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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

[Redacted]

C1

DATE: **APR 02 2012**

Office: CALIFORNIA SERVICE CENTER

FILE: [Redacted]

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition and it is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision and remand the petition Center for further action and consideration.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of 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 the location at which the beneficiary will work is a bona fide nonprofit religious organization, that the petitioner had not fully responded to the request for evidence (RFE), and that the petitioner's evidence contains discrepancies.

Counsel asserts on appeal that the director's decision is based on an "erroneous statutory and regulatory construction." Counsel submits a brief and additional documentation in support of the appeal.

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).

In its June 30, 2009 letter submitted in support of the petition, the petitioner stated that the proffered position was that of pastor of its church plant, the [REDACTED] and is under the guidance and supervision of the petitioner's director of ministry and pastor of [REDACTED]. The petitioner further stated that it would provide the beneficiary with an annual base salary of \$24,000, housing, food and travel expenses, and that the beneficiary had served in the position as an R-1 nonimmigrant religious worker since May 1, 2007.

The regulation at 8 C.F.R. § 204.5(m)(5) provides, in pertinent part:

Tax-exempt organization means an organization that has received a determination letter from the IRS [Internal Revenue Service] establishing that it, or a group that it belongs to, is exempt from taxation in accordance with sections 501(c)(3) of the IRC [Internal Revenue Code] of 1986 or subsequent amendments or equivalent sections of prior enactments of the IRC.

Additionally, the regulation at 8 C.F.R. § 204.5(m)(8) provides:

Evidence relating to the petitioning organization. A petition shall include the following initial evidence relating to the petitioning organization:

- (i) A currently valid determination letter from the [IRS] establishing that the organization is a tax-exempt organization; or
- (ii) For a religious organization that is recognized as tax-exempt under a group tax-exemption, a currently valid determination letter from the IRS establishing that the group is tax-exempt; or
- (iii) For a bona fide organization that is affiliated with the religious denomination, if the organization was granted tax-exempt status under section 501(c)(3) of the [IRC] of 1986, or subsequent amendment or equivalent sections of prior enactments of the [IRC], as something other than a religious organization:
 - (A) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;
 - (B) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;
 - (C) Organizational literature, such as books, articles, brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization; and
 - (D) A religious denomination certification. The religious organization must complete, sign and date a religious denomination certification certifying that the petitioning organization is affiliated with the religious denomination. The certification is to be submitted by the petitioner along with the petition.

With the petition, the petitioner submitted a copy of a December 18, 1980 letter from the IRS stating that it had been granted tax exemption as an organization under sections 170(b)(1)(A)(vi) and 509(a)(1) of the IRC and that its exempt status under section 501(c)(3) of the IRC was still in effect. The petitioner also submitted a copy of its articles of incorporation, bylaws, statement of faith, and an unaudited copy of its unsigned and undated 2007 IRS Form 990, Return of Organization Exempt from Income Tax. The IRS

Form 990 indicates that the petitioner paid the beneficiary and his wife \$23,100 during the year. The petitioner submitted copies of IRS Form 1099-MISC, Miscellaneous Income, that it issued to the beneficiary and on which it reported nonemployee compensation of \$7,500 in 2007 and \$15,300 in 2008. The 2008 IRS Form 1099-MISC also reported \$10,200 in housing allowance. The petitioner stated in its June 30, 2009 letter submitted in support of the petition that it does not issue IRS Form W-2, Wage and Tax Statement, to its employees "as all of our workers are paid ministers who have exempted themselves from payroll withholding." The petitioner submitted copies of checks that it made payable to the beneficiary during 2007, 2008 and 2009; however, the checks contain no indication that they had been processed by the bank.

The petitioner also provided information for [REDACTED] including excerpts from its website, an unaudited copy of its 2009 balance sheet, an unaudited copy of its April 2009 profit and loss statement, a November 2006 lease for premises at [REDACTED] an insurance policy, a December 2008 church directory, and church programs.

In her December 16, 2009 RFE, the director recognized the IRS certification letter for the petitioning organization but also stated:

However, the balance sheet of [AIC] was submitted and not the petitioner's financial information. And it was not supported by sufficient financial evidence. Provide verifiable evidence showing how the petitioning organization . . . will provide compensation for the beneficiary . . . banking statements, audited financial statements and W-3s (if available) for the last two years

In its December 29, 2009 response, the petitioner stated that it had provided documentation with the petition that consisted of its IRS Form 990 for 2007 and pay checks for the beneficiary for 2007 through June 2009. The petitioner stated that its 2008 return has not been completed as the petitioner was granted an extension of the deadline to file from the IRS (the petitioner's tax year runs from August to July). The petitioner submitted partial copies of its monthly bank statements for September 2009 through November 2009, showing ending balances ranging from \$2,760.75 to \$15,881.57 and copies of checks made payable to the beneficiary in the amount of at least \$2,000 during 2009. Only one of these checks reflects that it has been processed by the bank. The petitioner submitted a copy of an IRS Form 1099-MISC that it issued to the beneficiary in 2009, reflecting nonemployee compensation of \$14,552.32 and housing of \$9,700.

In denying the petition, the director stated:

The petitioner qualifies as a non-profit tax exempt organization; however, [REDACTED] has not established that qualification since it was built in 2007. A rental agreement of the petitioner is not necessary; however, there was no written agreement of the petitioner and the church plant [REDACTED] submitted. And there is no article of incorporation of the church plant showing its subsidiary status or relationship to the petitioner submitted in order to appropriate the tax exempt status.

On appeal, counsel emphasizes that the beneficiary will work for the petitioner and not the [REDACTED] and that the tax records and pay checks "prove the employment relationship."

The director's determination cannot stand. The director correctly recognized and accepted the petitioner's tax-exempt certification from the IRS. The regulation does not require the petitioner to establish that the organization to which it, as the prospective employer, assigns the beneficiary is also tax exempt. The record sufficiently establishes that the petitioner is the prospective employer, that it has an employer/employee relationship with the beneficiary, and has assumed responsibility for compensating the beneficiary.

The director also determined that the petitioner failed to respond completely to the RFE. The regulation at 8 C.F.R. § 103.2(b)(13)(i) provides:

Failure to submit evidence or respond to a notice of intent to deny. If the petitioner or applicant fails to respond to a request for evidence or to a notice of intent to deny by the required date, the application or petition may be summarily denied as abandoned, denied based on the record, or denied for both reasons.

In her RFE, the director stated:

The petition indicates that Sunday service will be held at the [REDACTED]. The rental lease indicates that the [REDACTED] was leased for half-day (6 hours) weekly. Where are other services such as church leadership meeting, meeting [sic], youth meeting, worship team meeting, church accounting/banking, . . . etc. . . . activities held? Except the location at the [REDACTED], submit documentary evidence to show activity at all work locations requested by the petition. Include the following:

- Copies of the petitioner's lease agreements, rental agreements, and/or mortgage payments;
- A copy of the city or county fire department occupancy permit for the petitioner's location;
- Copies of utility bills and telephone bills for the last three months;
- Color photographs of the work location(s), both inside and outside the building.

If requested evidence is not available, please explain and provide supporting documentation, if there's any.

In addition, when the beneficiary will travel to work at other locations, submit detail description of such traveling work, including physical addresses of the other work locations, color photographs of such locations, the date and time duration spent for each location, the specific name of classes or congregations or ceremonies that the beneficiary is expected to provide service, and valid contact information.

On the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, the petitioner stated that the "main responsibility for this position is to lead Worship, Youth Ministry, College & Career Ministry, Sunday school and Community Outreach/Mission." The petitioner repeated these responsibilities in its June 30, 2009 letter submitted in support of the petition, and provided a schedule of the beneficiary's duties that included leading Sunday service, leading Sunday school, leading the college and career ministry, pastoral visitation and counseling, community outreach, leadership meetings and church administration. The November 2006

lease between [REDACTED] provided that the church would have use of the [REDACTED] from 4 pm to 10 pm every Sunday and that the fee for leasing the property "is based upon ½ day usage (up to 6 hours) per week." The lease also provided that the terms of the agreement would be reevaluated at three months intervals, beginning in March 2007, at which time changes could be made. The petitioner provided a detailed hourly time frame of the beneficiary's weekly schedule.

In response to the director's RFE, the petitioner stated:

[AIC] has no church office, other than the homes of the pastors. Meetings outside of Sunday mornings are generally taken place at the home of one of the pastors or at an alternative venue such as coffee shops or restaurants.

[The beneficiary] uses his home office as well as the home of [REDACTED] to prepare and review sermons and Bible study materials, teach youth bible studies, provide pastoral counseling, lead prayer meetings and other team leader meetings, administrate church programs, etc. [The beneficiary] reports to [REDACTED] daily.

Wednesday night Youth Bible Studies are held at the home of [the beneficiary and his wife].

Pastoral counseling and visitation by [the beneficiary] usually takes place in his home, at a local coffee shop . . . , at the home of the individuals or at local hospitals.

Prayer meetings, team leaders meetings and most other church functions are usually held at the home of one of the pastors

[The beneficiary] also leads two or three mission trips each year to places like [REDACTED]

The petitioner listed the address of each of its pastors and provided the names and address of coffee shops and restaurants that it usually uses as alternative venues for meetings and counseling services.

The petitioner submitted a January 7, 2010 letter from [REDACTED] in which she confirmed that [REDACTED] rented its theater for their Sunday services and that in July 2007, it began using the facilities on Sunday from 7:00 am to 2:00 pm. The petitioner also submitted a January 6, 2010 letter from [REDACTED], who stated that he has been a member of [REDACTED] for the past two years and that during that time, the beneficiary and his wife "hosted the youth group at their home" and that [REDACTED] takes his son there on Wednesday evening for bible study. A January 8, 2010 unsigned letter from [REDACTED], verified that the beneficiary and his wife "led a team from [REDACTED] and put on a family fun day for the community at [REDACTED] in [REDACTED]. A January 8, 2010 letter from [REDACTED], the activities and volunteer coordinator for [REDACTED] verified that "over the past 18 months, [the beneficiary and his wife] have led three different missions' teams from [REDACTED] to serve here at [REDACTED]." The petitioner also provided color photographs of the offices, including the home offices of the pastors of [REDACTED] of its various work locations and of other venues at which the beneficiary had participated.

In her decision denying the petition, the director stated that the petitioner had failed to fully respond to the RFE in that it did “not provide specific address, date and time duration spent at coffee shops, or restaurants where congregation meetings or bible study classes have been held” and that “the petitioner has not provided a time line of schedule of services held at the home office, as requested.”

On appeal, counsel states that the petitioner has provided all of the documentation requested by the director, including a “[d]etailed breakdown schedule of the Beneficiary for the week of August 30-September 5, 2009, which was a representative week of the Beneficiary’s typical schedule.”

The record reflects that the petitioner provided all of the requested documentation requested in its response to the RFE. The director’s determination is therefore withdrawn.

Finally, the director determined that there were unresolved discrepancies in the petitioner’s evidence. The director noted that the petitioner stated in response to the RFE that it held Sunday service at the [REDACTED] beginning at 10:00 am but that its lease indicated that it had access to the property from 4:00 pm to 10:00 pm. This determination by the director ignores the letter from [REDACTED] who stated that as of July 2007, the petitioner had access to the property from 7:00 am to 2:00 pm. Thus, there is no unresolved conflict in the record regarding this issue.

The director also found that “the amount of past compensation in 2007” was not reported consistently.

The beneficiary’s IRS Form 1099-MISC for 2007 reflects that the petitioner paid him \$7,500 in nonemployee compensation for the year. The document does not reflect any housing allowance provided to the beneficiary. The beneficiary’s tax transcript for 2007 reflects that he reported only the \$7,500 on his federal income tax return.

In her RFE, the director advised the petitioner that:

The beneficiary was authorized to work since at least May 2007. However, his 1099-Misc income report only shows he earned \$7,500 for the entire 2007 year. Provide evidence that the beneficiary has been working fulltime and continuously since July 27, 2007 to the present in a religious occupation.

The petitioner responded that the beneficiary had been working as a pastor with the petitioning organization since May 2007 and that it had submitted copies of the beneficiary’s paychecks from May 2007 to June 2009. The petitioner further stated that the beneficiary’s IRS Form 1099-MISC for 2007 “inadvertently did not include the housing allowance in the amount of \$3,000. [The petitioner] will correct the amount. For the entire year 2007, [the beneficiary] earned \$10,500.”

On appeal, counsel states that the petitioner had not only explained the discrepancy but had provided copies of the check paid to the beneficiary in 2007. Counsel additionally asserts:

Moreover, the missing information on the 1099 is de [minimis] in that it is the missing amount on that record for housing allowance and not salary directly relating to the full-time work. Specifically, the copies of the pay checks consistently show a monthly payment of \$1,500 from May 2007 to December 2007 and \$2,000 from January 2008 to the present.

The petitioner submits a copy of the corrected IRS Form 1099-MISC for 2007 and an unaudited copy of the beneficiary's undated and unsigned IRS Form 1040X, Amended U.S. Individual Income Tax Return. The record contains copies of checks to the beneficiary in the amount of \$1,500 dated from June 2007 to December 2007. The checks indicate that they are for salary or compensation and total \$10,500.

Nonetheless, whereas the petitioner has provided sufficient documentation to explain the difference in the amount reported on the beneficiary's IRS Form 1099-MISC for 2007, the record contains additional discrepancies for the year that remain unexplained.

The petitioner's IRS Form 990 indicates that it paid the beneficiary and his wife \$23,100. However, the record does not indicate that the beneficiary's wife was in the employ of the petitioner and the record does not reflect the source of the additional \$12,600 above that reported on the IRS Form 1099-MISC. Additionally, the petitioner's 2008 IRS Form 990 submitted on appeal indicates that the petitioner paid the beneficiary and his wife \$24,627 although the beneficiary's 2008 IRS Form 1099-MISC indicates compensation of \$25,500, which the beneficiary's tax transcript indicates he reported on his tax return.

The record is remanded to the director to clarify these issues regarding the beneficiary's compensation for 2007 and 2008.

Additionally, the record does not reflect that the petitioner has successfully completed an inspection or other compliance review. The regulation at 8 C.F.R. § 204.5(m)(12) provides:

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.

On remand, the director shall determine whether an on-site inspection or other compliance review is appropriate for the instant petition.

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 AAO for review.