the petitioning church actually exists as a bona fide church. It appears, rather, that the church exists only “on paper” through corporate and tax filings intended to create the appearance that a functioning church exists.

On March 8, 2008, the AAO notified the petitioner of the AAO’s intent to dismiss the appeal with a finding of fraud. In that notice, the AAO stated:

The alien beneficiary . . . has actively participated in creating the appearance of a church, for instance by signing the certificate of correction to your organization’s certificate of incorporation and by filing tax documents relating to New Anointing Church. The beneficiary has, by actively participating in the petition, sought to procure admission into the

¹ A listing for the North Brunswick property is located at http://www.newstarrealty.com/community/bbs/zboard.php?id=etc&page=23&sn1=&divpage=1&sn=off&ss=on&sc=on&select_arrange=headnum&desc=asc&no=5731; a photograph of the house appears at http://www.newstarrealty.com/community/bbs/data/etc/Áý»çÁø2_1.jpg. The web page at <http://www.zipcodesandmore.com/zipcodesandmore/zipResults.aspx?zip=07728&city=FREEHOLD> includes a listing for the Freehold property; a photograph of that house appears at <http://tours.tourfactory.com/tours/tour.asp?t=394574>. (All sites visited March 4, 2008.)

United States and other benefits provided under the Act by virtue of [her] claimed activity with New Anointing Church.

Section 212(a)(6)(C)(i) of the Act states: "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." Absent independent and objective evidence to overcome, fully and persuasively, our above finding, the AAO will dismiss the appeal and enter a formal finding of fraud or willful misrepresentation into the record. This finding of fraud can be considered in future proceedings in which the beneficiary's admissibility is an issue.

The AAO allowed the petitioner fifteen days to respond to the allegations in that notice. To date, the AAO has received no response from the petitioner or from counsel, and therefore the AAO must conclude that the petitioner has chosen not to contest those allegations. The AAO will, therefore, enter a finding of fraud and willful misrepresentation of a material fact at the conclusion of this decision.

We turn, now, to the merits of the petitioner's petition and the director's findings.

TAX-EXEMPT STATUS

8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization 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 petitioner's initial submission included a letter from the Internal Revenue Service (IRS), issued on August 27, 2004. The church name and Employer Identification Number on the letter match the information shown on the Form I-360 petition. The letter stated, in part: "In May 2004 we issued a determination letter that recognized your organization as exempt from federal income tax . . . under section 501(c)(3) of the Internal Revenue Code." The letter was addressed in care of the beneficiary at [REDACTED] North Brunswick, New Jersey.

On March 22, 2007, the director issued a request for evidence (RFE), noting that the petitioning church is located in Freehold, but the IRS letter was sent to North Brunswick. The director requested evidence to show that the petitioning church in Freehold is tax-exempt. The director also asked why the IRS addressed its August 2004 letter to the beneficiary, even though the beneficiary was not yet authorized to work for the

petitioner at that time. (This latter inquiry appears to presuppose a relationship between the entity in Freehold and the entity in North Brunswick, because the IRS letter was sent to the beneficiary in North Brunswick.)

In response to the RFE, [REDACTED] stated that the IRS addressed its letter to the beneficiary “because she volunteered for our church; also she was a chairman of the Board of Trustees of the corporation.” The petitioner submitted a copy of its New Jersey Sales and Use Tax Exempt Organization Certificate, Form ST-5, showing the church’s Freehold address. The petitioner also submitted copies of utility bills issued to [REDACTED] at the Freehold address. [REDACTED] is the petitioner’s only paid employee other than the beneficiary.

The director denied the petition on July 17, 2007, stating that the petitioner’s New Jersey Form ST-5 did not establish *federal* tax-exempt status, and that “[t]he petitioner has not submitted documentation establishing that the petitioner located at [REDACTED] is connected with the organization holding 501(c)(3) tax exemption located [at] [REDACTED].”

On appeal, [REDACTED] states “the petitioner’s address was changed to [REDACTED] New Jersey.” This assertion does not explain why the petitioner has used both addresses on the same document, such as [REDACTED] initial letter of December 22, 2006. The record contains numerous documents showing the Freehold address that predate, by over a year, other documents showing the North Brunswick address. The existence of IRS Form 8822, Address Change Request, refutes [REDACTED] claim that “there is no form to verify the change of address for the federal tax exemption.”

The record does not establish who owns the North Brunswick property, but the record contains repeated references to that property well beyond the IRS letter.

The petitioner’s Certificate of Incorporation, filed March 26, 2004, stated “[t]he location of the principal office of this corporation is c/o [REDACTED].” That same address was also provided as the residential address of all five members of the petitioner’s Board of Trustees: [REDACTED] (possibly a variant spelling of the beneficiary’s name), [REDACTED] (possibly the same person as [REDACTED]).

A correction to that certificate, filed April 2, 2004, stated “[t]he location of the principal office of this corporation is c/o [the beneficiary], [REDACTED].” That same address was also stated as the residential address of the beneficiary and two other members of the petitioner’s Board of Trustees: [REDACTED]. Two other trustees, [REDACTED], were said to reside at [REDACTED] New York. The beneficiary signed this correction, under the title of “Chairman.”

The available evidence includes several links between the Freehold address and the North Brunswick address. The AAO therefore withdraws the director’s specific finding that the IRS recognition letter does not apply to the petitioning entity. Nevertheless, given that there is no evidence that any church actually exists at either of the addresses that the petitioner has provided, the AAO cannot find that the petitioner is legitimately entitled

to tax-exempt status. The AAO therefore affirms the overall finding that the petitioner has failed to demonstrate that it is a *bona fide* church.

PAST EXPERIENCE

The regulation at 8 C.F.R. § 204.5(m)(1) indicates that the “religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.” 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on December 26, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an evangelist throughout the two years immediately prior to that date.

introduutory letter indicated that “[s]ince her entry into the United States in March 2004, [the beneficiary] has attended and worked for this Church.” signed a “Certificate of Experience” describing the beneficiary’s “Employment Period” as “April, 2004 – Present.”

Income tax documents submitted with the initial filing indicate that the petitioner paid the beneficiary \$3,000 in 2004 and \$18,000 in 2005. We note that the federal tax returns are marked as having been prepared by a paid preparer, but the preparer’s signature does not appear on the copies of the returns. Therefore, the returns do not comply with 26 C.F.R. § 1.6695-1(b)(1), which generally provides that an income tax return preparer must manually sign the return in the appropriate space provided on the return after it is completed and before it is presented to the taxpayer (or nontaxable entity) for signature.

In the RFE, the director requested further evidence of the beneficiary’s work history during the 2004-2006 qualifying period, including evidence of payment or other financial support.

In response, the petitioner submitted additional copies of the beneficiary’s 2004-2005 tax documents and newly available 2006 documents, showing that the petitioner paid the beneficiary \$24,000 in 2006. The petitioner also submitted IRS Forms W-3, Transmittal of Wage and Tax Statements, for 2004 through 2006. stated that the beneficiary began her work as an Evangelist beginning November 1, 2004.” Elsewhere in the same letter, stated that the beneficiary “began working [on] November 11, 2004.”

In denying the petition, the director found that the petitioner had made contradictory assertions, first stating that the beneficiary began working for the petitioner in April 2004, and then asserting that the beneficiary’s employment began in November 2004. The director also noted that the April 2004 correction to the petitioner’s Certificate of Incorporation named the beneficiary as the Chairman of the petitioner’s Board of Trustees. The director found that the petitioner’s claims lacked credibility because of these inconsistencies.

On appeal, asserts that the beneficiary worked as an unpaid volunteer from April through October of 2004, and then, upon attaining R-1 nonimmigrant religious worker status, became a paid worker beginning in November 2004. notes the petitioner’s submission of IRS Forms W-2 and W-3 to establish that the beneficiary received payment throughout the December 2004-December 2006 qualifying period.

Once again, the credibility issues cited in the AAO's finding of fraud come into play here. Given that several of the petitioner's bedrock claims have been discredited by independent evidence, the petitioner's unsupported assertions have negligible weight. 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.

IRS Forms W-2, W-3 and 1040 are not primary evidence of the beneficiary's compensation, because they do not document the financial transactions themselves. When the petitioner and the beneficiary have compromised their credibility, information that they report on tax forms carries greatly diminished weight.

All of the beneficiary's qualifying experience is purported to have taken place at the petitioning church. Because the record contains no credible evidence that the petitioning church physically exists, the AAO cannot see how the beneficiary could have worked for the petitioner during the two-year qualifying period. Given the derogatory evidence, and the petitioner's failure to rebut it, the AAO concludes that claims regarding the beneficiary's experience with the petitioning church are no more credible than the petitioner's claims to have been located at [REDACTED]

The AAO affirms the director's finding that the petitioner has not adequately established that the beneficiary worked continuously as an evangelist throughout the two-year qualifying period.

RELIGIOUS OCCUPATION

The final issue is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) defines "religious occupation" as:

an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined at 8 C.F.R. § 204.5(m)(2). The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

Citizenship and Immigration Services therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination,

that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

described the beneficiary's duties:

1. plan, administer, implement, and monitor missionary programs and activities of the church under the supervision of the pastor;
2. prepare, plan and arrange Sunday School;
3. perform the Sunday liturgy;
4. lead the Bible classes;
5. assist the pastor of church administration;
6. visit the sick and lonely members;
7. provide congregational direction for missionary and evangelism through the use of effective organizational leadership, communication, family and spiritual counseling, fellowship activities, group facilitation, and strategies designed for congregational revitalization;
8. set educational guidelines to provide a diverse curriculum of spiritual enrichment through evangelism and missionary work and expose the congregation to new experiences that provide life long learning opportunities through missionary and evangelism, and conduct Bible Study Classes and teach Bible to church members; and
9. counsel our members, including for the children and youth group.

(*Sic.*) A March 15, 2002 certificate signed by [REDACTED] indicates that the beneficiary "completed [the] Evangelist Training Course in [the] General Training Center of Korea Holiness Immanuel Church."

The director, in the RFE, instructed the petitioner to provide further details about the proffered position, including the "number of hours per week to be spent performing each duty," and to "explain how the duties of the position relate to a traditional religious function." In response, [REDACTED] essentially repeated the list of duties provided earlier and stated that the beneficiary works 35 to 40 hours per week.

In the denial decision, the director quoted the list of duties and stated:

The petitioner did not submit a breakdown of the duties as requested and did not specify the number of hours spent each week doing which duties. The beneficiary's list of duties appear[s] to include some duties which are secular [or] administrative in nature . . . as opposed to religious activities. As the petitioner has not enumerated the number of hours spent by the beneficiary in the accomplishment of each duty as requested, and has already established that the beneficiary has filled secular positions within the organization, the petitioner has not established that the duties performed by the beneficiary's [*sic*] are sufficiently religious in nature. The petitioner has not established that the beneficiary's duties relate to a traditional religious function.

On appeal, [REDACTED] states: “the Evangelist works as a missionary for most of her time,” and provides a breakdown of duties including “Missionary Visit[s],” “Preach[ing]” and “Guiding of the missionary members.” While the duties include administrative functions such as conferences and meetings, sending mailings, and other activities, the described tasks include substantial religious duties.

The AAO harbors no illusions about the credibility of the petitioner in general, or [REDACTED] in particular, but the beneficiary’s position *as described* is consistent with a religious occupation. Our serious doubts as to whether the beneficiary has ever *performed* those duties, or ever intends to do so in the future, should not prejudice a finding narrowly focused on the nature of the described duties. The AAO withdraws the director’s finding that the position is not a religious occupation, with the understanding that although the petitioner has described a qualifying position, there is no credible evidence that the beneficiary actually has worked or will work in that position.

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.

The AAO finds that the petitioner, with the beneficiary’s participation, 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. See 18 U.S.C. §§ 1001, 1546. The AAO will enter a finding of fraud and willful misrepresentation of a material fact.

Additionally, the evidence is not credible and will not be given any weight in this proceeding. If CIS fails to believe 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 fraudulent documents 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 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.