

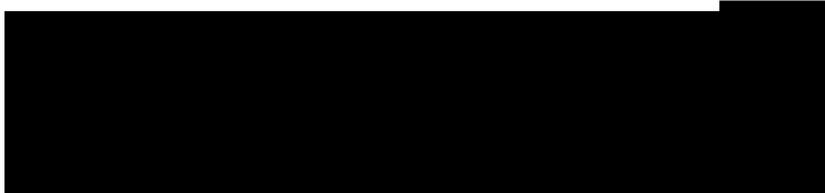
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: DEC 15 2010

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)

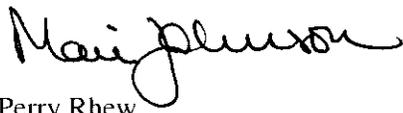
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,


Perry Rhew
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 AAO will withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, the AAO will remand the petition for further action and consideration.

The petitioner is an evangelical Christian church affiliated with the [REDACTED]. [REDACTED] 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 minister. The director determined that the petitioner had submitted sufficient evidence regarding the beneficiary's intended compensation.

On appeal, the petitioner submits statements from church officials and copies of financial records.

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 . . . ; 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)(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 [Internal Revenue Service] 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.

The petitioner filed the Form I-360 petition on January 29, 2009. The petitioner indicated that the beneficiary "is given a gross monthly salary of \$3000.00 (\$1,423.50/every 15th and 30th of the month – value minus deductions). Moreover, he receives love offerings in monetary form and in kind."

Copies of IRS Form W-2 Wage and Tax Statements indicate that the petitioner paid the beneficiary \$24,000 in 2007 and \$19,500 in 2008. The petitioner did not explain why the beneficiary's compensation dropped from 2007 to 2008. The 2007 form shows the petitioner's previous name, [REDACTED] but the same employer identification number and state identification number, indicating a change of employer name rather than a change of employer.

On March 20, 2009, the director instructed the petitioner to submit evidence of its intent to compensate the beneficiary, including the documentation listed in the regulation at 8 C.F.R. § 204.5(m)(10). In response, the petitioner's [REDACTED], stated:

For the fiscal years 2007 and 2008, [the petitioner] has been reporting collections at an average of \$6,738 a month and in the form of tithes and offerings from our Church members. . . . During the first quarter of 2009, we have averaged \$9,472 per month. The monthly collection has been more than sufficient to cover our commitment of Three thousand dollars (\$3,000) for [the beneficiary's] monthly compensation (\$1,000 of which is housing allowance). This monthly compensation was effective 10/1/2008.

The petitioner submitted photocopies of three checks, showing the following information:

Date	Amount	Notation
March 29, 2009	\$1,423.50	Salary 03/16-03/31
April 12, 2009	300.00	Love gift
April 12, 2009	1,423.50	Salary 4/01-4/15

The photocopied checks do not show any indication of processing for payment. Copies of the beneficiary's bank statements from January through March 2009 show the following deposits, with handwritten annotations on the copies:

Date	Amount	Notation
December 31, 2008	\$1,523.50	Salary & L.O. [love offering]
January 5, 2009	500.00	L.O.
January 16, 2009	1,323.50	Salary
January 28, 2009	80.00	L.O.
February 2, 2009	1,423.50	Salary
February 9, 2009	85.00	L.O.
February 17, 2009	1,423.50	Salary
February 17, 2009	250.00	L.O.
March 10, 2009	50.00	Love Offering
March 16, 2009	1,923.50	Salary & Love Offering

The above payments generally reflect semimonthly payments of \$1,423.50, as claimed, but the mid-January payment fell \$100 short and there is no evidence of a payment at the end of February.

The director denied the petition on May 30, 2009, stating that the petitioner did not submit sufficient financial documentation, and that the IRS Forms W-2 show annual compensation well below the \$36,000 that the petitioner claims it will pay the beneficiary. On appeal, [REDACTED] identified as an officer of the petitioning church, states: "The apparent decrease in income earned from 2007 as reflected in the Form W2 . . . merely reflected the treatment of part of the gross compensation as housing allowance that was non-taxable income." [REDACTED] provides the following table of the beneficiary's compensation:

	Salary	Housing	Total
Jan 07 – Jun 07	\$15,000	\$0	\$15,000
Jul 07 – Dec 07	9,000	6,000	15,000
Total 2007	24,000	6,000	30,000
Jan 08 – Sep 08	13,500	9,000	22,500
Oct 08 – Dec 08	6,000	3,000	9,000
Total 2008	19,500	12,000	31,500

The petitioner is correct in asserting that a member of the clergy can exclude a reasonable housing allowance from his or her gross income. See IRS Publication 517, "Social Security and Other Information for Members of the Clergy and Religious Workers," page 8.¹ Therefore, we would expect the taxable salary shown on Form W-2 to be lower than the beneficiary's total compensation.

The petitioner submits partial copies of bank statements, showing payment of several checks. The petitioner also submitted bank-issued copies of processed checks. Together, these two sources show a general pattern of twice-monthly payments to the beneficiary in the following amounts:

Date range	Amount
January – February 2007	\$1,163.88
February – October 2007	1,171.38
November 2007 – June 2008	1,188.13
July – October 2008	1,192.63
October 2008 onward	1,423.50

Copies of the beneficiary's bank statements show deposits that correspond to the checks listed above. The bank documents show that the petitioner paid the beneficiary the full amount in mid-January 2009. The lower amount deposited into the beneficiary's account, therefore, is consistent with the beneficiary having deposited most, but not all, of the paycheck, and having cashed the balance. The petitioner's

¹ Available at <http://www.irs.gov/pub/irs-pdf/p517.pdf> (relevant excerpts added to the record November 16, 2010).

statements also show monthly ending balances in excess of \$20,000, showing that the one missing paycheck from early 2009 was not the result of the petitioner's inability to provide that payment. The petitioner submits budget documents consistent with the above information, and a notarized resolution showing that the beneficiary receives a part of his compensation as a housing allowance.

We note that it is not clear whether the petitioner is meeting all applicable IRS reporting requirements with respect to the housing allowance. For our purposes, it is enough that the record persuasively shows that the petitioner has paid the beneficiary more than the amount reported as salary on IRS Form W-2. The record, therefore, does not establish systematic underpayment of the beneficiary's compensation, or cast doubt on the petitioner's ability or intention to compensate the beneficiary at the offered level in the future.

We withdraw the director's finding regarding the beneficiary's compensation. Because that issue was the only stated ground for denial, we withdraw the denial decision in its entirety.

Although the record shows no affirmative basis for denial, we will not yet approve the petition outright. The USCIS regulation at 8 C.F.R. § 204.5(m)(12) states:

Inspections, evaluations, verifications, and compliance reviews. The supporting evidence submitted may be verified by USCIS through any means determined appropriate by USCIS, up to and including an on-site inspection of the petitioning organization. The inspection may include a tour of the organization's facilities, an interview with the organization's officials, a review of selected organization records relating to compliance with immigration laws and regulations, and an interview with any other individuals or review of any other records that the USCIS considers pertinent to the integrity of the organization. An inspection may include the organization headquarters, satellite locations, or the work locations planned for the applicable employee. If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition.

Therefore, we will remand this matter for a compliance review in order to verify the petitioner's claims and ensure compliance with USCIS requirements. If the petitioner passes the compliance review, we instruct the director to approve the petition. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.