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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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**U.S. Citizenship
and Immigration
Services**

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FILE: SRC 06 143 53454 Office: CALIFORNIA SERVICE CENTER Date: **JAN 07 2010**

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:



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 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 a member church of the North American branch of the Redeemed Christian Church of God (RCCG). 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 satisfactorily passed a site inspection, and that tax records failed to identify the source of much of the beneficiary's income. In addition, the director determined that the petitioner had misrepresented material facts in the proceeding.

On appeal, the petitioner submits a brief from counsel and numerous documents, some of them copies of previously submitted materials.

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)(12) reads:

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.

The petitioner filed the petition on April 4, 2006. In a letter accompanying the initial submission, of the petitioner's Board of Trustees, stated:

[The beneficiary] was ordained as an Asst. Pastor on August 8, 2000 and has since occupied many ministerial positions . . . before being employed at the U.S. branch in November, 2003. He was ordained as a full Pastor on June 15, 2005. . . .

He's compensated with a base salary of \$2,000.00 per month. Other fringe benefits will apply as they become available. His salary is paid solely from the church funds and he filed his income tax appropriately. The beneficiary will also receive honorarium from preaching engagements in other RCCG Parishes and other religious organizations.

A copy of a December 22, 2005 "Reconfirmation of Appointment" letter from [REDACTED] to the beneficiary indicates that the beneficiary's "base salary will be \$2,000.00 per month; that is: **Salary \$1,000.00, and Housing \$1,000.00** with effect from January 1, 2006."

The petitioner submitted copies of the beneficiary's ministerial credentials, as well as various promotional materials and church publications referring to the beneficiary's religious work in Nigeria and in the United States.

The petitioner also submitted copies of the beneficiary's Internal Revenue Service (IRS) Form 1040 income tax returns for 2004 and 2005, along with copies of IRS Form W-2 Wage and Tax Statements. The 2004 documents indicate that the [REDACTED] Stafford, Texas, paid the beneficiary \$6,120, while the [REDACTED] in Chicago, Illinois paid the beneficiary \$1,000 in salary, \$5,000 for housing, and \$1,000 for utilities. On his tax return, the beneficiary reported \$7,120 in salaries (consistent with the above) and also reported \$1,700 in "other income," specified elsewhere on the return as "ministry income." The IRS documents include nothing to identify the source of the "other income." The petitioner did not submit copies of income tax schedules to show that the reported \$1,700 was what remained, after expenses, of the \$6,000 received for housing and utilities.

The 2005 return shows an IRS receipt stamp showing timely filing on February 17, 2006. IRS Forms W-2 indicate that [REDACTED] paid the beneficiary \$2,400, while the petitioning church paid the beneficiary \$11,624 in “clergy hsg [housing]” in 2005. The beneficiary reported the former amount as salaries on his tax return, and the latter amount as “net profit” on Schedule SE, Self-Employment Tax. The beneficiary reported no other income.

The petitioner submitted photocopies of monthly pay receipts from [REDACTED] in the following amounts:

Date	Paying Entity	Annotation	Amount
March 2004	[REDACTED]	Housing & Utilities	1,200.00
April 2004	[REDACTED]	Housing & Utilities	1,200.00
May 2004	[REDACTED]	Housing & Utilities	1,200.00
June 2004	[REDACTED]	Housing & Utilities	1,200.00
July 2004	[REDACTED]	Housing & Utilities	1,200.00
August 2004	[REDACTED]	Salary	1,200.00
September 2004	[REDACTED]	Salary	1,200.00
October 2004	[REDACTED]	Burial Assistance	1,000.00
October 2004	[REDACTED]	Salary	1,200.00
November 2004	[REDACTED]	Salary	1,200.00
December 2004	[REDACTED]	Salary & Bonus	1,320.00
January 2005	[REDACTED]	Salary	1,200.00
April 2005	The petitioning church	Housing	1,030.00
May 2005	The petitioning church	Housing	1,030.00
May 2005	[REDACTED]	Housing Allowance	1,200.00
June 2005	The petitioning church	Housing	1,030.00
June 2005	[REDACTED]*	Housing Allowance	1,200.00
July 2005	The petitioning church	Housing	1,030.00
July 2005	[REDACTED]	Housing Allowance	1,200.00
August 2005	The petitioning church	Housing	1,030.00
August 2005	[REDACTED]	Housing Allowance	1,200.00
September 2005	The petitioning church	Housing	1,030.00
October 2005	The petitioning church	Housing	1,030.00
October 2005	[REDACTED]	Housing Allowance	1,200.00
November 2005	The petitioning church	Housing	1,030.00
December 2005	The petitioning church	Housing	1,030.00
January 2006	The petitioning church	Salary & Housing	2,000.00
February 2006	The petitioning church	Salary & Housing	2,000.00

The asterisks (*) denote payments for which the paying entity is not identified, but can be inferred from available information (such as year-to-date totals). The above figures indicate that nearly all of the beneficiary’s 2005 compensation was provided in the form of housing allowances, often provided simultaneously by two sources. Each 2006 payment is divided evenly between salary and housing, as

specified in the December 2005 job offer letter. There are no pay documents for February and March 2005, but from the year-to-date amount on the April 2005 statements we can calculate that the beneficiary received \$2,354.00 in housing allowances earlier in the year.

On May 1, 2007, the director issued a request for evidence, stating:

You have indicated that the beneficiary will be remunerated for services at \$2,000 per month (\$1,000 housing allowance and \$1,000 salary). However, the beneficiary's financial documents do not corroborate this. The beneficiary's tax documents for the years 2004 and 2005 indicate that the beneficiary received wages of \$7,120 in the year 2004, and \$2,400 in the year 2005. Provide a statement regarding this discrepancy.

The director also questioned whether the beneficiary's church salary was sufficient to support himself and his family.

In response, [REDACTED] stated:

The beneficiary's salary of \$2000 per month took effect from January 2006. Please refer [to] the letter of re-confirmation of employment dated December 22, 2005. . . .

- In 2004 the beneficiary's salary was \$1200 per month. The earned clergy total financial income of the Beneficiary with housing was about **\$13,920.00** and the enclosed W2s reflect that and he paid Tax on his total gross earned clergy financial income. He neither had a supplementary job nor solicited for any.
- The issue of wage of \$2400 in 2005 was an Administrative error . . . in which some monthly wages of the beneficiary were paid and documented as housing in
However, the beneficiary earned a total financial paid income amount (housing inclusive) of about **\$22,424.00**. The W2s also reflect this and he paid Tax on his total gross clergy income. He neither had a supplementary job nor solicited for any.
- In January 2006 the beneficiary's salary of \$2000 per month took effect. . . . He earned a total financial income amount (Housing inclusive) of about **\$24,000.00** and other ministry income of **\$2900**, making a total earned income amount of **\$26,900.00**. He paid Tax based on his total income. The attached W2s also reflects [*sic*]. He neither had a supplementary job nor solicited for any.

(Emphasis in original.) The petitioner also submitted a copy of the beneficiary's 2006 income tax return, with a January 25, 2007 IRS receipt stamp, on which the beneficiary reported \$12,000 in salary and \$2,900 in "ministry income." The accompanying IRS Form W-2 showed \$12,000 in salary and another \$12,000 for "clergy hsg."

On July 30, 2008, a USCIS officer visited the petitioning church, which occupied two suites in an office building, and spoke to the beneficiary and to [REDACTED]. The beneficiary indicated that he was the

only employee of the petitioning church, although five volunteers also performed some work for the church. [REDACTED] wore the uniform of an emergency medical technician and said little during the discussion.

On October 7, 2008, the director issued a notice of intent to deny the petition, based in part on “uncertainty of church income” and related factors. The director instructed the petitioner to obtain a Social Security report to show whether the beneficiary had received income from outside the church. The director also stated that the “field investigation . . . concluded that the petitioner has violated Section 212(a)(6)(C)(i) of the Immigration and Nationality Act by submitting to USCIS a petition containing willful misrepresentation of material facts in order that the beneficiary may gain an immigration benefit.”

We note that, while it is certainly possible for an organization or corporation based in the United States to commit fraud or misrepresentation on behalf of an alien, the director’s citation of section 212(a)(6)(C)(i) of the Act is misplaced. That section reads as follows: “Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.” Whatever other civil or criminal penalties may result from such behavior, a United States entity cannot be in violation of section 212(a)(6)(C)(i) of the Act, because the entity is not an alien that can be found inadmissible.

In response to the notice, [REDACTED] stated that the petitioner had personally founded the petitioning church in 2003, and that every RCCG church begins under humble circumstances before expanding. [REDACTED] asserted that it is unfair to judge the church’s viability based on its temporary location in rented office space. [REDACTED] added that he, himself, “owns and operates the EMT business in . . . the same office building” that contains the petitioning church, and is “a member of the Board of Trustees of the Petitioner, and not an ambulance driver that was conscripted to speak for the Petitioner.”

The petitioner submitted a printout from the Social Security Administration, showing the following income information:

Year	Self-employment income	Wage income
2004	\$497.00	\$6,120.00
2005	10,735.00	2,400.00
2006	9,633.00	12,000.00
2007	6,492.00	12,000.00

The director denied the petition on February 25, 2009, stating that the Social Security report shows “self employment income . . . not shown anywhere on the submitted tax return[s].” The director found that “USCIS can not determine how this income was derived.” The director also found that the petitioner had failed to pass a compliance review, and therefore the petition could not be approved.

On appeal, counsel argues that the director ignored documentation of the beneficiary's ministerial credentials and other evidence that the petitioner is a *bona fide*, fully functioning church. Counsel observes that, because [REDACTED] is an unpaid, volunteer member of the petitioner's board of trustees (as noted by the officer who visited the church and spoke to him), it is unremarkable that [REDACTED] has a job outside the church.

The petitioner submits a copy of the 2008 edition of IRS Publication 517, *Social Security and Other Information for Members of the Clergy and Religious Workers*. Page 8 of that publication states: "Ordained, commissioned, or licensed ministers of the gospel may be able to exclude the rental allowance or fair rental value of a parsonage that is provided to them as pay for their services. . . . This exclusion applies only for income tax purposes. It does not apply for [self-employment] tax purposes." This provision would explain why the beneficiary reported "self-employment" income over and above his salary from the church. In this context, the amounts shown on the Social Security printout do not strongly suggest outside employment.

For the reasons explained above, we will withdraw the director's stated ground for denial. Nevertheless, USCIS cannot approve the petition until and unless the petitioner resolves certain issues.

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).

8 C.F.R. § 204.5(m)(7) requires the alien's intending employer to complete and sign a detailed attestation with information about the employer, the alien, the nature of the proposed employment and compensation, and other information. At the time of filing in 2006, the regulations did not yet require such an attestation. The requirement came into existence with the publication of new regulations on November 26, 2008. Since that date, the director has not informed the petitioner of this requirement or requested its submission. Submission of this attestation is a necessary condition for approval.

More substantially, there is an issue regarding the beneficiary's secular activities. Section 101(a)(27)(C)(ii)(I) of the Act requires that the beneficiary must seek to enter the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination.

In the October 2008 notice of intent to deny the petition, the director advised the petitioner that the beneficiary had registered a business called [REDACTED]. In response to that notice, [REDACTED] stated:

[REDACTED] came into being only in July 2007 when a friend of the beneficiary in Nigeria requested that the beneficiary should help him buy some computers in the U.S. and ship them to him in Nigeria. To place an Order for the

Computers, a business name was necessarily required. Secondly the beneficiary's friend in Nigeria requires an Invoice with a business name to enable his bank in Nigeria [to] transfer money back into the U.S., hence the business name registration. . . . Moreover, since the first quarter of this year [2008] the beneficiary has ceased from any such transaction.

The petitioner submitted no evidence to support the above claims. These claims are not self-evident. For instance, it is not clear why the beneficiary could not order the computers under his own name, and therefore had to create "a business name." With respect to the assertion that [REDACTED] was never a business venture for the petitioner, the director must provide the petitioner an opportunity to submit first-hand documentation (such as invoices and bank documents) to show how much the beneficiary spent to order and ship the computers, and how much he received from his unidentified "friend in Nigeria." If he received anything beyond his own expenses in purchasing and shipping the computers, then would be very difficult to consider the surplus as anything other than business income.

Because it is established and uncontested that the beneficiary registered a business name under which he purchased and shipped computers, the petitioner must submit documentary evidence that will persuasively establish that [REDACTED] was not, and was never intended to be, a profit-generating enterprise. Testimonial claims by the petitioner, the beneficiary, and/or the "friend in Nigeria" cannot and will not suffice in this respect. 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)).

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. 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.