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U.S. Citizenship  
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Services

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[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: SEP 24 2008

WAC 06 250 53199

IN RE:

Petitioner:

[Redacted]

Beneficiary:

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

ON BEHALF OF PETITIONER:

[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 on appeal. The AAO will sustain the appeal and approve the petition.

The petitioner is an association of Baptist churches. 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 missionary. The director determined that the petitioner had not established that the beneficiary intends to work solely as a missionary.

On appeal, the petitioner submits a brief from counsel.

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).

Citizenship and Immigration Regulations at 8 C.F.R. § 204.5(m)(4) relate to the terms of employment that the petitioner must establish:

*Job offer.* The letter from the authorized official of the religious organization in the United States must also state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration), or how the alien will be paid or remunerated if the alien will work in a professional religious capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support. In doubtful

cases, additional evidence such as bank letters, recent audits, church membership figures, and/or the number of individuals currently receiving compensation may be requested.

Materials in the record indicate that the beneficiary leads an “Arabic Speaking Fellowship” that aims to convert Muslims in the vicinity of Charlotte, North Carolina. The beneficiary also teaches a course entitled “What is the Muslim World View?”

Internal Revenue Service (IRS) Form W-2 Wage and Tax Statements indicate that the petitioner paid the beneficiary \$22,250 in 2004 and \$30,320 in 2005. A July 14, 2006 pay receipt indicates that the petitioner paid the beneficiary \$1,500 in a semi-monthly pay period, which would annualize to \$36,000 per year before taxes.

On March 2, 2007, the director issued a request for evidence, instructing the petitioner to submit evidence regarding the beneficiary’s work history, the nature of his occupation, and other factors. The director also stated: “A search of public records indicates the beneficiary is involved with Lasercom.LLC, a telecommunications company. Explain this involvement.”

In response, [REDACTED], the petitioner’s Director of Missions, indicated that the beneficiary worked a total of 48 hours per week preparing and teaching classes, conducting visits and counseling, and performing related duties. A newly-available IRS Form W-2 showed that the petitioner paid the beneficiary \$34,428.50 in 2006.

The petitioner submitted a copy of a printout from the North Carolina Department of the Secretary of State, showing that Lasercom.LLC is a “Current-Active” corporation formed on April 16, 2004, with the beneficiary as its registered agent.

The beneficiary stated:

Regarding LASERCOM LLC. In April 2004, I took preliminary steps to establish a business by registering a company in North Carolina. My purpose for establishing this company at that time was to secure the company name “LASERCOM LLC” for future business plans. It is our plan to have my wife and children operate this as a home-based business after we are granted Permanent Resident status in the United States. This will allow our family to assist our children with their college expenses. However, this company has conducted no business and has received no income to this point. Furthermore, our family has no intention to conduct business with this company until we are legally able to do so.

The beneficiary’s IRS Form 1040 income tax return identifies the beneficiary’s occupation as “Church Planter” and that of his spouse as “Homemaker.” The beneficiary reported \$34,429 in “Wages, salaries, tips, etc.,” corresponding to the petitioner’s Form W-2 (rounded to the nearest dollar). On Schedule C, Profit or Loss From Business, the beneficiary indicated that Lasercom LLC provides “Recycal Services [sic]” from the petitioner’s home address. The beneficiary claimed no income from this business in 2006, and claimed \$85 in “Office expense” and \$75 in “Miscellaneous expenses” for a net loss of \$160.

The petitioner also provided copies of the beneficiary's Schedules C for earlier years. The beneficiary reported no income and \$750 in expenses for "Legal and professional services" in 2004 (the year he formed Lasercom LLC). For 2005, the beneficiary again reported no income, and \$110 in expenses (\$75 for "Legal and professional services" and \$35 for "Office expense").

The director denied the petition on August 13, 2007, rejecting the beneficiary's explanation as "self-serving," stating that it is "difficult to believe that the beneficiary will not be involved in the operation of Lasercom LLC," and concluding that the beneficiary "is not coming solely to the United States to engage in his religious occupation."

On appeal, counsel argues that the petitioner has shown that he received no income from Lasercom in 2004, 2005 or 2006, and that "the Petitioner has established all elements required by both the Act and the regulations." Most significantly, counsel observes that the statute does not require that the beneficiary seeks to enter the United States *solely* to engage in a religious occupation; the term "solely" appears in a clause that applies only to ministers at in section 101(a)(27)(C)(ii)(I) of the Act.

The AAO also notes that 8 C.F.R. § 204.5(m)(4) similarly requires only ministers to be solely engaged as ministers. For religious workers who are not ministers, the regulation requires only that "the alien will not be solely dependent on supplemental employment or solicitation of funds for support." Here, the petitioner has demonstrated not only that the beneficiary receives a salary from the petitioner, but also that the salary has increased each year. This salary is consistent with full-time employment. Given that the petitioner pays the beneficiary over \$30,000 per year, it is plain that the beneficiary is not solely dependent on supplemental employment or solicitation of funds for support. There is no evidence that Lasercom is even a viable business, let alone that the beneficiary intends to abandon his religious work in favor of Lasercom.

The petitioner has overcome the grounds for denial stated in the director's decision, and the AAO's appellate review of the record has revealed no new grounds for denial. The petitioner has already passed a site check conducted pursuant to a memorandum from Michael Aytes, Associate Director, Domestic Operations, and [REDACTED], Division Chief, Office of Fraud Detection and National Security, *Standard Operating Procedures for Religious Worker Petition Anti-Fraud Enhancements* (July 5, 2006).

The burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden. Accordingly, the petition shall be approved.

**ORDER:** The appeal is sustained. The petition is approved.