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U.S. Citizenship
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Services

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FILE: WAC 08 033 50965 Office: CALIFORNIA SERVICE CENTER Date: **JUN 24 2009**

IN RE: Petitioner:
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:

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.


John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO remanded the matter to the director for issuance of a new decision under substantially revised regulations. The director again denied the petition and, on the AAO's instruction, certified the decision to the AAO for review. The AAO will affirm the director's decision to deny the petition.

The petitioner was initially identified as a Protestant Christian church belonging to the United Evangelists Association. The petitioner 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 women's minister. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous and lawfully authorized work experience as a minister immediately preceding the filing date of the petition. The director also found that the petitioner had not established its ability to compensate the beneficiary.

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.4(a)(2) indicates that the petitioner may submit a brief within 30 days after the director serves notice of a certified decision. The director issued the certified denial on March 21, 2009. The permitted time period has elapsed, and the AAO has received no response to the certified denial. The AAO therefore considers the record to be complete as it now stands.

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 September 30, 2009, 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 September 30, 2009, 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).

When the petitioner filed the petition on November 14, 2007, older regulations governed the special immigrant religious worker program. Subsequently, however, Congress enacted the Special Immigrant Nonminister Religious Worker Program Act, Pub. L. No. 110-391, 122 Stat. 4193 (2008).¹ As required under section 2(b)(1) of that statute, USCIS promulgated a rule setting forth new regulations for special immigrant religious worker petitions. Supplementary information published with the new rule specified: “All cases pending on the rule’s effective date . . . will be adjudicated under the standards of this rule. If documentation is required under this rule that was not required before, the petition will not be denied. Instead the petitioner will be allowed a reasonable period of time to provide the required evidence or information.” 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008).

Section 557(b) of the Administrative Procedure Act (APA), 5 U.S.C. § 557(b), provides that an initial agency decision is not final if “there is an appeal to, or review on motion of, the agency within time provided by rule.” Because there was a pending appeal in this proceeding when the new statute became law, the matter is still pending and therefore subject to the new rule.

Because the regulations under which the petition was originally adjudicated are no longer in effect, we will discuss the early stages of this proceeding only as they relate to the director’s more recent decision. We will concentrate, instead, on how the petitioner’s evidence relates to the regulations now in effect, and the director’s actions under those new regulations.

The first stated basis for denial concerns the beneficiary’s authorization to work in the United States.

The USCIS regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the beneficiary has been working as a minister or in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States, continuously for at least the two-year period immediately preceding the filing of the petition. The regulation at 8 C.F.R. § 204.5(m)(11) reads, in part: “Qualifying prior experience during the two years immediately preceding the petition . . . if acquired in the United States, must have been authorized under United States immigration law.”

On the Form I-360 petition, filed November 14, 2007, the petitioner indicated that the beneficiary entered the United States on September 6, 1993. Under “Current Nonimmigrant Status,” the petitioner wrote “I-360 APPLICANT,” which is not a valid nonimmigrant status. Asked whether the beneficiary “ever worked in the U.S. without permission,” the petitioner answered “No.” Church

¹ The use of the term “nonminister” in the name of the statute simply acknowledges that certain provisions of the statute that pertained to nonministers – but not to ministers – had expired and therefore required reauthorization in order to remain in effect. Therefore, the term “nonminister” does not mean that the new regulations apply only to nonministers. Many key provisions in the regulations, including the provisions relating to past experience, apply equally to both ministers and nonministers.

██████████ signed Form I-360 under penalty of perjury, affirming that the information provided with the petition was true and correct. In a letter accompanying the petition, ██████████ stated that the beneficiary worked for the petitioner “during the period from October / 2002 to present.”

The director’s initial denial of the petition on March 10, 2008, did not address the issue of the beneficiary’s claimed past experience. The director revisited the issue, however, after the AAO issued its remand order. On December 23, 2008, the director issued a notice of intent to deny the petition, instructing the petitioner to submit “evidence that the beneficiary has been working for at least the two-year period immediately preceding the filing of the petition,” as well as “evidence that the beneficiary was employed while in lawful status.”

In response to the notice, ██████████ stated that the beneficiary “has been working for us since 2002.” ██████████ did not address the issue of the beneficiary’s immigration status during that time. At no time has the petitioner submitted any evidence that the beneficiary was in lawful immigration status that would have permitted her to work for the petitioner, either during the 2005-2007 qualifying period or at any other time. The petitioner’s claim on Form I-360 that the beneficiary never worked in the United States without permission is not evidence of the beneficiary’s lawful status. 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 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

The director issued a notice of certification on March 21, 2009, denying the petition. The director stated:

On December 23, 2008 the petitioner was requested to provide evidence that the beneficiary was employed in lawful immigration status. This evidence was not submitted. DHS [Department of Homeland Security] records indicate that the beneficiary was granted voluntary departure on October 29, 2002, however, she did not depart the country. Therefore, any employment since that time would have been illegal.

The petitioner has not responded to the notice of certification. We agree with the director’s finding that the petitioner has not shown that the beneficiary’s claimed employment was authorized under United States immigration law.

We note that, prior to the certified denial, the director did not advise the petitioner of the beneficiary’s failure to abide by her voluntary departure agreement. Even if we disregard the voluntary departure issue, it remains that the petitioner provided no evidence of the beneficiary’s lawful status in response to a specific request to do so.

We further note that the petitioner’s initial submission contained Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal. On that

form, dated November 10, 2007, the beneficiary claimed to have been removed from the United States on January 8, 2001. On line 20 of the form, for the address of her “present residence,” the beneficiary provided the California address of the petitioning entity. The record does not show that the beneficiary left the United States in 2001 as claimed. The record does show, however, that the beneficiary was already in the United States in late 2007, when she filed Form I-212.

The second and final issue raised in the director’s 2009 decision concerns the petitioner’s ability to compensate the beneficiary.

The USCIS regulation at 8 C.F.R. § 204.5(m)(10) reads:

Evidence relating to compensation. Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

In a letter submitted with the petition, _____ stated: “We pay compensations in cash without deductions to [the beneficiary], we report the firms 1099MISC and 1096 forms [*sic*].”

Photocopied “Record[s] of Payments of Compensations” dated from January 2005 to October 2007 indicate that the petitioner paid the beneficiary twice a month. Most of the records indicate payments of \$91 in the first half of the month and \$92 in the second half, totaling \$183 per month, except for the first two months of each year, when the amounts shown are \$92 and \$93, totaling \$185 per month. These claimed pay records indicate that the petitioner paid the beneficiary \$2,200 per year.

Copies of Internal Revenue Service (IRS) Form 1099-MISC Miscellaneous Income Statements likewise indicated that the petitioner paid the beneficiary \$2,200 per year in both 2005 and 2006. Copies of the petitioner’s IRS Form 1040 income tax returns for those two years reflect this same information. We note that the beneficiary’s 2005 and 2006 tax returns are both dated May 31, 2007, after the filing deadline for both returns. The unsigned copies are not certified by the IRS, so there is no direct evidence that the beneficiary filed these returns with the IRS. There is also no direct evidence that the petitioner filed the Forms 1099-MISC with the IRS.

On December 14, 2007, the director issued a request for evidence (RFE), instructing the petitioner to submit documentary evidence of payments to the beneficiary. In response, _____ stated that the beneficiary “has worked in our congregation from October of 2002 till the present. . . . In one

week she completes a total of 40 hrs and receives an income of \$2,200.00 a year. The church provides [the beneficiary with] her immediate necessities.”

The petitioner submitted profit and loss statements for calendar years 2005 through 2007, marked as having been “audited” by [REDACTED] containing the following information:

	2005	2006	2007
Gross Income	\$46,270.00	\$46,270.00	\$50,475.00
Deductions:			
Minister Ordained Fees	7,811.00	7,811.00	7,811.00
Professional Fees	950.00	1,050.00	1,100.00
Accounting Fees	1,050.00	1,150.00	1,250.00
Supplies	925.00	950.00	1,150.00
Occupancy	18,600.00	18,600.00	18,600.00
Telephone	305.00	295.00	315.00
Total Deductions	<u>29,461.00</u>	<u>29,856.00</u>	<u>30,226.00</u>
Net Profit	16,629.00	16,414.00	20,249.00

A copy of the commercial lease for the petitioner’s premises confirmed that the petitioner paid \$1,550 rent per month, equal to \$18,600 per year. This accounts for the “Occupancy” figure. Copies of telephone bills from October 2007 to January 2008 contain the following figures:

Month	New charges	Overdue	Total
October 2007	\$39.49	\$45.20	\$84.69
November 2007	42.01	0.00	42.01
December 2007	40.88	47.93	88.81
January 2008	40.15	95.20	135.35

The amounts shown on the telephone bills indicate that the petitioner incurs charges of about \$40 per month, which would approach \$500 per year. This is substantially higher than the amounts shown on the profit and loss statements. The bills also show that the petitioner has repeatedly been delinquent in paying its telephone bills. These delays in payment do not readily suggest that the petitioner had sufficient funds on hand to pay those bills. We note that the telephone bills are in [REDACTED] name, not the petitioner’s name, and that the bills include “Residence Flat Rate Serv[ice].”

The petitioner provided no documentary evidence, such as bank statements, to confirm the other figures listed in the profit and loss statements.

The director denied the petition on March 10, 2008, in part because the beneficiary could not realistically support herself on \$2,200 per year and the petitioner had not shown that the church could pay a higher amount. On appeal from that decision, [REDACTED] claimed:

The beneficiary receives \$2,200.00 per year not including housing, food, clothing and amenities provided in full and at no cost to her. The Ministry rents out a room for her in a home of a Brother of God. Rent for the room is \$350.00 and includes utilities and other expenses. The Ministry also provides food and necessities worth up to \$300.00 per month.

The petitioner submitted original (not copied) Requests for Housing, signed by the beneficiary and purportedly dated January 2, 2006 and January 2, 2007. On each of these forms, the beneficiary requested the following support:

Rent Payment	\$350.00
Food and Clothing	300.00
Monthly Cash Payment	40.00
Total Monthly	690.00
Total Annually	8,280.00

The above table is not consistent with the profit and loss statements submitted previously. The record contains no first-hand documentary evidence to prove that the petitioner, or any other entity, ever made such payments to the beneficiary.

The petitioner submitted copies of its bank statements from all of 2006, January 2007, December 2007 and February 2008. We will focus on the 2006 statements, which represent the only complete year of bank statements. The statements do not show payments matching the requests for housing or the beneficiary's previously claimed salary payments. The only regular payments shown on those statements are monthly \$1,550 checks, which match the monthly rent payments for the church premises. In many months, the \$1,550 rent check was the only check issued. The statements for May, June and July 2006 each show payment of an overdraft fee, indicating that the petitioner's bank balance was not sufficient to cover withdrawals. These repeated overdrafts do not inspire confidence in the petitioner's ability to cover its financial obligations.

Leaving aside the monthly \$1,550 checks mentioned above and bank service charges, the petitioner withdrew only \$2,909 from its bank account in all of 2006, \$2,000 of which was in a single transaction on November 3. The bank statements do not show regular payments to the beneficiary of about \$90 twice a month, as initially claimed. They also do not show that the petitioner has contributed \$690 per month toward the beneficiary's support, as the petitioner later claimed.

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). Section 204(b) of the Act, 8 U.S.C. § 1154(b), provides for the approval of immigrant petitions only upon a determination that "the facts stated in the petition are true." False, contradictory, or unverifiable claims inherently prevent a finding that the petitioner's claims are true. See *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Systronics Corp. v. I.N.S.*,

153 F. Supp. 2d 7, 15 (D.D.C. 2001); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988).

The 2006 bank statements also show deposits totaling \$22,521.04 for the year. This is less than half the \$46,270.00 claimed as “gross income” on the profit and loss statement for 2006 (which, [REDACTED] claimed, resulted from an “audit” of church finances). The petitioner did not explain why the numbers on the 2006 bank statements do not match the petitioner’s previous claims about its expenses that year. The petitioner has effectively presented three mutually contradictory accounts of its finances for 2006.

In the December 23, 2008 notice of intent to deny the petition, the director requested “evidence of how the petitioner intends to compensate the alien.” including IRS documentation if available. In response, [REDACTED] claimed that the beneficiary “is provided with free room and board and [is] given a monthly amount of \$183.00 for any other necessity she may have.” The petitioner submitted copies of previously submitted documents, but no new documentation to show payments to the beneficiary in any amount at any time.

The petitioner also submitted copies of more recent telephone bills, showing that the petitioner’s delinquent payments at times exceeded \$160. These bills reinforce the existing impression that the petitioner is only occasionally able to pay its telephone bills.

In the certified denial notice, the director asserted that \$2,200 per year is not sufficient for the beneficiary’s support, and that the petitioner had not submitted any evidence that it supports the beneficiary in any other way. The director concluded “the evidence is insufficient to establish that the petitioner will be able to compensate the beneficiary for [her] employment in the United States.”

The petitioner has not contested the director’s finding. We agree with the director’s uncontested finding that the petitioner has not established its ability to compensate the beneficiary.

Review of the record brings another issue to our attention. 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).

USCIS regulations at 8 C.F.R. § 204.5(m)(8) set forth the requirements relating to the petitioner’s standing as a religious organization:

Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization; or
- (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or
- (iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, as something other than a religious organization:
 - (A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;
 - (B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;
 - (C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and
 - (D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

The petitioner initially claimed affiliation with the United Evangelists Association (UEA). The petitioner frequently placed the initials "UEA" after its name in several places, including the Form I-360 petition and the beneficiary's credentials. The initial filing of the petition included copies of the following documents:

- A Certificate of Ordination, indicating that the UEA had ordained [REDACTED] as a minister on March 1, 1994. The certificate shows the signatures of [REDACTED] and [REDACTED]
- An undated letter from [REDACTED] to "[REDACTED]", welcoming "your church to be affiliated with the United Evangelists Association."
- A November 6, 1999 letter from [REDACTED] stating: "[REDACTED] is the Pastor of [REDACTED] that he [sic] is beginning on behalf of the United Evangelists Association." The letter also provided the UEA's nine-digit

Employer Identification Number (EIN). This same EIN appears on the Form I-360 and the IRS Forms 1099-MISC in the record.

- A UEA Certificate of Church Affiliation dated November 21, 1999 and signed by [REDACTED] and [REDACTED]
- A letter signed by [REDACTED] and [REDACTED], affirming that the petitioner, at the address shown on the Form I-140, “is affiliated with the UNITED EVANGELISTS ASSOCIATION and is . . . authorized to collect, receive funds and to grant tax deductible receipts under the United Evangelists Association’s Internal Revenue Service tax exempt number.”
- A City of Inglewood Business Tax Certificate Renewal Delinquent Notice issued to [REDACTED] (*sic*) at the petitioner’s address. The certificate includes [REDACTED] name, as well as that of the UEA.
- A March 7, 2006 letter from the IRS to the UEA, confirming that the UEA and “the subordinates named on the list you submitted [are] exempt from federal income tax under section 501(c)(3) of the [Internal Revenue] Code.” The letter shows the same EIN listed on the documents described above.

In response to the director’s December 14, 2007 RFE, the petitioner again submitted copies of documents asserting affiliation with the UEA.

On appeal from the initial denial of the petition, the petitioner submitted a copy of IRS Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, which [REDACTED] signed on December 31, 2007. The record contains no evidence that the petitioner actually filed the application.

After the director issued the notice of intent to deny the petition on December 23, 2008, [REDACTED] stated: “[The petitioner] was believed to be covered as a bona fide non-profit organization and is exempt from taxation by the United Evangelist Association. . . . but were later informed we weren’t.” [REDACTED] offered no explanation as to how the petitioner mistakenly came to believe it was affiliated with the UEA. (The letterhead of this newest letter continues to use the initials “UEA” after the petitioner’s name.) The admission that no such affiliation exists casts doubt on all the claimed UEA documents submitted previously.

The petitioner submitted another copy of its IRS Form 1023. [REDACTED] claimed “We submitted the form 1023 but have not received a response from the IRS.” [REDACTED] requested “extra time” to allow for resolution of this question. A petition, however, must be approvable as of its date of filing. The beneficiary of an immigrant visa petition must be eligible at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Therefore, a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Commr. 1998). If the petitioner was not already recognized as a 501(c)(3) tax-exempt religious

organization at the time it filed the petition in November 2007, then the petitioner cannot remedy this deficiency by filing IRS Form 1023 at a later date.

Throughout most of this proceeding, the petitioner claimed to be a qualifying tax-exempt religious organization through affiliation with the UEA. The petitioner has since admitted that this affiliation does not exist. Therefore, the petitioner has not established that it is a qualifying tax-exempt religious organization. This finding is an additional basis for denial of the petition.

The AAO will affirm the denial of the petition 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.

ORDER: The director's decision of March 21, 2009 is affirmed. The petition is denied.