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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

C1

[redacted]

Date: FEB 17 2012 CALIFORNIA SERVICE CENTER

FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

SELF REPRESENTED

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 on February 16, 2010. The petitioner filed a motion to reopen or reconsider on March 8, 2010. The director approved the motion on March 18, 2010 and then denied the petition on April 2, 2010. The petitioner appealed the matter to the Administrative Appeals Office (AAO) on April 19, 2010. The appeal will be dismissed.

The petitioner is church that seeks classification for 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), as a minister. The director determined that the petitioner had not established its ability to compensate the beneficiary.

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 October 1, 2008, 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 October 1, 2008, 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 on appeal is whether the petitioner has established its ability to compensate the beneficiary.

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 [Internal Revenue Service] documentation, such as IRS Form W-2 [Wage and Tax Statement] 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.

On Part 8 of the petition, the petitioner stated that it would compensate the beneficiary $1,500.00 a month ($18,000.00 a year) and provide her with housing and transportation.

In her February 16, 2010, decision, the director noted that U.S. Citizenship and Immigration Services (USCIS) had sent the petitioner a Notice of Intent to Deny (NOID) on January 4, 2010. The NOID stated that USCIS found that the petitioner's church exists, but not in the capacity claimed on the petition. Specifically, the petitioner holds weekly gatherings in a condominium and maintains only approximately 12 members. The NOID listed the petitioner's current revenues as $29,804.00 and current expenses as $21,784.00. The director concluded that gatherings consisting of eight to 12 members would not be sufficient to maintain revenues amounting to $29,804.00. The director stated that the petitioner's January 22, 2010 NOID response indicated that church attendance varies from week to week, sometimes with only seven or eight members and sometimes with full attendance. The petitioner also indicated that its church was founded only five years ago, but that its income was sufficient to cover both its expenses and the beneficiary's salary. The petitioner indicated that most members tithe more than $100.00 per month. The petitioner also stated that the church receives money from fundraising events or for special services such as the performance of garden weddings. The petitioner additionally submitted its balance sheet for 2008. The director highlighted that the balance sheet did not list any funds received for special services such as garden weddings. Furthermore, the balance sheet listed a fund balance of only $11,782.00 as of the end of 2008. The director found that this amount was insufficient to demonstrate that the petitioner will be able to compensate the beneficiary the proffered wage.

Within its March 8, 2010 motion to reopen or reconsider, the petitioner claimed that it had paid the beneficiary from 2007 to 2009 and that it was able to do so in the future. The petitioner submitted the beneficiary's 2009 Internal Revenue Service (IRS) income tax return and cancelled checks that showed wages paid. However, in her April 2, 2010 decision, the director noted that this evidence was dated after the January 9, 2009 filing of the petition and found that it was therefore not relevant in establishing the beneficiary's eligibility for this immigrant visa preference petition. The director again noted that the petitioner's $11,782.00 remaining balance at the end of 2008 was not enough to pay the beneficiary's proffered salary.

Within its April 19, 2010 appeal, the petitioner contends that it has demonstrated its ability to pay the beneficiary the proffered wage from 2007 to 2009 through a demonstration of wages paid. The petitioner emphasizes that it is a small ministry with few members, but that it has prospered through donations and offerings.

The petitioner also highlights that it has reached out to the community through a prayer line and radio broadcasts. The petitioner submitted a copy of an invoice from a radio station dated July 31, 2008, indicating that its broadcasts aired every other Sunday. The AAO notes that petitioner has not provided evidence that it has received any additional revenue from individuals in the community listening to the broadcasts who are not members of its congregation.

The petitioner submitted IRS Forms 1099-MISC that it issued to the beneficiary, its purported only paid employee, for work performed in 2007, 2008, and 2009 in the respective amounts of $11,000.00, $14,500.00, and $15,000.00. The AAO notes that petitioner did not pay the beneficiary the full proffered wage of $18,000.00 for any of those years. Such evidence of past remuneration is therefore not sufficient to establish the petitioner's ability to compensate the beneficiary the proffered wage prospectively.

In a signed letter dated February 23, 2010, the petitioner further clarified that its 2008 balance sheet included all of its tithes, offerings, and donations under the revenues section. The petitioner claimed that its balance of $11,782.00 at the end of the year was a surplus after expenses and employee compensation had been paid. The AAO notes that the balance sheet only lists the petitioner's assets, liabilities (stated as zero), and fund balance for that year. The balance sheet does not reflect any funds that the petitioner may have paid out for expenses or employee compensation as claimed. 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)). Furthermore, the AAO notes that the petitioner's balance sheet for 2007 reflects a fund balance of only $1,612.00. The petitioner goes on to state that the beneficiary will help its church to grow and prosper in the future by means of her employment there. Against the projection of future earnings, *Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg'l Comm'r 1977), states:

> I do not feel, nor do I believe the Congress intended, that the petitioner, who admittedly could not pay the offered wage at the time the petition was filed, should subsequently become eligible to have the petition approved under a new set of facts hinged upon probability and projections, even beyond the information presented on appeal.

In its April 9, 2009 response to the director's March 7, 2009 Request for Evidence (RFE), the petitioner had indicated that it held religious services in the beneficiary's home for economic reasons and that it had been paying her $1,500.00 per month as well as her mortgage, transportation, and maintenance and utility bills. The petitioner submitted a copy of its signed agreement dated December 20, 2006 to pay the beneficiary's monthly $253.58 maintenance fee for her housing. The petitioner additionally submitted copies of bills and checks it had executed for the beneficiary's mortgage and utility bills in 2009. However, as previously stated, the petitioner only paid her $15,000.00 in 2009. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988), states:

> It is incumbent on 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.

The AAO notes that the beneficiary has not previously paid the beneficiary the full proffered wage, nor has it demonstrated that it has realistically budgeted to do so in the future. It has merely speculated that its church will continue to grow and that it will be able to pay her salary. Accordingly, the AAO finds that the petitioner has failed to meet the requirements of 8 C.F.R. § 204.5(m)(10).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the AAO will dismiss the appeal.

ORDER: The appeal is dismissed.