

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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



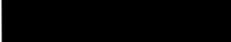
U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

C1



FILE:



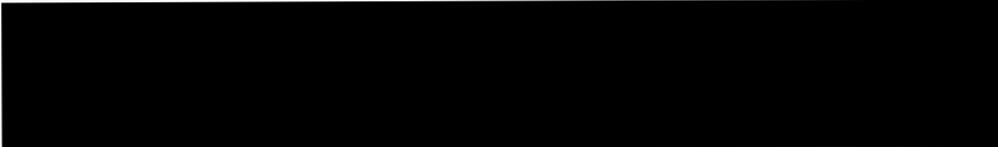
Office: CALIFORNIA SERVICE CENTER

Date: SEP 18 2008

WAC 07 076 53207

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:



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 or that it has the ability to pay the proffered wage.

Counsel for the petitioner timely filed a Form I-290B, Notice of Appeal or Motion, in which he asserted that the director erred in her determination that the petitioner appears to be unable to pay the proffered wage, as the parent church has deposited \$16,000 into the petitioner's treasury. Counsel further asserts that the petitioner submitted sufficient evidence to establish that the beneficiary had been performing full-time work of a religious nature for two years before the filing of the visa petition. Counsel indicated on the Form I-290B that a brief and/or additional evidence would be submitted to the AAO within 30 days of filing the appeal. As of the date of this decision, however, more than a year after the appeal was filed, the AAO has received no further documentation. Therefore, the record will be considered complete as presently constituted.

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 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 January 18, 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.

With the petition, the petitioner submitted copies of church bulletins showing the beneficiary as its pastor, and copies of canceled checks showing that it paid the beneficiary \$6,350 in 2005 and \$3,600 in 2006.

On May 17, 2007, the director issued a request for evidence (RFE) in which she instructed the petitioner to:

Provide evidence of the beneficiary’s work history beginning 1-22-2005 and ending 1-22-2007 only. 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. The experience letters must include a schedule that provides the time of day and detailed description of the exact duties performed for each hour of the work day throughout the entire week. In addition to experience letters, provide documentary evidence that the beneficiary is performing all of the claimed duties. 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 hat other activity the beneficiary was involved in that would show support. [Emphasis omitted.]

In an undated and unsigned document submitted in response, the petitioner stated that the beneficiary had been with the petitioning organization for over two years, and that his duties included:

- Preaching during worships on Sundays
- Teaching during Bible Study on Wednesdays
- Conduct of revival and healing prayer service every Friday
- Counseling of members and non-members of the church
- Administration of Holy Communion rites to church members
- Performance of baptismal rites
- Child christening and dedication

➤ Officiating at Holy Matrimony Services

The petitioner stated that the beneficiary also “made himself available, responding to member’s needs either in person or by telephone” and that he worked an average of 45 hours per week. The petitioner stated that it was paying the beneficiary a \$600 monthly stipend and providing him with accommodations “pending the confirmation of his appointment.” In another undated and unsigned document, the petitioner stated that the church’s other pastor provided the beneficiary with “accommodation in his personal house” and that “[t]his saves the beneficiary the expenses on rent, electricity and heating.” This statement is inconsistent with the petitioner’s statement that the church provides the beneficiary’s accommodations. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The beneficiary also provided an August 1, 2007 sworn statement in which he stated that he did not file federal or state income tax returns because his “total income of \$7,200 is much below the \$8,450 minimum gross income threshold that necessitates the filing of income tax returns.” The beneficiary also stated that he was “able to live on such a limited income in light of the fact that I am provided with free housing by the [petitioner] as well as free utilities (electricity and gas).” However, the petitioner submitted no documentary evidence to corroborate that the beneficiary received any compensation in excess of that submitted with the petition or that he was provided with free housing, either by the petitioner or by another individual. 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.

As noted previously, the petitioner submits no additional documentation in support of the appeal. While the evidence indicates that the beneficiary worked for the petitioner as its pastor, the evidence does not establish that this work was full-time or compensated on a regular basis. The beneficiary claimed to have total income of \$7,200 in 2004, 2005 and 2006. However, the record does not reveal the source of this income. The petitioner submitted copies of processed checks indicating payments to the beneficiary as follows:

Check number	Date	Amount
[REDACTED]	January 3, 2005	\$ 250 (Christmas bonus)
[REDACTED]	January 3, 2005	450
[REDACTED]	February 5, 2005	450
[REDACTED]	March 2, 2005	450
[REDACTED]	March 31, 2005	450
[REDACTED]	April 30, 2005	450
[REDACTED]	May 19, 2005	100
[REDACTED]	September 5, 2005	600
[REDACTED]	October 8, 2005	600
[REDACTED]	October 31, 2005	600
[REDACTED]	November 21, 2005	300
[REDACTED]	December 1, 2005	600
[REDACTED]	December 28, 2005	600
Total		\$5,900
[REDACTED]	February 1, 2006	\$ 600
[REDACTED]	March 2, 2006	600
[REDACTED]	April 2, 2006	600
[REDACTED]	May 2, 2006	600
[REDACTED]	June 1, 2006	600
[REDACTED]	February 3, 2006	600
Total		\$3,600

The record also includes a copy of check number [REDACTED] in the amount of \$450 issued to the beneficiary on September 1, 2004 and processed by the bank on January 24, 2005. A memorandum on the check indicated that it was for the beneficiary's August 2004 salary. A July 11, 2006 check number 1688 to the beneficiary in the amount of \$500 indicated that it was for conference expenses.

Documentation submitted by the petitioner therefore establishes only that it paid the beneficiary \$5,900 in 2005 and \$3,600 in 2006. We note that the petitioner submitted a copy of its 2005 financial report. This report indicates expenditures that included a \$7,750 stipend for a pastor and a \$7,850 salary. We note that church brochures show that the petitioner has two ministers and the copies of the canceled checks show that they issued checks to two ministers in 2005 and 2006. Neither of the amounts equals the income the beneficiary claims he had during the qualifying period or the amount that the petitioner stated it paid to the beneficiary during this period.

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 other issue 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.

In an October 15, 2004 “offer of appointment,” the petitioner stated that the beneficiary would be compensated at the rate of \$23,000 annually, including allowances. As evidence of its ability to pay this wage, the petitioner submitted copies of its December 31, 2005 and December 31, 2006 financial statements accompanied by an accountant’s compilation reports. As the compilations are based primarily on the representations of management, the accountant expressed no opinion as to whether they fairly present the financial position of the petitioning organization. In light of this, limited reliance can be placed on the validity of the facts presented in the financial statements that have been submitted. No further supporting documentation is included in the record to reflect the assertions made by the accountant in the financial documentation, or contained within the unaudited financial statements.

In response to the director’s RFE, the petitioner submitted a November 10, 2006 letter from the General Missionary Headquarters of the Christ Apostolic Church of U.S.A., in which the organization agreed to provide financial assistance in the amount of \$16,000 in support of the beneficiary’s salary. The petitioner submitted a copy of the audited financial statement for the Christ Apostolic Church of U.S.A. for the period ending December 31, 2006. The statement shows total assets of \$756,231, including approximately \$168,140 in cash, and no liabilities. The petitioner, however, submitted none of the documentation required by the above cited regulation to verify that the petitioning organization had the ability to pay the difference in the proffered salary of \$23,000.

Accordingly, the petitioner 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.