

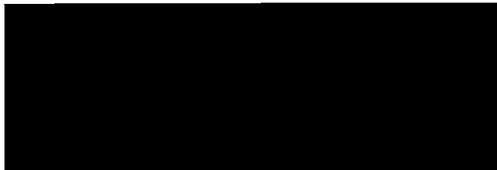
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY



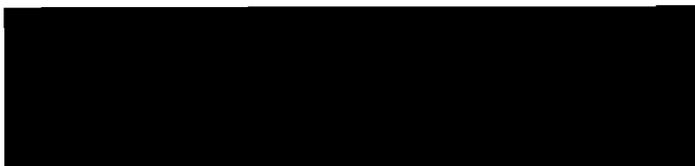
C1

FILE: LIN 05 042 52084 Office: CALIFORNIA SERVICE CENTER Date: **MAR 30 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:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) remanded the matter for issuance of a new decision. The director again denied the petition and the petitioner appealed the decision on March 28, 2007. On December 11, 2008, the AAO remanded the matter for consideration under new regulations. The Director, California Service Center, 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 self-petitioner seeks classification 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 he had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

The petitioner provides no additional documentation on certification.

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 issue presented on certification is whether the petitioner has established that he worked continuously in a qualifying religious occupation or vocation for the two years immediately preceding the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that he 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 December 9, 2004. Therefore, the petitioner must establish that he was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

With the petition, the petitioner submitted a copy of a “certificate of employment” purportedly from [REDACTED] in Korea. However, the translation accompanying this document does not comply with the provisions of 8 C.F.R. § 103.2(b)(3) in that the translator is not identified, did not certify that the translation was complete and accurate, and did not certify that he or she is competent to translate from Korean into English. Accordingly, the document has no probative value in this proceeding.

The petitioner also provided a copy of his résumé in which he indicates that he served as senior pastor at [REDACTED] in Seoul, Korea from March 1985 to December 2003, and as senior pastor with Glory Mission in Lakewood, Washington, his prospective employer, beginning in November 2004. The petitioner submitted a copy of his visa, indicating that he was authorized to enter the United States as a B1/B2 visitor for business or pleasure, and that his visa was valid for multiple entries from June 4, 1998 to May 30, 2006. The petitioner also provided a copy of his INS Form I-94, which shows that he entered the United States as a B-2 visitor on December 26, 2003 with an authorized period of stay until June 23, 2004. A Form I-797A, Notice of Action, indicates that the petitioner was granted an extension of his stay until December 22, 2004.

In an April 29, 2005, the Director, Nebraska Service Center, issued a request for evidence (RFE) in which he instructed the petitioner to:

Submit evidence which establishes that immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

In response, the petitioner provided a June 15, 2005 “Certificate of Career” from [REDACTED] in Korea certifying that the petitioner had served as a senior pastor with [REDACTED] from March 3, 1985 to December 25, 2003. The petitioner also resubmitted a copy of his résumé, and a list of his duties as a minister. The petitioner also provided the following schedule of his duties:

- 5:00 am early morning prayer performed DAILY

- SUNDAY
7:00 a.m. Speaking
9:00 a.m. Sunday School
11:00 a.m. Speaking
2:00 p.m. Youth Group & Prayer
3:00 p.m. Trinity Bible Study
3:30 p.m. Sunday School
7:00 p.m. Night Prayer Service
- TUESDAY
11:00 a.m. Disciple Training
- WEDNESDAY
11:00 a.m. Disciple Training
7:00 p.m. Prayer Service
- THURSDAY
11:00 a.m. Disciple Training
- FRIDAY
11:00 a.m. Bible Study
10:00 p.m. All Night Prayer Service
- SATURDAY
2:00 p.m. Youth Group & Prayer
4:00 p.m. Young Adult Bible Study

The petitioner submitted no supporting documentation such as canceled pay checks, pay vouchers or similar documentary evidence of his claimed employment in Korea during the qualifying two-year period.

In denying the petition, the Director, Nebraska Service Center, determined that the petitioner had submitted no documentation to establish that he worked as a pastor subsequent to December 2003, the date indicated on the "Certificate of Career."

On appeal, the petitioner stated that he misunderstood the director's instructions and thought that he only had to provide evidence that he served as a pastor for two years – not for the two years immediately preceding the filing of the visa petition. The petitioner stated in a March 22, 2007 letter that he had "been performing the same pastor duties" with his prospective employer that he performed with the church in Korea. The petitioner provided copies of church bulletins identifying him as pastor of the church and resubmitted the schedule of the times he allegedly worked in the United States. Counsel stated in his March 23, 2007 brief that the petitioner performed these duties "voluntarily."

Pursuant to requirements under section 2(b)(1) of the Special Immigrant Nonminister Religious Worker Program Act, Pub. L. No. 110-391, 122 Stat. 4193 (2008), USCIS issued 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). In keeping with this requirement, the AAO remanded the petition to the director on December 11, 2008, to give the petitioner an opportunity to meet the new requirements.

The new USCIS regulation at 8 C.F.R. § 204.5(m)(11) provides:

Evidence relating to the alien's prior employment. Qualifying prior experience during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work, must have occurred after the age of 14, and if acquired in the United States, must have been authorized under United States immigration law. If the alien was employed in the United States during the two years immediately preceding the filing of the application and:

- (i) Received salaried compensation, the petitioner must submit IRS documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of income tax returns.
- (ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.
- (iii) Received no salary but provided for his or her own support, and provided support for any dependents, the petitioner must show how support was maintained by submitting with the petition additional documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS.

If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

In response to the director's Notice of Intent to Deny (NOID) issued pursuant to the AAO's remand, the petitioner submitted a statement from his prospective employer stating that the petitioner had not been compensated for his work with his prospective employer as he has been "supporting himself through his own private funds." The petitioner provided a copy of a June 15, 2004 letter from Bank of America indicating that he had opened an account in April 2004 and had a current balance in excess of \$6,000; a copy of a wire transfer indicating that [REDACTED] had wired \$9,500 to the petitioner's account in January 2005, and a copy of the petitioner's January 2005 checking account statement.

The petitioner's claim and evidence regarding his self-support during the two-year period prior to filing is disqualifying. In the supplementary information for the final rule, as it relates to self-support, the rule stated:

Compensation Requirements

USCIS proposed to add a requirement that the alien's work, under both the immigrant and nonimmigrant programs, be compensated by the employer. Specifically, the rule proposed amending the definition of "religious occupation" to require that an occupation be "traditionally recognized as a compensated occupation within the denomination." Commenters were concerned that the proposed rule would exclude many religious workers who do not receive salaried compensation, but may receive stipends, room, board, or medical care, or who may rely on other resources such as personal savings, rather than salaried or non-salaried compensation.

In response to the commenters' concerns, USCIS is clarifying that compensation can include either salaried or non-salaried compensation. Under the Internal Revenue Code, non-salaried support, such as stipends, room, board, or medical care, qualifies as taxable compensation unless specifically excluded.

* * *

Several commenters stated that the proposed compensation requirement would exclude programs that traditionally utilized only self-supporting religious workers from participating in the R-1 visa program. The comments noted that religious workers who are self-supporting receive neither salaried nor non-salaried compensation; instead, they may rely on a combination of resources such as personal or family savings, room and board with host families in the United States, and donations from the denomination's local churches. Additionally, the comments noted that self-supporting religious workers are currently admitted under the R-1 visa program. In response, the final rule will continue to allow these aliens to be admitted under the R-1 visa classification. USCIS will, however, to preserve its ability to prevent fraud, permit self-supporting religious workers only under very limited circumstances, and, consistent with other provisions of the final rule, require specific types of documentation.

The change provides that if the nonimmigrant alien will be self-supporting, the petitioner must submit documentation establishing that the position the alien will hold is part of an established program for temporary, uncompensated missionary work within the organization, which is part of a broader, international program of missionary work sponsored by the denomination.

USCIS again notes that the religious worker visas are not the exclusive means by which an alien may be admitted to the United States to perform self-supported religious work, including missionary work. Current regulations specifically provide for the admission of missionaries under the general visitor for business visa.

73 Fed. Reg. at 72281-72282. *See also* Fed. Reg. at 72278.

As specifically provided for in the final rule, the only religious workers who may rely on self-support rather than actual salary or in-kind support as evidence of their prior employment are those workers in an established missionary program under an R-1 or B-1 nonimmigrant visa. In this instance, the record does not establish that the petitioner was in a missionary program or that he was an R-1 or B-1 nonimmigrant. Instead, as previously discussed, the record indicates that the petitioner last entered the United States on December 26, 2003 as a B-2 nonimmigrant visitor for pleasure and obtained a subsequent extension of that status from June 24, 2004 to December 22, 2004. The petitioner's voluntary work in the United States is not qualifying. As indicated in the supplementary information for the proposed rule:

USCIS recognizes that legitimate religious work is sometimes performed on a voluntary basis, but allowing such work to be the basis for an R-1 nonimmigrant visa or special immigrant religious worker classification opens the door to an unacceptable amount of fraud and increased risk to the integrity of the program.

72 Fed. Reg. 20442, 20446 (Apr. 25, 2007).

Additionally, the record does not establish that the petitioner worked in an authorized status in the United States. An alien who is present in the United States pursuant to a B-2 visa is not authorized to work in the United States. 8 C.F.R. § 214.1(e). Any work performed in the United States in an unauthorized status interrupts the continuous work experience required by the regulation.

Therefore, in addition to his failure to provide documentary evidence of his work outside of the United States as required by regulation, the petitioner has failed to establish any qualifying work since his entry into the United States.

Accordingly, for the reasons discussed above, the petitioner has not established that he worked continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the visa petition.

Beyond the decision of the director, the petitioner has not established that his prospective employer has the ability to compensate him in the proffered position.

In an October 2, 2008 offer of employment, the petitioner stated that it would pay the beneficiary \$800 per week. The petitioner provided no documentation that it has paid the beneficiary in the past. The regulation at 8 C.F.R. § 204.5(m)(10) provides that the petitioner must submit:

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 its November 24, 2004 letter, the petitioner's prospective employer stated that he would be compensated at the rate of \$2,400 per month with a \$300 monthly car subsidy. The letter indicated that the organization had a membership of 90 and that it expected to add a new program that it expected to bring in \$50,000 in gross income. A budget worksheet indicated that the organization expected to have an income of \$65,000 in 2004 and \$112,000 in 2005. However, the worksheet does not clearly indicate any expenses associated with the new program.

In a compliance review conducted by USCIS on September 11, 2007, [REDACTED] the prospective employer, indicated that only 6 to 10 people attended each service and that donations amounted to \$600 to \$1,000 per week. In its attestation submitted pursuant to the director's NOID issued on remand, the organization stated that it had a membership of 23 and that it had two other employees. No salary information was provided for these employees; however, the organization indicated that the petitioner's compensation would be \$22,000, which would include housing, transportation and living expenses. This is far below the 90 members the petitioner initially alleged it had and far below the \$32,400 compensation package originally offered to the petitioner. The petitioner has provided no documentation of any income actually received by his prospective employer.

The evidence does not establish how the petitioner's prospective employer will compensate the petitioner.

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).

The AAO will affirm the certified denial 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 sustained that burden.

ORDER: The director's decision of July 16, 2009 is affirmed.