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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**

C₁

[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **DEC 17 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:

[REDACTED]

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

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 dismiss the appeal.

The petitioner is a church of the Assemblies of God denomination. 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 it has the ability or intention to pay the beneficiary's proposed salary, or that the beneficiary's intended work is primarily religious in nature.

On appeal, the petitioner submits financial documents, some of them previously submitted.

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 first issue under discussion concerns the beneficiary's intended compensation. 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 October 17, 2008. In a letter accompanying the initial submission, counsel initially stated: "The beneficiary has and will be paid \$230.00 (U.S.D.) per week." Portions of this sentence have been obscured with correction fluid and overwritten in pen, so that the sentence now reads: "The beneficiary will be paid \$500.00 (U.S.D.) per week."

The petitioner submitted an uncertified copy of IRS Form 990, Return of Organization Exempt From Income Tax, prepared by Tax House Corporation [REDACTED]

The return included the following figures:

Total revenue	\$3,150,922
Total expenses	2,735,485
Excess for the year	415,437
Net assets at end of year	3,286,324
Compensation of officers	132,080
Salaries and wages	504,070

The petitioner also submitted copies of bank statements showing a monthly balance between \$12,000 and \$22,000 in the first three months of 2008.

A list of claimed payments to the beneficiary in 2008 shows fluctuating amounts, with a general pattern showing that the weekly net payments (after withholding) began at \$199.87, then increased to \$230.00, then decreased slightly to \$225.00. The list also shows other payments to the beneficiary in various amounts, some less than \$100 and others over \$750. The list, with the heading "All Transactions for [the beneficiary] / January through December 2008," indicates that the petitioner paid the beneficiary a total of \$12,012.62 for that calendar year.

Copies of processed checks from late 2008 substantiate some but not all of the payments claimed on the list mentioned above. Several checks are marked "Non-Employee Compensations 1099." Others, for \$524.00 or \$624.00, are marked "Rent/House Allowance."

Copies of pay receipts show annual gross pay totals of \$6,625.00 for 2006, \$13,250.00 for 2007, and a year-to-date total of \$3,225.00 as of April 1, 2008. The petitioner did not submit pay statements for the six months immediately prior to the October 2008 filing date. The information submitted indicated that, in the past, the petitioner had paid the beneficiary about half of the proposed salary.

On February 5, 2009, the director issued a request for evidence (RFE), instructing the petitioner to submit evidence newly required under revised regulations. Among other things, the director instructed the petitioner to submit IRS documentation and other financial evidence required under the regulation at 8 C.F.R. § 204.5(m)(10).

In response to the RFE, the petitioner submitted copies of previously submitted materials, as well as new documents. The petitioner submitted payroll documents from ADP Tax Filing Service, indicating that the company had “filed the Quarterly 941 Return,” but the petitioner did not submit the quarterly returns themselves. The ADP documents show the following figures:

Quarter	No. of employees	Compensation paid
1, 2007	31	\$169,586.00
2, 2007	32	183,461.00
3, 2007	32	185,166.00
4, 2007	30	162,904.00
1, 2008	32	160,474.00
2, 2008	30	35,419.00
3, 2008	6	29,766.00
4, 2008	6	30,766.00

The above figures seem to indicate that the petitioner reduced its staff by 80% early in the second quarter of 2008. The totals for 2008 agree with an IRS Form W-2 Wage and Tax Statement indicating that the petitioner had 34 employees in 2008, who earned a total of \$256,425.00.

Individual Forms W-2 for the beneficiary indicate that the petitioner paid him \$6,625.00 in 2006, \$13,250.00 in 2007 and \$3,225.00 in 2008. These amounts match the yearly totals on the previously submitted pay receipts.

Copies of processed checks, marked “Non-Employee Compensations 1099,” show that the petitioner continued to pay the beneficiary \$225.00 per week into late 2008. The beneficiary reported paying the beneficiary \$7,842.00 in “Nonemployee compensation” on IRS Form 1099-MISC, Miscellaneous Income, in 2008. Thus, the petitioner paid the beneficiary as an employee for only the first three months of 2008, and afterward paid him as a “nonemployee.” This transition coincides with the significant drop in employees and salaries shown on the petitioner’s payroll documents. Therefore, it appears that, sometime around April 2008, the petitioner reclassified the beneficiary as a contractor rather than an employee, and began reporting his compensation on IRS Form 1099-MISC instead of Form W-2.

The director denied the petition on May 30, 2009, stating that the beneficiary’s past compensation was so low that it casts doubt on the beneficiary’s ability to support himself without outside employment. The director concluded: “the petitioner failed to submit evidence that would pertain to the petitioner’s ability to pay.” The director did not discuss any financial evidence apart from IRS Forms W-2.

On appeal, [REDACTED] senior pastor of the petitioning church, states that the director did not give due consideration to the Form 990 returns that the petitioner has submitted. [REDACTED] states: "Although these income tax returns were not 'IRS-certified federal tax returns (all pages, signed),' the applicable regulation does not require 'IRS certified, signed tax returns.'" The regulation at 8 C.F.R. § 204.5(m)(10) calls for "IRS documentation, such as IRS Form W-2 or certified tax returns." The director quoted this regulation in the denial notice. A certified return verifies that the information submitted to USCIS matches the return filed with the IRS.

[REDACTED] observes that the petitioner had submitted copies of the beneficiary's IRS Forms W-2 for 2006 through 2008. These documents, however, showed a salary barely half the amount stated previously by counsel. [REDACTED] also observes that the petitioner made additional, non-salary payments to the beneficiary, to cover housing and other expenses. Even taking these payments into account, there is no evidence that the petitioner has ever compensated the beneficiary at a rate approaching \$500.00 per week. The beneficiary's total claimed 2008 compensation, according to the "All Transactions" list that the petitioner submitted, was less than half that amount.

Newly submitted copies of checks show that the petitioner paid the beneficiary \$756.00 per month in 2007 for "Rent/House Allowance." The petitioner has not explained why that monthly amount dropped in 2008, as shown by the checks submitted previously.

The petitioner has claimed that the beneficiary's future compensation will significantly exceed his documented past compensation, but the record contains no credible evidence to reflect this intention. We therefore agree with the director's finding that the petitioner has not satisfactorily shown that the beneficiary will receive \$500.00 per week as claimed.

The second and final stated basis for denial concerns the nature of the beneficiary's intended employment. The director, in the denial decision, framed the issue in reference to the beneficiary's past experience, but the director's arguments relate more to the definitions of relevant terms found in the regulation at 8 C.F.R. § 204.5(m)(5). That regulation defines a "minister" as an individual who:

- (A) Is fully authorized by a religious denomination, and fully trained according to the denomination's standards, to conduct such religious worship and perform other duties usually performed by authorized members of the clergy of that denomination;
- (B) Is not a lay preacher or a person not authorized to perform duties usually performed by clergy;
- (C) Performs activities with a rational relationship to the religious calling of the minister; and
- (D) Works solely as a minister in the United States, which may include administrative duties incidental to the duties of a minister.

Religious occupation means an occupation that meets all of the following requirements:

- (A) The duties must primarily relate to a traditional religious function and be recognized as a religious occupation within the denomination.
- (B) The duties must be primarily related to, and must clearly involve, inculcating or carrying out the religious creed and beliefs of the denomination.
- (C) The duties do not include positions that are primarily administrative or support such as janitors, maintenance workers, clerical employees, fund raisers, persons solely involved in the solicitation of donations, or similar positions, although limited administrative duties that are only incidental to religious functions are permissible. . . .

Counsel's introductory letter included a two-and-a-half page list of the beneficiary's "Major Duties and Responsibilities." Excerpts follow:

A. Preaching and Worship Leadership (50%)

The Pastor:

Prepares sermons that are relevant and that challenge members and unchurched individuals to become fully devoted followers of Christ. . . .

Meets weekly with the leadership to critique prior worship services and plans/agrees on worship services regarding music selection, transitions, humor, atmosphere, etc.

Assists with planning of special worship services. . . .

B. Leadership Development and Discipleship (15%)

The Pastor:

Takes the initiative in recommending and implementing actions that fulfill the vision and mission of the church.

Selects and meets with leadership team. . . .

C. Vision, Creativity and Strategic Planning (15%)

The Pastor:

Implements the vision of the church.

Leads staff and Session in developing strategic plan and vision. . . .

D. Teaching and Discipleship (10%)

The Pastor:

Organizes and teaches a weekly congregational Bible study series that provides an in-depth look at and interprets Scripture.

Teaches multiple sessions of New Members Class pertaining to the following subject areas:

- What the Bible says about the church.
- What we believe at church.

- Vision, philosophy of ministry and covenant of behavior.
- Personal testimony.

E. Congregational Relations and Pastoral Care 5%

The Pastor:

- Maintains a “high touch” ministry.
- Hospital calling.

Conducts baptisms, weddings and funerals as requested and needed . . .

Presents special programs. . . .

(Numbering omitted.) In the February 2009 RFE, the director asked the petitioner to clarify “whether the beneficiary will be working in a vocational capacity or a ministerial capacity.” In response, the petitioner stated, in an attestation:

The Pastor is responsible for the spiritual welfare, overall program, growth and life of the church. He provides spiritual leadership in all areas of evangelism and discipleship, which requires creating, communicating and coordinating vision with the leadership, staff and lay leaders as they minister and serve the church family and community.

The Pastor is also responsible for the oversight and leadership of worship services and special events. He is responsible to the church for providing spiritual and administrative leadership of the church; and uses his skills in proclamation and pastoral care to meet the needs of persons in the church and community.

That same attestation indicated that the petitioner employed 14 employees, but identified only three job titles: pastor, minister of education and minister of music. The petitioner submitted an employee list containing 31 names. Twenty-one of those 31 employees hold the title of “Pastor” (including a “Pastor Presidente” and “Pastor Vice Presidente”). The petitioner did not explain why it claimed only 14 employees, while simultaneously identifying 31 employees.

The petitioner also submitted copies of previously submitted materials. The petitioner did not directly answer the question of whether it considers the beneficiary to be a minister or some other type of religious worker, although the petitioner’s repeated submission of what purport to be ordination documents suggests that the petitioner considers the beneficiary to be a minister.

In denying the petition, the director concluded: “no evidence has been submitted to establish that the duties of a ‘Pastor’ are normally performed in the petitioner’s religious denomination by a remunerated full-time permanent employee and not part time workers or volunteers.”

On appeal, the petitioner repeats the description of the beneficiary’s duties that first appeared in the initial submission. The petitioner submits a copy of the Bylaws of the General Council of the Assemblies of God, which list “[t]hree classifications of ministry” at Article VII, Section 1: “the ordained minister, the licensed minister, and the certified minister.” In describing his particular duties, it is significant that the petitioner never uses the word “minister” in reference to the beneficiary.

The petitioner refers to the beneficiary as “the pastor” and asserts that “the pastor” is responsible for Sunday morning worship services. We cannot ignore, however, that the petitioner has claimed that two-thirds of its employees are pastors at a single church. The petitioner also attested that the church has 350 members, indicating that the petitioner employs a pastor for every 17 members. The petitioner’s inconsistent claims about its number of employees (ranging from six to 14 to 32) raise further questions.

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.

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).

When considering the petitioner’s inconsistent claims, along with its very high number of pastors on staff, we note that the petitioner acknowledges that it has filed 18 immigrant and nonimmigrant religious worker petitions in the five years preceding the filing of the present petition. All of the petitioner’s claimed pastors appear to have begun working for the petitioner in 2004 or later. Given the high number of claimed pastors and apparent high turnaround rate, it is not clear how many pastors the petitioner has employed out of a genuine need for their services. We agree, therefore, with the director’s basic finding that the petitioner has not established that the beneficiary’s intended employment serves a primarily religious purpose.

A related issue presents itself, beyond the director’s decision. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The regulation at 8 C.F.R. § 204.5(m)(9) requires the petitioner to submit certain documents relating to the qualifications of a minister. Here, the petitioner has submitted uncertified translations of the beneficiary’s theological seminary transcript and ordination certificate. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3).

Because the translations are uncertified (and do not even identify the translator), the translations do not meet the regulatory requirements. Therefore, even if we were to find that the petitioner seeks to employ the beneficiary as a minister, the petitioner has not properly documented the beneficiary's credentials as such.

The AAO will dismiss the appeal 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. The petitioner has not met that burden.

ORDER: The appeal is dismissed.