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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



C,

Date: **JUL 24 2012** Office: CALIFORNIA SERVICE CENTER



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:

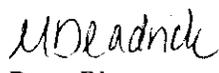


INSTRUCTIONS:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 church. 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 an assistant pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits an attestation from Prophecy Church of God in Haiti, letters from [REDACTED] pastor of Prophecy Church of God in Haiti, documents related to the finances of Prophecy Church of God in Haiti, a document entitled "Revival Program of the Church – Predication's Bens Pierre," untranslated "Registre de Mariages," "Registre de Presentation des Enfants," "Registre du Deces," and "Acte de Deces" documents, a certificate relating to funerals conducted on December 27, 2010, and copies of sermons purportedly prepared and delivered by 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 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 United States Citizenship and Immigration Service's (USCIS) regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the beneficiary has been working as a minister or in a qualifying religious occupation or vocation, 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 petitioner filed the petition on May 20, 2010. Therefore, the petitioner must establish that the beneficiary was continuously performing qualifying religious work throughout the two-year period immediately preceding that date.

The USCIS regulation at 8 C.F.R. § 204.5(m)(11) provides:

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.

According to the Form I-360 petition and accompanying materials, the beneficiary currently resides in Haiti and was not present in the United States during any part of the two-year qualifying period immediately preceding the filing of the petition. In an undated letter with the heading "Work History," the petitioner stated that the beneficiary "volunteered his services" to the petitioning church during the years 2004 to 2006. In a separate letter accompanying the petition, dated February 1, 2010, the petitioner stated that the beneficiary "has been with the Church of God of Prophecy from January 01, 2003 until October 10, 2004 when he returned to Haiti," and that he "has given voluntary ministerial service in the Church as part of his service to the Lord, and from June 2004 to December 2004, he was asked to serve as assistant to the pastor." No explanation was

provided for the discrepancies regarding the dates of the beneficiary's volunteer service for the petitioner. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In the February 1, 2010 letter, the petitioner further stated that the beneficiary "has served in several capacities of church ministries and administration; Sunday school superintendent, Evangelism director, and pastored the Deliverance Church of God Mission in Port-au-Prince, Haiti." The petitioner submitted a letter from Mission Eglise de Dieu de la Deliverance in Port-au-Prince, Haiti, which stated, in pertinent part:

Every year, we preach conference together by making invitations of the leaders coming from the other assemblies. Among the leaders whom we are in the habit of receiving from the prediction, MINISTER BENS PIERRE is often counted in the number in the we are grateful to GOD for this servant since his birth for Jesus Christ's life.

The letter did not indicate that Mission Eglise de Dieu de la Deliverance employed the beneficiary as a religious worker or provide dates of employment.

The petitioner also submitted an attestation from Rev. [REDACTED] pastor of Prophecy Church of God in Haiti (alternately referred to as Church of God of Prophecy in Haiti, Church of God of Prophecy of Cite Soleil, and Eglise de Dieu de la Prophetie Cite Soleil) located in Cite Soleil, Haiti, asserting that the beneficiary worked in that church as a deputy pastor "from November 2004 until now." Another letter from the same church, signed by various officials including the beneficiary himself, stated that the beneficiary served as assistant pastor "[f]rom October 17, 2004." A certificate from the church dated November 2, 2008 recognized the beneficiary for "4 years of service devoted to the church of God of prophecy of Cite Soleil." Additionally, the petitioner submitted a letter from Rev. [REDACTED] "National Overseer" of L'Eglise de Dieu de la Prophetie in Port-au-Prince, Haiti, which stated that the beneficiary is currently working as an associate pastor "in the Church of God of Prophecy In City Soleil, Haiti," and also stated the following: "Therefore he wasn't get paid [sic]. Sometime he receive some fees for example car allowance etc.. upon service giving. Notice that it's not on a regular base."

On December 16, 2010, USCIS issued a Request for Evidence in part requesting evidence that the beneficiary worked continuously in a qualifying position for at least the two-year period immediately preceding the filing of the petition. The notice specifically instructed the petitioner to submit experience letters written by the beneficiary's previous and current employers that include "the employer's name, specific dates of employment, specific job duties, number of hours worked per week, form and amount of compensation, and level of responsibility/supervision." The notice also stated that "[e]ach experience letter must be written by an authorized official from the specific location at which the experience was gained." The petitioner was additionally instructed to submit

evidence of compensation received by the beneficiary or evidence of self-support, as well as an explanation for any break in the continuity of the work during the qualifying period.

In response to the notice, the petitioner submitted a letter from Prophecy Church of God in Haiti in Cite Soleil stating that it employed the beneficiary as an assistant pastor throughout the two-year qualifying period immediately preceding the filing of the petition. The letter further stated:

His average week as Assistant Pastor consists of:

Preaching Word of God – 45%
Leading Bible Studies – 30%
Preaching sermons – 10%
Other pastor duties as needed – 15%

On an as needed basis, Bens Pierre also performs:

Counseling members of the church – 30%
Leading religious revivals – 50%
Conducting marriage ceremonies, funerals and burials – 20%

He is responsible for supervising the lay staff in the congregation.

Bens Pierre works an average of 10 hours per week and isn't paid but, he receives some fees about 350 (HTG) per week.

An additional letter and attestation from Prophecy Church of God in Haiti in Cite Soleil stated that the church employed the beneficiary since November 2004. A letter dated August 2, 2011 from [REDACTED] L'Eglise de Dieu de la Prophetie in Port-au-Prince, Haiti, asserted that the beneficiary has been working in the church in Cite Soleil for seven years.

On May 25, 2011, the director denied the petition. The director noted that the petitioner "did not submit any evidence comparable to Internal Revenue Service (IRS) documentation to establish the beneficiary's employment outside the United States during the 2008 – 2010 qualifying period," and she found the evidence insufficient to establish that the beneficiary has the requisite two years of continuous, qualifying work experience immediately preceding the filing of the petition.

On the Form I-290B, Notice of Appeal, counsel for the petitioner argues that the previously submitted evidence establishes the beneficiary's continuous, qualifying religious work during the two years immediately preceding the filing of the petition. As further evidence of the beneficiary's employment, the petitioner submits an attestation from Prophecy Church of God in Haiti in Cite Soleil stating that the beneficiary spends two hours per week coordinating and supervising missionaries' activities among the staff. The petitioner submits outlines of sermons purportedly prepared and delivered by the beneficiary. The petitioner also submits copies of documents which counsel asserts are records of weddings, infant dedications, and funerals conducted by the beneficiary. However, the documents are not in English. Because the petitioner failed to submit

certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. See 8 C.F.R. § 103.2(b)(3). Additionally, the petitioner submits a chart showing eight revival programs purportedly held by the beneficiary during the qualifying period, but the English version of the document fails to list the subjects and dates of the revivals. The petitioner also submits a certificate, signed by the beneficiary and [REDACTED] which states that they both sang at the church at funerals held on March 17, 2010.

With regard to evidence of compensation, counsel asserts on the Form I-290B that “[t]here is no evidence comparable to IRS documentation -- this is Haiti after all!” The petitioner submits a letter from Hermann Dubuisson of Prophecy Church of God in Haiti in Cite Soleil, which states:

There are not financial forms that must be filed whit [sic] a local authority concerning income and expenses because the Haitians churches are tax-exempt, so there is no way to think about deposits related to the subject.

The petitioner also submits a document with the heading “Other forms of Compensation,” signed by Hermann Dubuisson, purportedly listing compensation “resulting from the church to Bens Pierre as requisition of right (law) in its Minister’s qualities” in the following chart:

Year	Description	Amount (HTG)
September 2008 - December 2008	Car rental	0.00
	Restoration costs	1200.00
	Freight charges	720.00
	gratification	0.00
	Other support costs	1000.00
January 2009 - December 2009	Car rental	0.00
	Restoration costs	6000.00
	Freight charges	2600.00
	gratification	0.00
	Other support costs	4000.00
January 2010 - December 2010	Car rental	0.00
	Restoration costs	4000.00
	Freight charges	2000.00
	gratification	0.00
	Other support costs	3200.00

A separate letter from [REDACTED] of Prophecy Church of God in Haiti in Cite Soleil asserts that, throughout the qualifying period, the church provided the beneficiary with a “gratuity made every first Sunday of each month to the fixed amount of 3,500(HTG).” The petitioner also submits financial statements for the church in Cite Soleil for the period May 25, 2008 to June 27, 2010, listing in part the amount paid as “Gratification to the Ministers” without specifying the names of the ministers.

The current regulation at 8 C.F.R. § 204.5(m)(11) requires compensated employment. To the extent that the petitioner claims that the beneficiary's volunteer work is qualifying experience, any work performed by the beneficiary as a volunteer is not qualifying. In the preamble to the proposed rule, USCIS recognized that although "legitimate religious work is sometimes performed on a voluntary basis ... allowing such work to be the basis for ... special immigrant religious worker classification opens the door to an unacceptable amount of fraud and increased risk to the integrity of the program." See 72 Fed. Reg. 20442, 20446 (April 25, 2007). Accordingly, any time the beneficiary may have spent "working" as a volunteer for the petitioner cannot be considered qualifying employment.

There are several inconsistencies in the evidence submitted by the petitioner regarding the issue of the beneficiary's compensation during the qualifying period. The letter from the national overseer of L'Eglise de Dieu de la Prophetie in Port-au-Prince, Haiti, which accompanied the petition, asserted that the beneficiary was not paid for his work with Prophecy Church of God in Haiti in Cite Soleil, but received some support from the church on an irregular basis. In a letter submitted in response to the Request for Evidence, Prophecy Church of God in Haiti in Cite Soleil asserted that the beneficiary "isn't paid but, he receives some fees about 350 (HTG) per week." On appeal, Prophecy Church of God in Haiti in Cite Soleil asserts that it instead gave the beneficiary a "gratuity" of 3,500 HTG per month. The chart submitted on appeal indicates that the beneficiary received no "gratification" but received other forms of compensation in varying amounts. Doubt cast on any aspect of the petitioner's proof may, of course, 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). Further, although the petitioner has provided an explanation for the lack of official tax records of the beneficiary's compensation, the petitioner has submitted no evidence beyond the assertions of Prophecy Church of God in Haiti in Cite Soleil that the beneficiary received any compensation. 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)).

The AAO finds the petitioner's evidence insufficient to establish that the beneficiary's employment during the qualifying period was compensated as required under 8 C.F.R. § 204.5(m)(11). Therefore, the AAO agrees with the director's determination that the petitioner has not established that the beneficiary has the requisite two years of continuous, qualifying work experience immediately preceding the filing of the petition.

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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.