

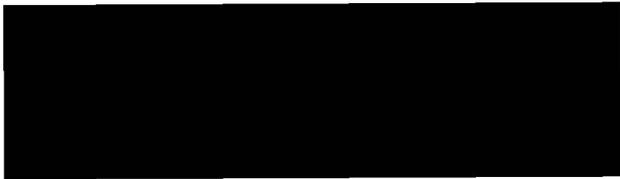
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: NOV 25 2009
WAC 07 187 54751

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.


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) remanded the matter for consideration under new regulations. The director again denied the petition and, following the AAO's instructions, certified the decision to the AAO for review. The AAO will affirm the director's decision.

The petitioner is a member of the United Presbyterian Churches in America. 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 the director of the petitioner's music ministry. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous qualifying work experience immediately preceding the filing date of the petition, or that the petitioner had made a qualifying job offer to the beneficiary.

In response to the certified decision, the petitioner submitted copies of previously submitted materials and a brief from counsel.

In this decision, the term "prior counsel" shall refer to _____ who represented the petitioner at the time the petitioner filed the petition. The term "counsel" shall refer to the present attorney of record.

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, 2012, 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, 2012, 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 U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(2) requires that the beneficiary must be coming to the United States to work in a full time (average of at least 35 hours per week) compensated position in a qualifying religious occupation or vocation.

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 petition was filed on June 6, 2007. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work throughout the two years immediately prior to that date.

[REDACTED] of the petitioning church, stated: "Assuming approval of our petition, [the] Beneficiary . . . will be paid \$16,800.00 a year as Director of Music Ministry, the rate of remuneration he is currently being paid."

A work schedule submitted with the petition indicated that the beneficiary worked the following hours:

Monday	6:00 a.m. – 8:00 a.m.
Tuesday	7:00 p.m. – 11:00 p.m.
Wednesday	7:00 p.m. – 11:00 p.m.
Thursday	7:00 p.m. – 11:50 p.m.
Friday	9:00 p.m. – 11:00 p.m.
Saturday	7:00 a.m. – 9:00 a.m. 6:00 p.m. – 11:00 p.m.
Sunday	8:00 a.m. – 1:00 p.m. 2:00 p.m. – 5:00 p.m.

Tax documents showed the petitioner's annual \$16,800 payments to the beneficiary. These materials also indicated that the beneficiary received \$22,000 in dividends from Multi Cellular Inc. in 2005. The petitioner was the beneficiary's only reported source of income in 2006. The preparer of the beneficiary's tax returns was [REDACTED].

[REDACTED]. The petitioner's articles of incorporation identify the same [REDACTED], with the same address, as the incorporator of the church.

Bank documents showed that the beneficiary received several overseas wire transfers, all in amounts between \$1,000 and \$10,000, from 2004 to 2007.

On November 30, 2007, the director issued a request for evidence (RFE). The director requested "a list of the beneficiary's employment history for 2005, 2006, and 2007; include any employment/paid work outside of the church." The director specifically instructed the petitioner to state "the days of the week,

location, and times the choir performs for the church." The director also requested information regarding Multi Cellular, Inc.

In response to the notice, prior counsel stated: "The Beneficiary is a shareholder of [Multi Cellular] since 2003, and is not involved in the management or operation of the business." The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Therefore, we must consider what evidence the petitioner submitted to support this claim. The only such evidence the petitioner submitted consists of an unsigned statement, indicating that an unidentified "[s]tore manager run[s] this business."

Copies of Internal Revenue Service (IRS) Form 1099-DIV Dividends and Distributions statements reflect the previously reported \$22,000 dividend from Multi Cellular in 2005, but also showed a \$20,189.59 dividend in 2006 that the beneficiary did not report on his tax return for that year (prepared by [REDACTED]). An IRS Form W-2 Wage and Tax Statement showed that the petitioner paid the beneficiary only \$12,600 in 2007, which is only nine months' pay at the stated rate.

With respect to choir performances, prior counsel stated: "Please refer to 'Work History of Beneficiary.'" That document included a section labeled "Schedule for the entire week." The schedule (which does not match the earlier schedule) showed the following hours. Many, but not all, of these periods involved the choir:

Monday	6:00 a.m. – 7:30 a.m.
Tuesday	8:00 p.m. – 12:00 p.m.
Wednesday	7:00 p.m. – 11:00 p.m.
Thursday	7:00 p.m. – 10:00 p.m.
Friday	8:30 p.m. – 11:00 p.m.
Saturday	7:00 a.m. – 8:30 a.m. 7:00 p.m. – 11:00 p.m.
Sunday	8:00 a.m. – 1:00 p.m. 2:00 p.m. – 5:00 p.m.

The director denied the petition on May 15, 2008, stating that the petitioner had not established a full-time job offer for the beneficiary (the first schedule shows a 32-hour week; the second schedule shows a 28¼-hour week). The director also noted that "State of Georgia public records indicate the beneficiary is the Chief Executive Officer, Chief Financial Officer, Secretary, and agent for Multi Cellular, Inc.," not merely a "shareholder" as previously claimed. The petitioner found that the petitioner's claims lacked credibility, and that the available evidence suggested that the beneficiary would continue to derive most of his income from activities outside the petitioning church.

On appeal, counsel claimed that the beneficiary's IRS Forms W-2 showed that "the beneficiary received from the petitioner the same wage of \$16,800 in 2007, 2006, and 2005 and filed the tax returns accordingly." The petitioner submitted copies of a 2007-dated Form W-2, showing that the

petitioner paid the beneficiary \$16,800 that year. The petitioner did not explain why there exist two different versions of the 2007 Form W-2 issued to the beneficiary. The fact remains that the petitioner previously submitted the W-2 showing \$12,600, and we cannot reasonably fault the director for taking that document into consideration. The petitioner's attempt to address this problem by submitting a new Form W-2 that contradicts the old one raises more questions than it answers.

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.

Counsel stated that the two versions of the beneficiary's work schedule did not match because "the initial schedule submitted with the [Form] I-360 was for 2007 and the schedule submitted in response to the RFE was for 2008." The schedule submitted in response to the RFE was marked "Work History of Beneficiary," implying that it referred to past work.

In a new letter, [REDACTED] stated:

[The beneficiary] has worked for our church over 40 hours per week. [The beneficiary's] schedule was made pursuant to our official worship hours. As director of music ministry, [the beneficiary] is required to praise with our choir at least 30 minutes before service. Therefore, 30 minutes should be added to every session of [the beneficiary's] work hours. In addition to official morning services on Monday and Saturday, our church holds morning services every weekday in which [the beneficiary] leads for praise. The time for preparation and every day morning services should be included in [the beneficiary's] weekly hours. If those hours are included, [the beneficiary] works over 40 hours per week.

Newly revised schedules for 2007 and 2008 show two-hour services every weekday morning. [REDACTED] did not explain why neither prior version of the beneficiary's work schedule included the substantial time described above, even after the director specifically requested a complete schedule of choir activities. If the earlier schedules were based on the petitioner's "official worship hours," then it is not clear why those schedules contained no mention of "morning services every weekday." The director had previously requested a detailed and complete schedule of the beneficiary's working hours, but the petitioner never mentioned any additional preparation time until after the director indicated that a part-time schedule could not qualify the beneficiary for classification as a special immigrant religious worker. As with the revised 2007 Form W-2, this letter suggests that the petitioner has revised its claims to meet USCIS requirements.

Certified Public Accountant [REDACTED] of YS Accounting & Tax Service stated:

I have handled all tax matters of Multi Cellular, Inc. since 2003. . . .

When the company was established, [the beneficiary] was listed on the corporate documents as the officer and agent of the Company because he was the 100% shareholder. Since its incorporation, however, [REDACTED] was selected as the officer and has operated the Company. Although [the beneficiary] received dividends from the Company as shareholder, he has not engaged in the management of the Company. [REDACTED] should have been registered as the CEO, CFO, Secretary, and agent of the Company in 2003. No one from the company realized that [the beneficiary] was listed as the officer with the Georgia Secretary of States [*sic*]. . . .

We requested an application of reinstatement from the Secretary of State office. . . . We are still currently waiting for the form to be delivered to the corporate address. Once we receive the form, we will correct the officer information of the company to [REDACTED] who has managed the company since 2008 [*sic*].

The petitioner's 2008 filing of a form with the Georgia Secretary of State does not explain why the beneficiary was previously listed as the chief executive officer of Multi Cellular for several years. This after-the-fact modification would not be sufficient, even without the petitioner's established pattern of making new claims on appeal to explain away potentially disqualifying evidence or information. The petitioner submitted no contemporaneous documentation of the regular operations of Multi Cellular. Also, if the beneficiary was never an officer of the corporation, then the early filings contained false statements while concealing the true identity of the corporation's officer(s). The beneficiary's unexplained role with Multi Cellular is particularly significant when we consider that every version of the church schedule leaves the beneficiary free during weekday business hours.

Regarding the wire transfers, the beneficiary's mother, [REDACTED], stated that the funds "came from his bank and income from his real estate." The petitioner submitted documentation of the beneficiary's bank accounts and real estate holdings in Korea. This evidence, from sources other than the petitioning church and YS Accounting & Tax Service, appears to be credible on its face.

On December 15, 2008, the AAO remanded the petition for a new decision based on the revised regulations. On February 4, 2009, the director instructed the petitioner to submit attestations and evidence to meet the new evidentiary requirements. In response, among other documents, the petitioner submitted another copy of the revised 2007 IRS Form W-2 showing that the petitioner paid the beneficiary \$16,800. The petitioner did not mention the earlier version of the form that showed only \$12,600 paid to the beneficiary.

The petitioner submitted a draft budget for 2009, showing \$16,800 earmarked for the beneficiary and \$24,000 for the pastor's salary. A previously submitted IRS Form 990 return indicated that the petitioner's pastor, [REDACTED], works only 30 hours per week. (That same Form 990, prepared by [REDACTED] indicated that the church's financial books are in the beneficiary's care.)

The director again denied the petition on May 6, 2009, stating: "By providing vague and inconsistent accounts of the beneficiary's employment history, pay, hours [and] duties, the petitioner has failed to meet the burden of proof." The director also found that the beneficiary's reliance on outside income cast doubt on the sufficiency of the job offer.

In response to the certified decision, counsel states:

[The director's decision] does not mention any inconstancy of the beneficiary's employment history, hours, and duties. . . . [The o]nly inconsistency mentioned . . . is the beneficiary's remuneration from the petitioner.

The [director] argues that the beneficiary had not been employed on a full-time basis because his wage was reduced to \$12,600 in 2007 from \$16,800 in 2006. . . . This conclusion does not have any factual basis. The beneficiary's W-2 form for 2007 . . . clearly shows that the beneficiary received the wage of \$16,800 from the petitioner in 2007.

(Counsel's emphasis.) Because a different attorney represented the petitioner in the earlier stages of this proceeding, counsel may be unaware of the petitioner's prior submission of a Form W-2 showing that the petitioner paid the beneficiary \$12,600 in 2007. Nevertheless, such a document is definitely in the record. The second version of the 2007 Form W-2 did not surface until after the petitioner retained counsel's services. Whether or not counsel knew of the earlier Form W-2, the fact remains that the petitioner has submitted two conflicting Forms W-2 for the same year, which forces the logical conclusion that at least one of those forms must contain incorrect information. The two forms cannot both be correct and accurate.

As for inconsistencies in the beneficiary's "employment history, hours and duties," the petitioner has submitted multiple versions of the beneficiary's weekly schedule. The assertion that the revised schedule applied to 2008 rather than 2007 does not explain why the petitioner originally labeled the revised schedule "Work History." The petitioner then added more than ten hours to both versions of the schedule, only after it became apparent that the classification requires full-time employment.

8 C.F.R. § 204.5(m)(2) requires the beneficiary to work at least 35 hours per week. The petitioner's original schedules show less than 35 hours per week, and the beneficiary's earnings from the church have been considerably lower than those of its part-time pastor. The petitioner has not credibly shown that the beneficiary's work for the church has been, and will continue to be, full-time.

With respect to the beneficiary's financial situation, counsel stated that the regulations do "not require the petitioner to pay the beneficiary a livable wage" (counsel's emphasis). 8 C.F.R. § 204.5(m)(7)(xii) requires the prospective employer to attest to its ability and intention to compensate the alien at a level at which the alien and accompanying family members will not become public charges.

The record reflects that the beneficiary has substantial assets in Korea, as well as income from Multi Cellular. The petitioner has argued that the beneficiary's income from Multi Cellular has been investment income rather than earned (employment-based) income, but the petitioner's credibility is suspect in this proceeding. We find that the petitioner, on whom the burden of proof rests, has not satisfactorily established that the beneficiary's income from that secular, for-profit business has come from his investment alone, rather than any ongoing involvement in the operation of the business.

We agree with the director's finding that serious inconsistencies in the evidence submitted by the petitioner has given rise to serious questions about the credibility and reliability of the petitioner's claims regarding the beneficiary's past experience and intended future work. 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 burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will affirm the director's decision.

ORDER: The director's decision of May 6, 2009 is affirmed. The petition is denied.