



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF I-D-D-J-P- INC

DATE: JUNE 7, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner, a Pentecostal church, seeks to classify the Beneficiary as a special immigrant religious worker to perform services as a pastor. *See* Immigration and Nationality Act (the Act) section 203(b)(4), 8 U.S.C. § 1153(b)(4). This immigrant classification allows non-profit religious organizations, or their affiliates, to employ foreign nationals as ministers, in religious vocations, or in other religious occupations in the United States.

The Director, California Service Center, denied the petition. The Director found the Petitioner did not satisfactorily complete a pre-approval inspection, noting unresolved discrepancies regarding the Beneficiary's compensation.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and argues that the new documentation shows what the Beneficiary's compensation will be and how it intends to provide such compensation.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Non-profit religious organizations may petition for foreign nationals to immigrate to the United States to perform full-time, compensated religious work. The petitioning organizations, and the foreign nationals who are the beneficiaries of this employment-based visa, must meet certain eligibility criteria. Foreign nationals may also self-petition for this classification.

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, 2016, 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, 2016, 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 regulation at 8 C.F.R. § 204.5(m)(10) provides the initial requirements relating to how the Petitioner intends to compensate the Beneficiary:

*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 [Internal Revenue Service] 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.

In addition, the regulation at 8 C.F.R. § 204.5(m)(12) allows U.S. Citizenship and Immigration Services (USCIS) to verify information supporting the petition through any means deemed appropriate, including an on-site inspection. It further provides: "If USCIS decides to conduct a pre-approval inspection, satisfactory completion of such inspection will be a condition for approval of any petition."

## II. ANALYSIS

The issues within this appeal relate to whether the Petitioner has resolved inconsistencies in the record regarding the Beneficiary's compensation. Within the petition, filed in December 2014, the Petitioner indicated it would compensate the Beneficiary with \$700 each week. In a letter accompanying the petition, the Petitioner indicated that it had employed the Beneficiary as a pastor

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since 2009, and that he was currently receiving \$700 weekly in addition to an unspecified housing allowance and an unspecified stipend for his expenses. The Director issued a request for evidence (RFE), which in part pertained to compensation. The Petitioner's RFE response letter contained conflicting information, stating first that the Beneficiary would be compensated at \$600 per week plus housing expenses and an allowance, and in the next paragraph that he received a compensation of \$700 weekly in addition to a housing allowance.

After USCIS performed a pre-adjudicative site visit, the Director issued a notice of intent to deny the petition (NOID), identifying discrepant information pertaining to the details of the Beneficiary's compensation. The Director noted the following:

- The Beneficiary stated that he is compensated at approximately \$919 weekly, which the Director estimated at \$44,112 annually.
- The petition's signatory stated that the Beneficiary's salary is determined based on the donations the church receives.
- The Beneficiary stated that his salary has increased as the membership in the church increased.
- The Beneficiary's IRS documentation for 2013 and 2014, provided during the site visit, was inconsistent with his statements regarding his income.

Within the NOID response, the Petitioner submitted the Beneficiary's IRS Form 1099-MISC, Miscellaneous Income, for 2012, 2013, and 2014, each of which listed \$33,600 in compensation. The Petitioner stated in its response letter that "corrections were made" to the 2012 and 2013 documents "to reflect \$700 weekly income." The Petitioner also presented an excerpt of the minutes of the [REDACTED] for its parent organization signifying a pastor's minimum compensation scale, a letter about the Beneficiary, copies of letters the church provided with previous submissions, and copies of checks the Petitioner indicated were associated with the church buying additional property.

The Director denied the petition, finding that the Petitioner offered inconsistent information pertaining to the Beneficiary's compensation and that it did not resolve those inconsistencies through probative evidence. The Director concluded that due to the discrepant information, it did not satisfactorily complete the pre-approval inspection, which is a condition of the petition's approval under 8 C.F.R. § 204.5(m)(12).

On appeal, the Petitioner indicates that it has the financial means to compensate the Beneficiary at the stated weekly rate of \$700. The appellate evidence consists of another copy of the excerpt of the [REDACTED] minutes, new copies the Beneficiary's Forms 1099-MISC from 2012 to 2014, a Settlement Statement that appears to be related to the additional property the church purchased, and various photographs.

We agree with the Director that the Petitioner has not resolved the pertinent inconsistencies in the record. Where such contradictions are present, the Petitioner should offer independent, objective

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evidence to establish the actual facts surrounding the issue. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Specifically, the Petitioner has not resolved discrepancies in the submitted tax documentation. Regarding the Forms 1099-MISC offered in response to the NOID, based on the Petitioner's statement it appears that it amended the forms after the Director raised the issue. The fact that the Petitioner offered conflicting information, and appears to have altered the Forms 1099-MISC to correlate with the proffered wage of \$700 per week after the Director noted the discrepancy, brings into question the true facts of the case.

Furthermore, the IRS documentation submitted on appeal includes an additional discrepancy. The 2014 Form 1099-MISC provided in response to the Director's NOID was identified on the form as Copy 2. As stated above, it reflected that the Beneficiary earned \$33,600. The Petitioner submits two additional copies of the Beneficiary's 2014 Form 1099-MISC on appeal, Copy A and Copy C. While Copy A contains the same information as the Form 1099 submitted in response to the NOID, Copy C shows \$9,800 in earnings. The Petitioner does not offer an explanation for this updated information or explain the origin of the discrepant amounts, nor does it indicate why this information was not furnished previously. Accordingly, the newly submitted IRS documentation does not resolve the inconsistencies noted in the Director's decision.

The remaining evidence submitted on appeal is insufficient to resolve the stated discrepancies. The excerpt from the Petitioner's parent organization's [REDACTED] meeting minutes reflects that a pastor's compensation is dependent upon the number of church members and that the appropriate compensation for a congregation of the Petitioner's size would be \$1,002 per week. This document does not show how the Petitioner intends to provide the compensation specified at filing and on appeal. While the Settlement Statement demonstrates that the church is growing and possessed the means to finance and pay for approximately half of the property, this does not represent how the Petitioner intends to provide the Beneficiary's compensation. Further, photographs of the church, its members, and its prospective property do not establish the manner in which it will be able to compensate the Beneficiary at the stated salary.

The Petitioner has not offered documentation that sufficiently addresses the discrepancies noted within the Director's NOID and decision. The Director's decision informed the Petitioner that it could not rectify the noted incongruences with explanations, but that it must submit independent and objective evidence that points to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591. Here, the Petitioner has not provided such documentation. Because the above unresolved discrepancies call the Petitioner's intent and ability to provide the compensation described on the petition into question, they are directly material to establishing eligibility. As a result, the Petitioner has not met its burden of proof.

### III. CONCLUSION

For the reasons discussed above, the Petitioner has not offered documentary evidence that sufficiently addresses the discrepancies noted during a compliance review site visit.

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden. Accordingly, we will dismiss the appeal.

**ORDER:** The appeal is dismissed.

Cite as *Matter of I-D-D-J-P- Inc*, ID# 16651 (AAO June 7, 2016)