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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

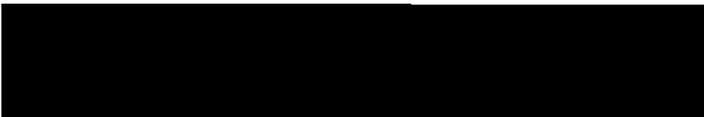


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DATE: JUL 19 2012 OFFICE: CALIFORNIA SERVICE CENTER



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:

KEVIN STOUT  
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EUGENE, OR 97401

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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision. Because the record, as it now stands, does not support approval of the petition, the AAO will remand the petition for further action and consideration.

The petitioner is a church affiliated with [REDACTED]. 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 pastor. The director determined that the petitioner had not established that its qualifying tax-exempt status as of the petition's filing date.

*On appeal, the petitioner submits a brief from counsel.*

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)(8) reads:

*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 Internal Revenue Service (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 Internal Revenue Code of 1986, or subsequent amendment or equivalent sections of prior enactments of the Internal Revenue Code, 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.

The petitioner filed the Form I-360 petition on August 24, 2011. In a letter that accompanied the initial submission, Dr. [REDACTED], stated that [REDACTED] "has been issued a tax-exempt ruling by the IRS, which also applies to its subordinate departments . . . thus by definition including [the petitioning entity]. A copy of the group ruling is included in Exhibit A." Exhibit A included a copy of a December 22, 2004 IRS determination letter issued to [REDACTED]. The letter does not refer to a group exemption or "subordinate departments."

On September 28, 2011, the director issued a request for evidence, instructing the petitioner to submit, among other things, a valid IRS determination letter for the petitioning entity, or evidence that [REDACTED] holds a group exemption that includes the petitioner. In response, the petitioner submitted an IRS determination letter addressed to the petitioning church, dated December 16, 2011.

The director denied the petition on February 17, 2012, stating: “the effective date of the IRS determination letter confirming [the petitioner’s] tax exempt status is December 16, 2011. . . . [T]he IRS determination letter became valid subsequent to the Form I-360 petition filing.”

On appeal, counsel states that the denial notice contains “a mistake of fact because the effective date of the exemption is from 2004.” Review of the IRS letter confirms that the “Effective Date of Exemption” is December 13, 2004. December 16, 2011, is the date the IRS issued the letter, not the date that the petitioner first became a tax-exempt organization. The 2004 effective date on the letter confirms that the IRS considered the petitioner to be tax-exempt as of the August 2011 filing date. The AAO agrees with counsel’s contention that the controlling issue is whether the petitioner was tax-exempt on the date of filing, not whether the IRS determination “letter [was] physically in the hands of the organization at the time of filing.” The director properly notified the petitioner of a deficiency in the initial evidence, and the petitioner timely remedied that deficiency, which should have ended any controversy over this particular issue.

The director based the decision solely on perceived deficiencies in the petitioner’s IRS determination letter. The petitioner having overcome this one finding, the denial cannot stand. Nevertheless, other issues of concern remain, which the director must address in a new decision.

The AAO may identify additional grounds for denial beyond what the Service Center identified in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The 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.

USCIS records show a compliance review site inspection at ██████████ Pennsylvania headquarters in 2007, but the evidence available to the AAO does not indicate whether any compliance review has taken place with respect to the petitioning church in Oregon. The director must clarify this issue and take whatever remedial measures deemed necessary.

Also, there is a significant question regarding the beneficiary's past and intended future compensation. The USCIS regulations at 8 C.F.R. § 204.5(m)(10) and (11) require the petitioner to submit financial evidence, including IRS documentation if available, to establish the beneficiary's prior compensation and the petitioner's intent to provide future compensation. The USCIS regulation at 8 C.F.R. § 204.5(m)(7)(xii) requires the prospective employer to attest that it has the ability and intention to compensate the alien at a level at which the alien and accompanying family members will not become public charges. On an employer attestation accompanying the petition, [REDACTED] stated that the beneficiary will receive "a salary of \$3,000 per month." He also stated that the beneficiary's "total compensation will be approximately \$36,000/yr," indicating that the beneficiary would receive no compensation apart from the stated salary. [REDACTED] added that the petitioner "will not be required, nor will it be necessary for him to engage in any additional work outside our organization."

[REDACTED] has signed two prior petitions through which [REDACTED] in Pennsylvania, sought immigration benefits on the beneficiary's behalf. Specifically, [REDACTED] filed a Form I-129 nonimmigrant petition on December 7, 2005, and a Form I-360 special immigrant petition on November 1, 2010. USCIS terminated the 2005 nonimmigrant petition and refunded the filing fee because the procedures in effect at the time did not require the filing of Form I-129. The director denied the 2010 petition and [REDACTED] did not appeal the denial. The AAO, in its discretion, has chosen to obtain and review the records for the two prior proceedings.

On the 2005 nonimmigrant petition, [REDACTED] indicated that the beneficiary's sole compensation from January 2006 to January 2009 would be a salary of \$1,500 per month. The two immigrant petitions (from 2010 and 2011), taken together, contain four IRS Form W-2, Wage and Tax Statements showing the petitioner's payments to the beneficiary. Those statements include the following information:

Year	2007	2008	2009	2010
Wages, tips, etc.	none reported	\$1,500.00	\$0.01	\$0.01
Housing	\$33,000.00	\$13,500.00	\$33,000.00	\$30,000.00

The record of proceeding for the earlier petition also included a financial statement dated August 31, 2010, indicating that the parent church spent nothing on "Salary" and \$24,000 on "Housing Allowances" in the first eight months of 2010.

The submitted documentation indicates that the petitioner has paid the beneficiary almost all of his compensation in the form of housing allowances rather than salary, despite [REDACTED] repeated assertions that the beneficiary would receive a salary of \$1,500 or more per month.

The IRS excludes a minister's housing allowance from income tax (but not self-employment tax). The excluded allowance, however, must actually cover housing expenses. A page on the IRS's web site, "Topic 417: Earnings for Clergy," reads in part: "A minister who receives a housing allowance

may exclude the allowance from gross income to the extent it is used to pay expenses in providing a home. Generally, those expenses include rent, mortgage interest, utilities, repairs, and other expenses directly relating to providing a home.” The same page specifies that any portion of a minister’s housing allowance that exceeds actual housing expenses must be reported as taxable income. Source: <http://www.irs.gov/taxtopics/tc417.html> (printout added to record July 5, 2012).

In proposing the regulatory requirements for establishing the ability to compensate, USCIS explained that a petitioner must establish that the beneficiary will “be compensated in the form of a salary or in the form of a stipend, room and board, or other support.” (72 Fed. Reg. 20442, 20446 (April 25, 2007)). Because almost all of the compensation from the petitioner and its parent church has been in the form of housing expenses, and the petitioner claims that the beneficiary does not “engage in any additional work outside [the petitioning] organization,” it is necessary for the petitioner to establish how the beneficiary and his family has met and will meet its non-housing expenses (e.g., food, clothing and transportation). More specifically, given that the petitioner pays the beneficiary a yearly salary of only one cent, the petitioner must establish how the petitioner and his family will avoid becoming public charges. See 8 C.F.R. § 204.5(m)(7)(xii).

Review of the parent church’s 2010 petition shows that, in a request for evidence dated March 3, 2011, the director stated: “If the beneficiary and his dependent(s) has/have other employment or own a business, provide description of the business(es).” The director also requested evidence of authorization to engage in such business(es). In response, the parent church’s then-attorney of record, ██████████, claimed “the beneficiary alien does not own a business.” ██████████ stated: “We have strict internal controls of our accounting systems whereby at least 2 persons verify every income and expense records [sic] of the organization; therefore it is erroneous to say that our records are inaccurate. We stand by our financial statements.”

In that same request for evidence, the director had requested official IRS documentation of the beneficiary’s income tax returns for 2008 through 2010. The parent church submitted IRS transcripts for the 2007 and 2008 returns, offering no explanation for the absence of the 2009 and 2010 returns. Those years fell outside the two-year qualifying period for the present proceeding, but the returns are material to the proceeding at hand because the beneficiary was already supposedly working for the petitioner at the time, under R-1 nonimmigrant religious worker status. On the 2007 return, the beneficiary reported no income from any source. For 2008, the beneficiary reported \$1,500 in wages, consistent with the Form W-2 from the petitioning church. The beneficiary also reported \$67,965 in income as a “computer consultant” on Schedule C, Profit or Loss From Business. This very substantial income, from an apparently secular source, appears to contradict the claim that “the beneficiary alien does not own a business.” Running a computer consulting business without USCIS authorization would have violated the beneficiary’s R-1 nonimmigrant religious worker status, which requires alien ministers to work solely as ministers. See section 101(a)(27)(C)(ii)(I) of the Act. This issue raises very serious questions of eligibility and credibility, which demand thorough and well-supported answers.

On remand, the petitioner must establish how the beneficiary has met and will meet non-housing needs such as food, clothing and transportation. The petitioner must show that the beneficiary's past earnings have been consistent with R-1 nonimmigrant status, and that in the future he will work solely as a minister as required by section 101(a)(27)(C)(ii)(I) of the Act and the USCIS regulation at 8 C.F.R. § 204.5(m)(2)(i). 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.

Therefore, the AAO will remand this matter to the director. 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 Administrative Appeals Office for review.