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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: **FEB 21 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.

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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is a Christian church of the Assemblies of God denomination. 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 minister. The director determined that the petitioner had not submitted sufficient evidence regarding its finances, location, or corporate status. The director also cited the denial of a previous nonimmigrant petition filed on the beneficiary's behalf, and stated that the petitioner had failed to pass a compliance review.

On appeal, submits copies of various documents intended to address the stated grounds for denial.

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.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon 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. *Id.* at 582, 591-92. Section 204(b) of the Act, 8 U.S.C. § 1154(b), provides for the approval of immigrant petitions only upon a determination that "the facts stated in the petition are true." False, contradictory, or unverifiable claims inherently prevent a finding that the petitioner's claims are true. See *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Systronics Corp. v. I.N.S.*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988).

In keeping with the above statute and case law, the petitioner must present a credible, consistent and truthful claim in order to warrant approval of the petition.

The petitioner filed the Form I-360 petition on February 1, 2008. In an accompanying letter, [REDACTED], deaconess of the petitioning church, stated: "The position offered is a permanent position for a Pastor, working 40 hours per week with a monthly salary of \$2,000.00."

The petitioner submitted documentation of its incorporation in Texas as [REDACTED] in 2002, amended to its present name in 2007. The beneficiary signed the articles of incorporation as the church's incorporator.

The petitioner submitted copies of two letters from [REDACTED] on [REDACTED] in Coppell, Texas. In the earlier letter, dated April 28, 2006, [REDACTED] stated: "[REDACTED] is meeting in our facilities. . . . [The beneficiary] is a very [REDACTED]" In the later letter, dated December 10, 2007, [REDACTED] stated that the petitioner, under its current name, "leases 2 rooms from us on a monthly bas[i]s for their church services."

The petitioner also submitted a copy of an "Application for Building Use," in which the petitioner agreed to pay \$400 per month to [REDACTED]. The copy shows the signatures of the beneficiary and [REDACTED] both dated January 1, 2004. The application, however, shows the petitioner's current name, which the petitioner did not adopt until 2007. As shown above, [REDACTED] knew the petitioner as [REDACTED] in April 2006, more than two years after the purported date on the [REDACTED].

The petitioner submitted copies of utility bills from 2007, showing the same [REDACTED] address shown on correspondence from [REDACTED]. The bills from [REDACTED] dated June through October 2007, identify the customer as [REDACTED]. There are also, however, bills from [REDACTED] dated August through October 2007, that identify the customer as "First Assembly of God." The [REDACTED] bills show not only the same street address, but also the same post office box number found on [REDACTED] letterhead. The relationship between the [REDACTED] and/or the petitioning church, is not clear. Nothing in the record shows that the shared use of a physical address would imply or require the shared use of a post office box.

The petitioner submitted partial copies of bank statements for [REDACTED] from January to June 2006, and from June to September 2007. The fragments submitted offer an incomplete picture of the petitioner's finances. The petitioner did not explain the omission of nearly a year's worth of statements from July 2006 to May 2007, as well as the most recent statements after September 2007.

The petitioner submitted copies of processed checks, showing that the beneficiary received \$1,500 on November 1 and the same amount on December 2, 2007. These two checks imply a salary of \$1,500 per month, but two checks do not establish a consistent pattern of payment.

While the petition was pending, USCIS published 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. [REDACTED]

On April 17, 2009, the director issued a request for evidence (RFE), instructing the petitioner to submit various documents newly required under the revised regulations. Among other things, the director requested a complete accounting of every address and location that the petitioner has used; photographs of the current location; and payroll and tax records, including the beneficiary's Internal Revenue Service (IRS) Form W-2 Wage and Tax Statements.

In response, the petitioner submitted an employer attestation. On that form, under "Description of the proposed salaried and/or non-salaried compensation," the petitioner wrote "\$2,000." The petitioner did not elaborate, but this figure appears to refer to a monthly salary.

The petitioner submitted partial copies of bank statements for March through May of 2009. The statements show "average ledger balances" below \$1,000. Only one submitted fragment shows a \$2,000 check. This check may represent a salary payment to the beneficiary, but the record does not identify the recipient of the payment. Copies of processed checks show monthly \$2,000 payments to the beneficiary in April, May and June of 2008.

The petitioner also submitted a copy of an "[redacted]" similar to the one submitted previously, but dated February 2009. The application indicated that the petitioner would pay \$400 per month for use of [redacted] facilities, but the record contains no direct evidence of such payments.

The petitioner submitted copies of IRS Forms W-2, showing the following amounts paid to the beneficiary:

Year	2005	2006	2007	2008
Salary	\$9,000	\$11,400	\$11,400	\$15,600
Housing	5,400	6,600	6,600	8,400
Total	14,400	18,000	18,000	24,000

Copies of the beneficiary's IRS Form 1040 income tax returns, corroborated by transcripts from the IRS, show the following figures:

Year	2006	2007	2008
Wages, salaries, tips, etc.	\$11,400	\$18,000	\$15,600
Self-employment profit	8,651	6,627	-

The petitioner also submitted a printout from the [redacted] showing the beneficiary's reported earnings. The printout indicated that, in 2006, the beneficiary received \$11,400 from the petitioner, and \$7,990 from self-employment. For 2007, the printout showed \$6,121 from self-employment. The printout did not include figures for 2008. The IRS transcripts show that there is "[n]o record" that the petitioner filed a Form W-2 for the beneficiary in 2007, which may explain its absence from the [redacted] printout.

A "Weekly Time Schedule" indicated that the beneficiary works at various locations, including members' homes and the "market place." The schedule placed the beneficiary at the church for Monday morning prayer, for five hours on Tuesdays, four and a half hours on Wednesdays, six hours on Fridays, eight hours on Saturdays and four hours on Sundays. The schedule did not state at what time of day the beneficiary performed these duties.

The director denied the petition on January 6, 2010, stating:

[T]he petitioner did not submit recent audits, tax returns or financial statements. Lacking the requested evidence, it cannot be affirmatively concluded that the petitioner has the continuing financial capacity to compensate the beneficiary of this petition or the continuing financial capability to sustain their church operations.

The following notes are made part of the record of evidence: (1) The petitioner submitted three bank statements for March, April and May of 2009. The average monthly balance of all the bank statements is less than \$820.00. However, bank statements are not acceptable evidence of a petitioner's continuing financial capability without financial statements; (2) The petitioner submitted an ' [REDACTED] to prove that they have been renting a worship sanctuary from [REDACTED]. However, there is no evidence that this building has actually been used for their church activities because the petitioner did not submit payment receipts for the use of the building; (3) The petitioner's previous church name is [REDACTED]. However, there is no evidence to substantiate such name change, such as Articles of Incorporation amendments; (4) The petitioner filed an I-129 [REDACTED] for the same beneficiary of this petition. USCIS records indicate that [REDACTED] was also denied because the petitioner was unable to submit recent audits, tax returns, or financial statements; and, (5) USCIS records reflect that the petitioner failed the religious worker compliance review program. However, the reason for the petitioner's failure of the religious worker compliance review program has no bearing on the issues discussed in this petition.

. . . The petition is denied because the burden of proof in these proceedings has not been met.

On appeal, to address item (1) above, the petitioner submits a compiled financial statement indicating that the petitioner had \$1,603.91 in available cash as of November 30, 2009. This amount is less than one month's pay for the beneficiary. The statement also indicated that the petitioner's gross income for January through November 2009 was \$77,782.00, with net income of \$6,664.01 remaining after \$71,117.99 in expenses. The itemized expenses included \$22,000 for "Salaries – Pastor."

The USCIS regulation at 8 C.F.R. § 204.5(m)(10) reads:

*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.

The financial documentation provided by the petitioner is incomplete. Where the petitioner has submitted direct evidence of the beneficiary's compensation after the February 2008 filing date, that evidence has shown full payment of the stated \$2,000 monthly salary. At the same time, however, significant gaps remain in the record, and discrepancies between the petitioner's IRS documents and the SSA printout are of concern, as is the petitioner's evident failure to report employee wages in 2007.

The financial documents submitted on appeal show that the petitioner had paid the beneficiary 11 months' salary in 2009, with insufficient funds available to pay the salary for the remaining month of the year. The fragmentary materials in the record appear to indicate that the petitioner has been barely able to compensate the beneficiary, and there are legitimate doubts about its ongoing ability to do so. Upon consideration, the AAO affirms the director's finding that the petitioner did not provide adequate evidence regarding the beneficiary's compensation.

Item (2) of the denial concerned the petitioner's payment for rented space at [REDACTED], [REDACTED] Coppel, Texas. The [REDACTED] dated January 2004, but using a name that the petitioning church did not adopt until three years later, is of serious concern with respect to the petitioner's overall credibility. This discrepancy, however, does not discredit the specific claim that the petitioner has used [REDACTED] space.

Furthermore, in the 2009 RFE, the director requested "copies of the petitioner's lease agreements, rental agreements, and/or mortgage payments." The director did not request copies of rent payments. The petitioner's failure to submit evidence that the director never requested is not grounds for denial of the petition.

On appeal, the petitioner submits a copy of a processed check, showing that the petitioner paid [REDACTED] 400 on August 30, 2009. In a new letter, [REDACTED] states "we have received payment of \$400.00 per month from [the petitioner] for the months of October, November and December 2009." Other materials in the record consistently place the petitioner at the site of [REDACTED]. The AAO therefore withdraws the issue of the petitioner's use of [REDACTED] facilities as a basis for denial.

Item (3) in the denial notice concerned the purported lack of corporate documentation to show the petitioner's name change from [REDACTED] to its present name. As noted earlier, the petitioner's initial submission included a Certificate of Amendment from the Texas Secretary of State, dated August 31, 2007, showing both names of the petitioning entity and the filing number [REDACTED]. This document refutes the director's finding that the record lacks evidence of the name change. The AAO therefore withdraws this specific ground for denial.

Item (4) in the director's denial concerns the denial of a nonimmigrant petition the petitioner had filed on the beneficiary's behalf. The relevance of this information arises from two USCIS regulations. The regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the beneficiary has been working 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 USCIS regulation at 8 C.F.R. § 204.5(m)(11) reads:

*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.

On the Form I-360, the petitioner listed the beneficiary's current nonimmigrant status as an R-1 nonimmigrant religious worker. Asked to provide the expiration date, the petitioner stated "Extension Pending."

In response to the April 2009 RFE, the petitioner submitted copies of filing receipts for two Form I-129 petitions that [REDACTED] filed, seeking to classify the beneficiary as an R-1 nonimmigrant religious worker. On June 19, 2003, the church filed a petition with receipt number [REDACTED]. USCIS records show that USCIS approved the petition on July 3, 2003, granting the beneficiary R-1 nonimmigrant status valid from July 4, 2003 to July 3, 2006. In an employer attestation dated June 24, 2009, the petitioner acknowledged the July 3, 2006 expiration date, but repeated the assertion that an application for extension was pending.

As the beneficiary's status neared its expiration date, the church sought to extend the beneficiary's stay by filing a Form I-129 petition with receipt number [REDACTED] on June 6, 2006. This petition was, indeed, pending on February 1, 2008, when the petitioner filed the Form I-360 petition now under consideration. USCIS denied the nonimmigrant petition on July 31, 2009, reopened it on September 29, 2009, and again denied it on November 20, 2009. The AAO's search of USCIS records did not show any appeal from the denial. USCIS records show correspondence returned as undeliverable on December 1, 2009. The timing suggests that the returned correspondence was the denial notice. The record does not contain any change of address notice from the petitioner. As of January 2010, the petitioner still claimed the same [REDACTED]. Routine service consists of mailing a copy by ordinary mail addressed to a person at his last known address. 8 C.F.R. § 103.5a(a)(1). If the director mailed the November 20, 2009 to the correct address, then the director properly served the notice.

Under the USCIS regulation at 8 C.F.R. § 274a.12(b)(20), an R-1 nonimmigrant alien whose status has expired but who has filed a timely application for an extension of stay is authorized to continue employment with the same employer for a period not to exceed 240 days beginning on the date of the expiration of the authorized period of stay. As noted above, the beneficiary's R-1 nonimmigrant status expired on July 3, 2006. Because USCIS never approved the application for extension of stay, the beneficiary's employment authorization ended 240 days later, on February 28, 2007.

The petitioner has not submitted any evidence to show that the beneficiary held lawful immigration status or employment authorization after February 28, 2007. Eleven months of the 2006-2008 qualifying period fall during this gap in the evidence. The absence of this evidence warrants denial of the petition under 8 C.F.R. §§ 204.5(m)(4) and (11).

With respect to the compliance review mentioned in item (5) above, an immigration officer visited the petitioning church on three occasions in an attempt to verify the beneficiary's employment in connection with the 2006 nonimmigrant petition discussed above. The visits occurred on Wednesday, January 24, 2007, at 11:30 a.m.; Saturday, February 17, 2007, at 10:47 a.m.; and Tuesday, February 20, 2007 at 2:40 p.m. The officer indicated that the beneficiary was not present during any of those visits, although the schedule in the record places her at the church on those days of the week. The officer stated that she "spoke with the beneficiary on the telephone," but the beneficiary "would not provide . . . her regular church schedule."

The USCIS regulation at 8 C.F.R. § 103.2(b)(16) states: "If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered." The record, however, contains no indication that the director, before denying the petition, advised the petitioner of the derogatory information from the attempted site visits.

The director failed to follow proper procedure by notifying the petitioner of the findings before issuing the denial decision. Nevertheless, on appeal, the petitioner has not rebutted or even acknowledged the findings of the 2007 compliance review. Therefore, the core finding stands: a USCIS officer repeatedly attempted to conduct a compliance review with site inspection, but was not able to complete the review. Under the regulation at 8 C.F.R. § 204.5(m)(16), this failure is, by itself, sufficient grounds for denial of the petition.

The AAO will dismiss the appeal 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 met that burden.

**ORDER:** The appeal is dismissed.