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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

File: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUL 16 2003

IN RE: Petitioner:
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:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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, 8 U.S.C. § 1153(b)(4), to perform services as an associate pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as an associate pastor immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established its ability to pay the beneficiary's annual wage of $18,000.

On appeal, counsel argues that the petitioner has submitted sufficient documentation of its ability to pay the proffered wage. Counsel also asserts that the beneficiary's paid vacation is not a disqualifying interruption of her employment.

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 October 1, 2003, 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 October 1, 2003, 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 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)(1) echoes the above statutory language, and states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious

worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States." The regulation indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition."

8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

> (ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:
>
> > (A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on October 25, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as an associate pastor from October 26, 1999 to October 25, 2001.

The initial submission includes a letter, dated July 3, 2000, from officials of the General Council Assemblies of God in Indonesia. The letter indicates that the beneficiary served as pastor of the Assembly of God in Duren Jaya from 1985 to 1999. The letter does not specify when in 1999 the beneficiary ceased to be the pastor; most of that year falls outside the relevant period. Although the letter was written in 2000, the chronology of the beneficiary's employment as a pastor for the Assemblies of God in Indonesia ends at 1999. A separate, unsigned document, headed "Biodata," on the same letterhead as the above letter, similarly stops at 1999.

Pastor [redacted] of the petitioning church states that the beneficiary "has an approved Religious Visa (R1) with validity of August 21, 2001 to June 15, 2004," but Pastor [redacted] does not specify when, if at all, the beneficiary actually began working for the petitioning church. Thus, the initial submission offers no indication as to where the beneficiary was working for most, if not all, of the qualifying two-year period.

On April 26, 2002, the director instructed the petitioner to submit "evidence of the beneficiary's work history beginning October 26, 1999, and ending October 25, 2001." The director requested detailed information regarding the beneficiary's employment during this period. In response, the petitioner has submitted a new letter from two officials of the Assemblies of God in Indonesia, indicating that the beneficiary "served as the pastor of the Assembly of God in Duren Jaya, Bekasi, Indonesia from 1985 to 2000." The petitioner claims that the beneficiary worked at the church in Duren Jaya until December 2000, although nothing from the church itself specifies the month.

The record contains copies of receipts dated through December 2000, and the beneficiary's name appears on these receipts, but the documents are in an Indonesian language with no translations provided. Therefore, we cannot determine the full significance of the receipts. It remains that, in July 2000, officials of the church in Indonesia indicated only that the beneficiary had worked as a pastor through 1999, even though the beneficiary was purportedly still working as a pastor when the letter was written.

The petitioner also asserts that the beneficiary has been the petitioner's associate pastor since September 2001. With respect to the intervening time between December 2000 and September 2001, Pastor [redacted] states that the beneficiary "arrived in the U.S. on February 28, 2001 for a vacation trip. She, however, officially resumed her pastoral duties with [the petitioner] . . . sometime in the first week of September 2001."

Noting the long interruption in the beneficiary's duties for most of 2001, the director denied the petition, stating "tourism does not constitute qualifying work experience in a religious occupation."

On appeal, the petitioner submits another letter from officials of the District Council of DKI/Jabar/Banten of the Assemblies of God in Indonesia. The officials indicate that, because the beneficiary had worked for fifteen years and "never taken a vacation leave," the church authorized her "to undertake a fifteen-month fully paid vacation" beginning in January 2001. Counsel argues "[t]he Beneficiary's initial visit to the U.S. for a pleasure trip (B-2) does not constitute a disruption to her continued pastoral work, nor should it have been regarded as an intervening space to her 2-year continuous experience as Associate Pastor." Counsel observes that the beneficiary had taken a paid vacation, and remained officially employed throughout the two-year period from October 1999 to October 2001.

Counsel argues that the beneficiary was on paid vacation, and remained officially employed throughout the relevant two-year period. Counsel asserts that "merely taking some time off to rest for a while" does not interrupt the employer/employee relationship. Still, we cannot ignore that the beneficiary's absence from her official duties in this case was not a short break of a few days or weeks, but a lapse of over eight months. Section 101(a)(27)(C)(iii) of the Act requires evidence that the alien "has been carrying on such vocation . . . continuously for at least the 2-year period" preceding the filing of the petition. The regulation at 8 C.F.R. § 204.5(m)(1) specifically requires that all "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition." For over one-third of the entire qualifying period, the beneficiary drew compensation but was not "performing the vocation" of a minister or "carrying on such vocation." From January to early September of 2001, the beneficiary was not performing the duties of a pastor or associate pastor at any church. While technically employed during that time, the petitioner was not earning new income, but rather was availing herself of paid leave already owed to her from an earlier time.

Counsel argues "[e]ven assuming that [the beneficiary's] trip . . . interrupted the 2-year continuous experience requirement, her extensive experience as Pastor which spans over 20 years may well compensate for the 8-month period." The statute and regulations, however, quite clearly state that the alien must work continuously throughout the two-year period immediately preceding the filing of the petition. There is no provision to allow earlier experience, whatever its duration, to serve in lieu of work performed during the two-year period.

The director also found that the petitioner has not established its ability to pay the beneficiary's proffered wage of $1,500 per month. Pastor Rose had earlier indicated that the beneficiary's "remuneration for services rendered will principally be generated through tithes and offerings and combined ministries." The beneficiary and her family would also receive "free board and lodging . . . in a house owned by one of our church members."

8 C.F.R. § 204.5(g)(2) states in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The initial filing contained no evidence of the petitioner's ability to pay. In response to the director's request for such evidence, the petitioner has submitted copies of check stubs showing that the petitioner has issued $750.00 checks to the beneficiary on April 21, May 19, and June 2, 2002. The spacing of the dates is consistent with twice-monthly payments equivalent to the proffered wage of $1,500 per month, but these stubs do not show that the petitioner has in fact paid the beneficiary $1,500 per month since the filing date. The petitioner does not explain why only these three pay stubs were submitted.

With the above check stubs, the petitioner has submitted a copy of a bank statement for a joint account held by the beneficiary and her spouse. The statement covers the period from December 22, 2001 to January 23, 2002, and reflects total deposits of $2,612.99 during that month. The individual deposits on the bank statement are itemized as follows:

12/24	$705.25
1/2	275.00
1/8	250.71
1/14	882.00
1/23	500.03

None of these deposits are consistent with twice-monthly payments of $750 each, and the source of the deposited funds is not identified. The record is silent regarding the employment situation of the beneficiary's spouse.

8 C.F.R. § 204.5(g)(2) requires evidence of the petitioner's ability to pay beginning with the filing date, which was six months before April 2002. The same regulation also states that evidence of the petitioner's ability to pay "shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements." The petitioner's annual report for 2001 showed an end-of-the-year balance of only $4,562.04 after expenses, insufficient to cover the beneficiary's annual salary of $18,000.

Although the petitioner has employed the beneficiary since August 2001, the record contains no documentation of its payments to the beneficiary prior to April 2002. The director accordingly denied the petition, in part because the petitioner has failed to establish its ability to pay the proffered wage. On appeal, Pastor Rose states "the following should be noted concerning offerings received from the Indonesian worshippers since April [2002].

April	$2431.00
May	$912.00
June	$2318.00
July	$1513.00"

The above figures average out to an amount sufficient to cover the beneficiary's wage of $1,500 per month. Still, the petitioner does not corroborate these figures with any documentary evidence. Furthermore, as noted above, the petitioner must establish its ability to pay beginning on the petition's October 25, 2001 filing date. The petitioner has repeatedly attempted to establish its ability to pay beginning six months later in April 2002.

Counsel maintains "the requisite documentation [has] been earlier submitted." Counsel states that the petitioner's financial reports establish the petitioner's ability to pay the proffered wage, but does not elaborate. We have already discussed those reports above.

Given the uncontested eight-month interruption in the performance of the beneficiary's duties, we must find that the beneficiary did not continuously perform the duties of a pastor or associate pastor during the required two-year period immediately preceding the filing of the petition. Furthermore, the petitioner has failed to demonstrate that it has consistently been able to pay the beneficiary's proffered wage from the filing date onward. For these reasons, the petition cannot be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.