

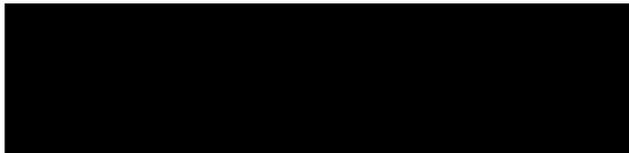
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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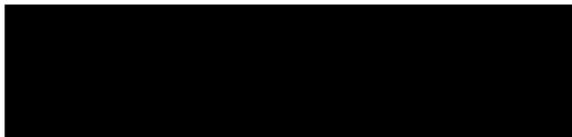
Date: **MAR 14 2012** Office: CALIFORNIA SERVICE CENTER

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. 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. 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 cited negative findings of a site visit and found the petitioner had failed to establish it was a bona fide organization and operating in the capacity claimed on the petition.

On appeal, the petitioner submits a brief from counsel, copies of documents already in the record, and a copy of the approval notice and Form I-129 petition classifying Eun Ha Jun (niece of the signatory of the instant petition) as an E2 nonimmigrant.

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 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.

The petitioner filed the Form I-360 petition on November 12, 2009. According to the petition and the accompanying supporting evidence, the petitioner operates out of a leased building at [REDACTED] Alaska, with a congregation of 75 members and no paid employees. The articles of incorporation for the church provide an incorporation date of May 13, 2008, and a letter from the IRS establishes that the church is a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986.

On July 15, 2009, a USCIS officer conducted a site visit at the petitioner's address. The officer found that the petitioner failed the site visit due to fraud. On March 1, 2010, USCIS issued a Notice of Intent to Deny the instant petition based on the failed site visit and compliance review. The notice states:

The USCIS is in possession of the following information: A site visit was conducted on July 15, 2009 and revealed the current location as a former group home which was undergoing renovation. A vehicle was parked out front but no one inside responded to knocks on the front door. There was no signage out front designating it as a place of worship. The petitioning organization has also been known as [REDACTED] and [REDACTED]. A review of the addresses listed in filings uncovered conflicting information. One address, [REDACTED] Bethel, AK is actually a "hotel" and has been a hotel for over 20 years. The second address, [REDACTED] is a dilapidated Quonset hut which was leased by the church from the City between September 1995 and August 2005. The church is allegedly now operating [REDACTED]. On October 24, 2009, the inspecting officer interviewed [REDACTED] over the phone. Apparently, he was out of town during the site visit. [REDACTED] claimed the renovation was completed in December 2008 and the congregation began worshipping there soon after. He further claimed that services are held every Sunday and the parishioners total 45-50. However, the Form I-129 petition claims 75 in their congregation. Moreover, when a former R-1 of the church was questioned during the site visit, she claimed the congregation numbered 20-40. The [REDACTED] is one of the directors who

established the church in 1995. Since 1995, the church has petitioned for family members and friends claiming they were sorely needed religious workers. These R-1 workers, instead of working in the church, were employed at businesses owned by the [REDACTED] church filed a Form I-129 petition on September 17, 2009 on behalf of the beneficiary [REDACTED] claiming he would be their pastor. Considering that the beneficiary [REDACTED] is already working in Anchorage, AK at an [REDACTED] church, it is curious why he would want to work in Bethel. Bethel is a small community and rather isolated. However when one reviews the immigration history of former R-1 workers in Bethel, the question is answered. These workers became employees of [REDACTED]. He has several businesses in Bethel, including the [REDACTED] and [REDACTED]. His brother and sister-in-law, who he claimed were needed by the church, were once employed by him. Their periods of employment at his businesses were revealed when they filed Form N-400 applications. It was quite surprising to see another R-1 filing by [REDACTED] considering the inspecting officer had been to Bethel and spoke with the signatory's niece [REDACTED] herself an R-1, but now an "E-2" at his video store. Evidently, the petitioning organization is engaged in religious worker fraud.

In a letter dated March 29, 2010 responding to the Notice of Intent to Deny, the petitioner addressed the issue of the appearance of the church at the time of the site visit. The petitioner states that [REDACTED] [REDACTED] leased the former group home at [REDACTED] in November of 2006 "in order to establish a meeting place for the church." According to the petitioner, extensive renovations were then done beginning in 2007 to convert the building into a church. These renovations were done by the end of 2008, since which time the church has been holding worship services at that location. The petitioner goes on to state that another construction project was underway in 2009 (at the time of the site visit) to "extend the parsonage in the church building," but meetings and worship services continued to be held there during that project. In support of these claims, the petitioner has submitted numerous photographs of the construction phases for both the main building and the parsonage renovations, as well as photographs of church services and functions being held in the renovated building.

In response to the assertion that the church was empty at the time of the site visit, the petitioner notes that the site visit was conducted during the day on a Wednesday. The petitioner points out that it had no paid employees (as stated on the petition), so it was uncommon for people to be there during the day on a weekday. Regarding the lack of signage, the petitioner acknowledges that it had no sign at that time, in part because of the ongoing renovation, and in part because it is the only Korean church in the town of Bethel and "the location of the church and the purpose of the building were very well known in the Korean Community." The petitioner goes on to state that the church building does now have a sign. A photograph of the sign was included.

Regarding the discrepancy regarding the number of members of the congregation, the petitioner states that it has 75 registered church members, but that 40 to 50 people usually attend the Sunday service. The petitioner asserts that the average church has one-third of its members attend the main

weekly service. In support of the claims regarding its membership, the petitioner has submitted a copy of the church membership directory, mostly in Korean, but with a "summary" from a translator attesting to assertion that there are 75 members listed. Additionally, the petitioner submitted a "Petition" signed by 38 individuals, stating that they are members of the church, that it was founded in 2008 since which time they have been holding services at [REDACTED] location, and that there are 75 church members although 40 to 50 people usually attend Sunday services.

In response to the Notice of Intent to Deny the petition, the petitioner also submitted copies of weekly church bulletins, as well as letters from community members in Bethel, Alaska, including the [REDACTED] and the [REDACTED] confirming that the petitioner is a legitimate and active church, and attesting to the character of the signatory of the petition, [REDACTED]

The Notice of Intent to Deny stated that the petitioner was previously known [REDACTED] and [REDACTED], and goes on to discuss the addresses used and immigration petitions filed under those names. In response, the petitioner asserts that it was founded in May of 2008, so any addresses supposedly used before that time "are irrelevant." The petitioner also states that, since it was established, it has only filed a petition for one other pastor and that petition was later withdrawn. With regard to the 2006 petition [REDACTED] the niece of the signatory for the instant petition, the petitioner asserts [REDACTED] but rather the petition was filed by [REDACTED]

The director denied the petition on April 29, 2010. In her decision, the director quotes extensively from the Notice of Intent to Deny. The director summarizes the evidence submitted by the petitioner in response to the notice, but concludes that it has not overcome the grounds for denial.

Accompanying its Form I-290B notice of appeal, the petitioner submits copies of the same evidence that was submitted in response to the Notice of Intent to Deny, as well as documentation of [REDACTED] E-2 nonimmigrant status. In the appeal brief, counsel for the petitioner argues that the petitioner "provided sufficient evidence to resolve the issues raised by USCIS."

We are persuaded that the petitioner has overcome questions raised by the site visit as to whether the petitioner is actively operating as a church [REDACTED]. The documentation and explanations submitted by the petitioner provide a logical and convincing explanation as to the appearance of the building during the site visit.

The first remaining issue is the relationship between the petitioner [REDACTED] and [REDACTED] and [REDACTED]. As stated above, the Notice of Intent to Deny states that the "petitioning organization is also known as [REDACTED] and [REDACTED] and the final decision also quotes that language. If all three named churches are indeed the same entity or are essentially the same church operating under various names, the AAO agrees with the director that the questionable immigration filing history and the questionable addresses given by [REDACTED] and [REDACTED]

combined with the petitioner's attempt to hide its relationship with those churches, would call into serious doubt the credibility of the petitioner and thus the petition itself. 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).

However, the director has not offered any evidence to support the conclusion that the three named churches are in fact the same church using different names. The director states that the signatory of this petition "is one of the directors who established the church in 1995." The petitioner has submitted documents showing that it was established in May of 2008. Standing alone, the assertion that an individual was involved in founding a church in 1995 and was then involved in founding a church in 2008 does not establish that the two churches are the same entity or even related entities.

The other remaining issue is the relationship between the signatory of the instant petition and the questionable petitions that were filed for his relatives as discussed in the notice and the final decision. Even without a relationship between the petitioning church and the other named churches, if the signatory of the instant petition was also the signatory on those other petitions, we agree with the director that this would call into doubt the credibility of the signatory and thus his statements on the instant petition. However, the director has not established the instant signatory's involvement in filing the petitions for his relatives beyond claiming that the named petitioner on the petition for the signatory's niece was "another name" for the instant petitioner.

The director cannot base the denial of this petition upon serious allegations without evidence offered in support of those conclusions. Just as the unsupported assertions of counsel are not evidence, neither are the unsupported conclusions of the director. *Cf. Matter of Obaigbena*, 19 I&N Dec. 533, 534 note (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The record does not establish the relationship between the petitioner and the other churches and petitions discussed in the decision. The AAO emphasizes that this is not a definitive finding that the petitioner's responses were consistent and credible. It is, rather, a finding that the director failed to support her conclusions in that regard. The AAO will therefore remand the matter for the director to determine the relationship, if any, between the instant petitioner and signatory and the other churches and petitions discussed in the decision.

Review of the record shows additional obstacles to approval of the petition. The AAO may deny an application or petition that fails to comply with the technical requirements of the law even if the Service Center does not identify all of the grounds for denial 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).

Specifically, the petitioner has not established that the beneficiary has the requisite two years of qualifying work experience immediately preceding the filing date of the petition.

The U.S. Citizenship and Immigration Services (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 petition was filed on November 12, 2009. 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.

In supporting materials accompanying the Form I-360 petition, the petitioner asserts that the beneficiary has been employed as a full time pastor [REDACTED] in Anchorage, Alaska since May of 2007 and receives an annual salary of \$24,000. As evidence of the beneficiary's compensation during the qualifying period, the petition has submitted uncertified photocopies of the beneficiary's Form 1040 for the years 2007 and 2008, photocopies of "Employee Pay Stubs" from [REDACTED] for the period of August to October of 2009, and photocopies of monthly checks from [REDACTED] to the beneficiary for the period of November, 2007 to October, 2009, some of which have "PAID" stamped on them. Since the beneficiary was employed in the United States

throughout the qualifying period and received salaried compensation, 8 C.F.R. § 204.5(m)(11)(i) requires that 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.” We find the evidence submitted by the petitioner is not sufficient under the regulations as it is not verifiable and the only IRS documents submitted are not certified.

For the reasons discussed above, the AAO will remand this matter for a new decision. 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.