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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

DATE: **MAY 03 2012** OFFICE: CALIFORNIA SERVICE CENTER [REDACTED]

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:

[REDACTED]

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 member church of the Korean Presbyterian Church of the USA. 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 established that the petitioner qualifies as a tax-exempt religious organization, or that it has the need for the beneficiary's services. The director also found that the petitioner had failed a compliance review.

On appeal, the petitioner submits a brief from counsel and supporting exhibits including witness letters, bank documents, and tax documents.

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).

When the petitioning organization is a church, the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 204.5(m)(8) requires the petitioner to submit either:

- (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.

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 July 20, 2009. The petition form shows the church's address as [REDACTED]. Under "the specific address(es) or location(s) where the alien will be working," the petitioner provided two Flushing addresses: "church: [REDACTED] [REDACTED] senior pastor of the petitioning church, signed the petition form, thereby certifying under penalty of perjury that the petition and all the evidence submitted with it are true and correct.

Pastor Shin also signed an accompanying letter on church letterhead, dated July 8, 2009, showing the Kissena Blvd. address. In the body of the letter, however, Pastor Shin claimed that the church is "located at [REDACTED]." Pastor Shin did not explain the discrepancy.

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.

The petitioner submitted a copy of an IRS determination letter dated March 13, 2002. The name and employer identification number of the organization shown on the letter matches the information on

Form I-360. The address, however, is [REDACTED] address also appears on incorporation documents from 2001, which also show the name of [REDACTED]

IRS documents from 2007 and 2008 show the [REDACTED] address also claimed as the petitioner's office address. Among the IRS documents is a Form 990 Return of Organization Exempt From Income Tax, which indicated that the beneficiary received \$15,000 in compensation during calendar year 2007.

The petitioner submitted a copy of a lease agreement, valid from March 25, 2009 to March 25, 2012, for the [REDACTED] address shown on Form I-360 and the petitioner's printed letterhead. A printed program for a worship service, dated 2009, also shows the [REDACTED]

On June 21, 2010, an immigration officer (IO) visited the [REDACTED] address to conduct a compliance review site inspection. The property at that address is a house, with a sign outside identifying two churches (the petitioning church and [REDACTED]). Finding the building unoccupied, the IO called a telephone number shown on the exterior sign and spoke to an individual who identified himself as [REDACTED] who made arrangements for a parishioner to unlock the building. Once inside, the IO found a church bulletin for the other church, and seating for about 25 people, but no evidence of religious activity by the petitioning church.

The next day, the IO arranged an interview with [REDACTED] and learned that the person who had repeatedly identified himself as [REDACTED] on the telephone was actually [REDACTED]'s son. [REDACTED] brought a ledger, purporting to show payments to the beneficiary dating back to 2006, but the IO noted that the ledger "appeared to be brand new." During the interview, [REDACTED] stated that the church does not have a Sunday school. When asked why the beneficiary was not present at the interview, however, [REDACTED] claimed that the beneficiary was doing work for the petitioner's Sunday school.

According to the IO, [REDACTED] produced photographs of himself at various church functions (none of them, apparently, at the [REDACTED] site), but no photographs of the beneficiary. [REDACTED] also produced a copy of the beneficiary's expired "preaching license." These materials are not in the record; there is only the IO's description of the materials produced during the interview.

The IO also stated that a representative of [REDACTED] "has never heard of the beneficiary and, although he is familiar with [REDACTED] name, he has only seen him a couple of times at the site."

The IO concluded that the petitioner had failed the compliance review. The director issued a notice of intent to deny the petition on August 11, 2010. This notice contained no mention of the petitioner's IRS determination letter, but it did report several of the IO's observations from the failed compliance review. The director stated that, because the failed compliance review raised doubts about the petitioner's claims, additional evidence would be necessary to establish eligibility. The director instructed the petitioner to submit evidence of the petitioner's religious activities at the

address; financial documentation; and verifiable documentation of the beneficiary's employment history, including "an itemized record from the Social Security Administration" (SSA); and "documentary evidence to show that the beneficiary's services are needed."

In response, counsel contended that the June 22 interview was on such short notice that the petitioner did not have the opportunity to contact the beneficiary or to assemble all of the evidence that the IO requested. The petitioner submitted several documents, including but not limited to:

- A "Certification of Membership" signed by [REDACTED] attesting to the petitioner's membership in that organization.
- A notarized letter from [REDACTED] identified as "a current pastor at [REDACTED] indicating that the petitioner 'is currently having services . . . in [the] same building as the [REDACTED]'. The letter did not mention the beneficiary by name or title, or otherwise verify the beneficiary's presence there.
- A list of names, addresses, and telephone numbers of persons who, counsel claimed, are willing to testify about the beneficiary's work for the petitioning church.
- A Korean-language newspaper, with an advertisement for the petitioning church, showing the beneficiary's name and photograph and the [REDACTED]. The date on the newspaper is August 20, 2010, meaning the advertisement appeared after the issuance of the notice of intent to deny the petition.
- Uncertified partial copies of the beneficiary's 2007 and 2008 federal income tax returns, with copies of IRS Form W-2 Wage and Tax Statements indicating that the petitioner paid the beneficiary \$27,000 in 2007 and \$25,008 in 2008.
- A printout from the [REDACTED] indicating that the petitioner paid the beneficiary \$15,000 in 2007 and \$25,008 in 2008, and the beneficiary reported \$23,088 in "self-employment" income in 2009. The 2007 amount does not match the amount claimed on the IRS Form W-2 for that year.

The director denied the petition on September 13, 2010, in part because the address on the petitioner's IRS determination letter does not match any of the addresses that the petitioner used at the time of filing. The director added that the petitioner had not overcome many of the credibility issues that led to the failure of the compliance review. Given these credibility issues, the director would not assume that the entity that received the IRS determination letter was the same one that filed the petition.

On appeal, the petitioner submits a copy of an IRS letter dated January 14, 2010, acknowledging the petitioner's "Jan. 05, 2010, request for information regarding [its] tax-exempt status." The letter, addressed to the petitioner at its current office address, confirmed that the petitioner is the same entity that the IRS recognized in 2002. This evidence is consistent with the matching employer

identification numbers on the previous submissions, and on the 2001 corporate documentation identifying [REDACTED] as an official of the corporation.

It is significant that the notice of intent to deny the petition did not mention the petitioner's tax-exempt status as an issue, and the requested evidence did not include IRS confirmation of the petitioner's tax-exempt status. The appeal was, therefore, the petitioner's first opportunity to submit the new letter. The AAO will withdraw the finding that the petitioner has not established its qualifying tax-exempt status.

There remains, nevertheless, the broader issue of the petitioner's overall credibility and its failure of the compliance review. Counsel, on appeal, repeats the claim that the IO did not give the petitioner enough time to prepare documents for the June 22, 2010 interview. Counsel also asserts that [REDACTED] "has the very limited ability to communicate in English," and that his "remarks were incorrectly translated or he misspoke because he was very nervous without his attorney's presence."

The IO's interview notes do not mention the presence of an interpreter, or language difficulties on Pastor Shin's part, but they also do not rule out these factors. If the petitioner seeks to explain away every discrepancy or discredited claim to [REDACTED] lack of fluency in English, then it necessarily follows that any English-language document signed by [REDACTED] is of dubious value because [REDACTED] was not in a good position to understand the documents presented for signature. A prominent example of this is [REDACTED] July 8, 2009 letter, which stated that the church is "located at [REDACTED]" The petitioner had left that address at least several months earlier when it began renting the [REDACTED] property in March 2009.

Another passage in the same letter reads: "As traditionally required by Presbyterian Church, Petitioner requires that our ordained minister must be officially ordained by Baptist Church." It seems highly unlikely that the pastor of a Presbyterian church would confuse the terms "Presbyterian" and "Baptist," and the record contains no documentary evidence to show that Presbyterian churches traditionally require their ministers to be ordained by Baptist churches rather than by Presbyterian churches.

If [REDACTED] has difficulty comprehending English, then USCIS can place little credence in any English-language document bearing his signature, including his certification on Form I-360 that the information in the record (predominantly in English) is true and correct.

While the petitioner submitted several exhibits in response to the notice of intent to deny the petition, those exhibits failed to address several of the issues the director raised. The letter from the pastor of [REDACTED], for instance, did not in any way contradict or rebut the IO's report about that church.

The submission of a list of names does not show that every person so listed will attest to the beneficiary's work for the church; counsel merely claimed as much. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988);

Matter of Laureano, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

A newspaper advertisement published after the issuance of the notice of intent to deny the petition, as the petitioner submitted, is considerably less persuasive than an advertisement that predated the point where USCIS first expressed concerns about the petition.

The IRS documentation of the beneficiary's 2007 earnings contradicts [REDACTED] documentation for the same year. The petitioner did not even acknowledge this contradiction, much less provide a persuasive and satisfactory explanation.

The compliance review brought to light several issues of significant concern, and the petitioner has not resolved them, despite three opportunities to do so (at the interview, in response to the notice of intent to deny and on appeal). The AAO will therefore affirm the director's finding that the petitioner has failed the compliance review, and that therefore, under the regulation at 8 C.F.R. § 204.5(m)(12), USCIS cannot properly approve the petition.

As a separate ground for denial, the director cited the petitioner's failure to demonstrate its need for a full-time minister, which cast doubt on the authenticity of the offer of full-time employment.

In the introductory letter dated July 8, 2009, [REDACTED] stated that the "Petitioner has approximately one hundred forty (140) members and there are thirteen (13) church officers and volunteers including two (2) paid pastors, Seniors and Deacons working for various departments such as Finance Department, Choir Department, [and] Worship Service Department."

The IO reported that, during the June 22, 2010 interview, [REDACTED] claimed that the church had "approximately 60 attending members" divided between [REDACTED] address and the [REDACTED] office address (which is also [REDACTED] home address). According to the IO, [REDACTED] asserted that the congregation is divided between the two locations because of growth in membership. The IO observed that the petitioner had previously claimed 140 members, and asked how a change from 140 members to 60 constitutes an expansion. The IO asserted that [REDACTED] "did not respond" to the question.

In the notice of intent to deny the petition, the director stated:

Submit documentary evidence to show that the beneficiary's services are needed.
Ensure that the evidence addresses the following factors:

- Number of volunteers and paid ministers and staff serving the petitioner's church
- Size of the congregation, submit a current membership directory verifying the total number of actual congregants attending services and ceremonies at the petitioner's location

- Specific duties which the beneficiary will be undertaking vs. specific duties of other staff
- Has the petitioning Organization always had the services of two pastors to perform the duties that the beneficiary will be undertaking? If not, what circumstances created a need for the beneficiary's services?

In response, counsel cited the following exhibits, most of which duplicate prior submissions:

- The beneficiary's 2007 IRS Form W-2;
- The approval notice for the beneficiary's R-1 nonimmigrant status, valid from 2006 to 2009;
- Several photographs of the petitioner in various settings, including a church service;
- Photographs of the covers of several Korean-language books, with stickers reading "Bible Study School";
- A list of the names of 36 men and 60 women, which counsel calls a "church directory"; and
- Overlapping lists identifying 13 participants in the "Praise Team" and 32 participants in the "Sunday Church School."

As noted previously, the 2007 IRS Form W-2 shows \$27,000 salary paid to the beneficiary, with \$4,112.40 in taxes withheld, but the SSA record for the same year shows only \$15,000. The petitioner submitted photocopies of what purport to be the beneficiary's monthly paychecks from 2007. Each check is in the amount of \$1,250, with no tax withheld, which is consistent with the SSA record but not the IRS Form W-2.

The photographs of the beneficiary (apparently leading a church service) show an organist and a total of eleven parishioners, but never all in the same picture. The photographs do not support the petitioner's claims about the size of the congregation.

The director, in the denial notice, found that the petitioner had failed to meet its burden of proof. On appeal, counsel asserts: "Petitioner has employed Beneficiary as its pastor since 2007 and Petitioner needs to continue its employment of Beneficiary," but otherwise the appeal does not directly address the issue.

The petitioner submits copies of three recent bank statements, the most recent of which (from September 2010) shows that the petitioner paid the beneficiary \$2,088 on August 21, 2010. The other statements, from July and August 2010, do not reflect any payments to the beneficiary.

The AAO has already explained why serious credibility issues permeate the record of proceeding. These issues necessarily affect the petitioner's claims regarding the beneficiary's consistent full-time employment. Counsel specifically singled out the 2007 IRS Form W-2 as a supporting factor, even though three other lines of evidence (checks, [REDACTED] records and the IRS Form 990) contradict this evidence and show that the petitioner paid the beneficiary \$15,000, not \$27,000, in 2007. The petitioner has not overcome these credibility issues, and the AAO will therefore affirm the director's

finding regarding the credibility and viability of the beneficiary's claimed job offer with the petitioning organization.

Review of the record reveals an additional disqualifying factor. 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 (9th 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)(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 USCIS regulation at 8 C.F.R. § 204.5(m)(11) requires that the two years of experience, if acquired in the United States, must have been authorized under United States immigration law.

The two-year qualifying period spanned from July 2007 to July 2009. On Form I-360, asked to state the beneficiary's "Current Nonimmigrant Status," the petitioner answered that the beneficiary was an R-1 nonimmigrant religious worker. Asked for the expiration date, the petitioner answered January 31, 2009. That date, however, fell nearly six months before the petition's filing date. Despite the expiration of the beneficiary's R-1 nonimmigrant status, the petitioner answered "no" when asked if the beneficiary had ever worked in the United States without authorization.

The petitioner has submitted documentation showing that the beneficiary held R-1 nonimmigrant status from February 1, 2006 to January 31, 2009, following the approval of a petition that the petitioner filed on his behalf. The record, however, does not document any attempt to extend the beneficiary's status past that expiration date, or any other way by which the beneficiary would have held employment authorization and/or lawful immigration status from February 1, 2009 onward.

The record does not show that the beneficiary held lawful immigration status or employment authorization between February 1 and July 20, 2009. The beneficiary's lack of status and his unlawful employment during that time are disqualifying factors under the USCIS regulations at 8 C.F.R. §§ 204.5(m)(4) and (11). For this additional reason, independent of the other stated grounds, USCIS cannot approve, and must therefore deny, 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.