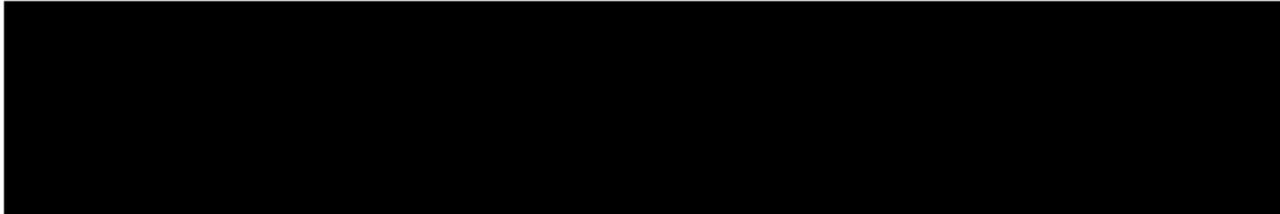


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**U.S. Department of Homeland Security**  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



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



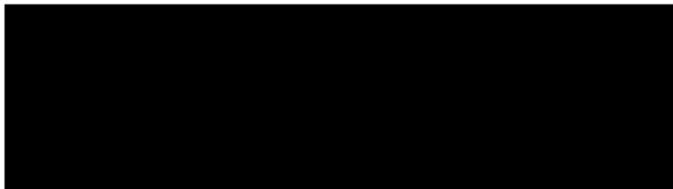
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DATE: **AUG 17 2012** Office: CALIFORNIA SERVICE CENTER FILE:

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:

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 will remand the petition for further action and consideration.

The petitioner is a regional conference of the Seventh-day Adventist 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 an assistant pastor. The director determined that the petitioner had not established that the beneficiary had been a member of its religious denomination for two full years immediately preceding the filing of the petition.

Counsel asserts on the appeal that the director applied the wrong standard of proof and that the petitioner and the First Portuguese Speaking Baptist Church are of the same denomination. 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).

The U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(1) provides that to be eligible for classification as a special immigrant religious worker, the alien (either abroad or in the United States) must:

For at least the two years immediately preceding the filing of the petition have been a member of a religious denomination that has a bona fide non-profit religious organization in the United States.

The petition was filed on February 19, 2010. Therefore the petitioner must establish that the beneficiary had been a member of its denomination for the two years immediately preceding that date.

The regulation at 8 C.F.R. § 204.5(m)(5) includes the following definitions:

*Denominational membership* means membership during at least the two-year period immediately preceding the filing date of the petition, in the same type of religious denomination as the United States religious organization where the alien will work.

*Religious denomination* means a religious group or community of believers that is governed or administered under a common type of ecclesiastical government and includes one or more of the following:

- (A) A recognized common creed or statement of faith shared among the denomination's members;
- (B) A common form of worship;
- (C) A common formal code of doctrine and discipline;
- (D) Common religious services and ceremonies;
- (E) Common established places of religious worship or religious congregations; or
- (F) Comparable indicia of a bona fide religious denomination.

In its January 25, 2010 letter submitted in support of the petition, the petitioner, through its (then) [REDACTED] stated:

[The beneficiary] has been providing traditional religious services to our organization as assistant pastor, since April 28, 2009, under R-1 status. Prior to joining our organization he provided traditional religious services to the First [REDACTED], where he held the position of Religious school Administrator/Director, also under R-1 status, from December 2007 to April 2009.

The petitioner further stated that prior to beginning his work as assistant pastor in April 2009:

[The beneficiary] served the church on [sic] “voluntary part-time services, at the [redacted] as Music Director and also as Elder from April 1, 2004 until April 2009. He provided these voluntary services on a regular basis, for an average of twenty to thirty hours, per week, since April 1, 2004. Being that our Church is purely supported by voluntary services, our members’ voluntary services tend to be organized on a weekly and hourly basis for efficiency purposes, instead of sporadically. . . . During the period in which he volunteered his services, [the beneficiary] has never received any numeration [sic] or other type of payment for his voluntary services, as doing so would be contrary to our Church’s policy of our Church being run on “purely voluntary services[.]” Upon beginning his full-time employment in April of 2009, he began receiving a salary for his services.

The petitioner submitted a copy of the beneficiary’s baptism certificate which reflects that he was baptized into [redacted] on November 16, 2002.

The beneficiary indicated in his résumé that during the period that he worked for the [redacted] [redacted] from December 2007 to April 2009, he also served as a volunteer, on a part-time basis as an [redacted] ministry in the [redacted]. The petitioner provided a copy of a September 3, 2009 letter from [redacted] of the [redacted] [redacted] in which he stated that the beneficiary “has been [redacted] [redacted] [sic], in the position Ministry and 1<sup>st</sup> Elder [redacted]

The petitioner submitted a copy of a September 17, 2008 letter from HSBC Bank addressed to the beneficiary at [redacted] and a copy of a February 9, 2008 certificate of the beneficiary’s participation in a “Seminar of Sabbath School Teachers Training” sponsored by [redacted]. The petitioner also provided copies of two e-mails dated in September and November 2008 from [redacted] that the petitioner stated includes the beneficiary. However, there is no evidence in the record to support the petitioner’s assertion that the beneficiary is included in the addresses on the e-mail. 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 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

In denying the petition, the director stated:

The record shows that on April 16, 2006, in support of its petition on behalf of the beneficiary [redacted] writes, “He has been an

**active participant in our church since December 2003**, when he first began working as the School Administer/Director of our Music School. While conducting his duties as School Administrator/Director **he follows our church's guidelines and principals**. By virtue of his participation in our church and activities, **he has all the benefits and privileges as a member . . .**" [Emphasis by the director.]

The record further shows that [redacted] Church is affiliated with the Southern Baptist Convention not the [petitioner]. The beneficiary abandoned his membership with the [SDA] from December 2003 until April 2009 when he aligned himself with the Baptist Church. While the two denominations may share some common beliefs, there clearly is a fundamental difference that separates the two churches.

Counsel asserts on appeal that the director "did not apply the correct evidentiary standard in making its decision." Counsel then quotes language that is not included in the director's decision, and alleges that the director's conclusion that the beneficiary had abandoned his membership in the SDA "is incorrect because the evidence in the record, taken together with the evidence being presented [on appeal] shows that [the beneficiary] continued his membership with the petitioner while working for the [redacted] Counsel further alleges that the director "seemed to decide the case applying the 'clear and convincing' or 'beyond a reasonable doubt' standard, which is absolutely incorrect in the present case."

Counsel's argument is without merit. Counsel states that the director "cannot pick and choose evidence to consider" but cites to no specific example of how and when the director used selective evidence or applied a higher standard of proof than preponderance of the evidence. Simply because the director denied the petition on the ground that the beneficiary did not meet the statutory membership requirement in the denomination does not, without more, imply that she used an excessively stringent standard.

Counsel states that the beneficiary continued to be a member of the SDA while working for the [redacted] because the two organizations "share a common faith" because they "both follow the principles of Christianity and proclaim the Gospel of Jesus Christ." Counsel's argument is again without merit.

Counsel asserts that the language of 72 Federal Register 20445 "states that the focus of the regulation is on the 'commonality of faith'" and that the Adjudicator's Field Manual "reiterates that the definition of a religious denomination, as the recognized common creed and form of worship." The petitioner provides the [redacted] and constitution and bylaws of the [redacted] which counsel states sets forth their religious principles. Nonetheless, counsel points to no commonality of principles between the two organizations other than their Christian beliefs. A belief in the Gospel of Jesus Christ is alone not sufficient to establish that the two organizations are of the same religious denomination. The petitioner has not established that the organizations share a common form of

ecclesiastical government, a recognized common creed or statement of faith, a common form of worship, common religious services and ceremonies, or common established places of worship or religious congregations.

Nonetheless, the director's decision cannot stand. The record clearly establishes that the beneficiary never relinquished his membership in the SDA, even during the period that he worked for the [REDACTED] Church.

The beneficiary's baptism certificate reflects that he was baptized into the SDA on November 16, 2002. On November 24, 2006, the [REDACTED] filed a Form I-129, Petition for a Nonimmigrant Worker, USCIS receipt number [REDACTED], on behalf of the beneficiary, in which it stated:

[The beneficiary] has been an active participant in our church since December 2003, when he first began working as the School Administrator/Director of our Music School. While conducting his duties as School Administrator/Director he follows our church's guidelines and principals. By virtue of his participation in our church and activities, he is a qualified member, and thus, has all the benefits and privileges as a member.

The [REDACTED] Church did not indicate on the Form I-129 that the beneficiary became a member of its denomination but merely a "qualified member" of the church by virtue of his performance of his job. Additionally, in the Form I-129, the [REDACTED] stated that since April 2004, the beneficiary had been acting as music director on a part-time voluntary basis for the [REDACTED]

In a November 15, 2006 letter, the [REDACTED] stated that the beneficiary "has been working on a part-time basis for our Church since December 2003, under his H-1B status, as a School Administrator." In the letter, the petitioner again stated that the beneficiary had worked during the previous two-year period with the [REDACTED] and that by "virtue of his participation in our church and activities, he has all the benefits and privileges of a member." The petitioner of that petition provided no documentation that the beneficiary had been baptized in the Baptist faith or had otherwise become a member of the Baptist denomination. The documentation provided by the [REDACTED] included a September 22, 2006 letter from the [REDACTED] which stated that the beneficiary had served as the church's music director and elder since April 1, 2004. The letter further stated:

In the position of Music Director and Elder, [the beneficiary's] duties include: conducting the worship, coordinating and preparing the musicians to sing and play in the church; teaching musicians, choir members, and church members music; playing the piano in our programs; responsible for leading rehearsals of choir and musical bands and coordinating musical portions of church services; ordering musical supplies when necessary; visiting the homes to deliver Christian

literature; praying in homes; conducting [sic] Bible Studies; starting [sic] home prayer groups; sharing the beliefs of the Church to prospective members; serving as a counsel for people in need.

Thus, the evidence contained in the record of proceeding for the petition filed by the [REDACTED] did not establish that the beneficiary was a member of its religious organization for two full years prior to the filing of the petition. That petition was, in fact, approved in error.

On November 13, 2008, the petitioner of the instant petition filed a nonimmigrant religious worker petition, USCIS receipt number [REDACTED] on behalf of the beneficiary to work as an assistant pastor. In its November 10, 2008 letter, the petitioner again stated that the beneficiary had been working for the SDA church since April 2004 as a music director and elder. The petitioner submitted a copy of the beneficiary's certificate of baptism in support of the nonimmigrant petition, which was approved on April 8, 2009.

Accordingly, the record does not establish that the beneficiary abandoned his membership in the SDA and there is no evidence that he had ever established a membership in the Baptist denomination. The director's decision is therefore withdrawn.

However, the petition may not be approved as the record now stands.

The proffered position is that of assistant pastor. The petitioner stated that the duties of that position would include conducting worship. The regulation at 8 C.F.R. § 204.5(m)(3) defines 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.

Additionally, the regulation at 8 C.F.R. § 204.5(m)(9) provides:

*Evidence relating to the qualifications of a minister.* If the alien is a minister, the petitioner must submit the following:

- (i) A copy of the alien's certificate of ordination or similar documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination; and
- (ii) Documents reflecting acceptance of the alien's qualifications as a minister in the religious denomination, as well as evidence that the alien has completed any course of prescribed theological education at an accredited theological institution normally required or recognized by that religious denomination, including transcripts, curriculum, and documentation that establishes that the theological institution is accredited by the denomination, or
- (iii) For denominations that do not require a prescribed theological education, evidence of:
  - (A) The denomination's requirements for ordination to minister;
  - (B) The duties to be performed by virtue of ordination;
  - (C) The denomination's levels of ordination, if any; and
  - (D) The alien's completion of the denomination's requirements for ordination.

The record contains no documentation of the beneficiary's ordination or other evidence of his qualifications as a minister. Although the petitioner submitted a copy of its church manual, chapter 10 relating to ministers was omitted. On remand, the director shall address the issue of the beneficiary's qualifications for the proffered position.

The 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 petition 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.