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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

File: EAC 01 143 52515 Office: VERMONT SERVICE CENTER

Date: SEP - 2 2003

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: SELF-REPRESENTED

PUBLIC COPY

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, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a religious ministry. 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 a minister and research assistant. The director determined that the petitioner had not established (1) that the position offered constitutes qualifying religious work, (2) that the beneficiary had the requisite two years of continuous work experience as a minister and research assistant immediately preceding the filing date of the petition, (3) its ability to pay the beneficiary's salary, or (4) any history of employing salaried religious workers.

On appeal, the petitioner submits a short statement and copies of documents, most of them previously submitted.

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 first issue in this proceeding is whether the petitioner has made a qualifying job offer. 8 C.F.R. § 204.5(m)(4) states that each petition for a religious worker must be accompanied by a job offer from an authorized official of the religious organization at which the alien will be employed in the United

States. The official must state how the alien will be solely carrying on the religious vocation and describe the terms of payment for services or other remuneration.

The Bureau interprets the term “traditional religious function” to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

The petitioner, in a joint letter signed by Presiding Elder Francis Degraft Hayfrun and treasurer/trustee Mary Jones, states that the petitioner seeks “to employ the services of [the beneficiary] as a Minister and Research Assistant of our International Ministry’s Outreach Research Program.” The petitioner states that the beneficiary is an ordained minister who “also completed a four year degree course in Humanities and Social Studies.”

The director requested further evidence to establish that the beneficiary fits into one of the regulatory categories of religious workers. For instance, the director stated “if the alien is a minister . . . [a] copy of the certificate of ordination or other authorization should be submitted.” The director requested “evidence that the beneficiary’s primary duties, for the two years of qualifying employment, require specific religious training beyond that of a dedicated and caring member of the congregation or body. The evidence must establish that the job duties are traditional religious functions above those performed routinely by other members.”

In response, Elder Hayfrun states that the beneficiary “successfully completed Penticostal¹ [sic] Church School of Ministry, in 1995,” and was ordained the following year by the “Penticostal Church of South Africa.” Elder Hayfrun states that the petitioner “thought it feasible to further train [the beneficiary] through courses sponsored by our Ministerial Alliance . . . from 1999 to 2000. . . . [A]t the completion of all requirements, the Presiding Elder . . . was delighted to commission [the beneficiary] as Minister of the Gospel and International Representative under the Incorporation of Mercy International Ministry in December 2000.” Elder Hayfrun lists the beneficiary’s duties as “Religious Counseling,” “Communications,” “Bible Teaching,” “Bible Studies,” “Religious Instructions & Noonday Prayer,” “Worship Service (Preaching & Teaching)” and “International Projects Review.” The petitioner has not explained which of these duties justifies the title of “research assistant,” previously applied to the beneficiary.

The petitioner submits a course transcript from the Penticostal Church School of Ministry, Johannesburg, South Africa, indicating that the beneficiary trained there from February 1993 to February 1996, passing his final examination in April 1996.

The petitioner also submits a copy of its Constitution and Bylaws, Article X of which contains a clause that seems to indicate that there is no educational requirement for its ministers: “One can

¹ The word “Pentecostal” is misspelled “Penticostal” virtually every time it appears in the record, including on what purports to be official letterhead.

have all education but did not call by God [sic]. The Presbytery in this ministry is trusting God for wisdom in this matter.”

In denying the petition, the director noted that the petitioner has submitted no evidence to support the claim that the beneficiary was ordained as a minister in 1996. The director also found that the petitioner has not submitted sufficient evidence to demonstrate that the beneficiary has performed, and will continue to perform, the tasks of a qualifying religious worker.

On appeal, the petitioner submits a copy of a Certificate of Completion from Pentecostal Church School of Ministry, dated April 3, 1996. Another photocopied certificate from the Pentecostal Church of South Africa indicates that the beneficiary was ordained as a minister on April 13, 1996. Apart from the questions of credibility that necessarily arise from the systematic misspelling of “Pentecostal” on these unauthenticated documents, the documents do not establish that the beneficiary’s position traditionally requires an ordained minister rather than a volunteer or lay preacher. To possess a given qualification does not demonstrate that the job requires that qualification.

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 March 29, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister and research assistant throughout the two-year period immediately preceding that date.

The petitioner indicates that the beneficiary “arrived in the United States on October 3, 1998 . . . and has since his arrival been working steadily with the establishment of our International Research and Outreach Programs.” Because the initial filing included no corroboration of this

claim, the director instructed the petitioner to submit additional evidence to establish the beneficiary's continuous employment throughout the two-year qualifying period.

As noted above, Elder Hayfrun states "at the completion of all requirements, the Presiding Elder . . . was delighted to commission [the beneficiary] as Minister of the Gospel and International Representative under the Incorporation of Mercy International Ministry in December 2000." This information indicates that the beneficiary was not fully qualified, with all the necessary credentials, until a few months before the petition's March 2001 filing date. Elder Hayfrun adds that the beneficiary's "employment . . . commenced from December 1999." This claim fails to account for over a third of the two-year qualifying period, which began in March 1999. At no time following the initial filing has the petitioner repeated (or produced any support for) the claim that the beneficiary has worked with the petitioner "since his arrival" in 1998.

The director found that the petitioner has failed to establish that the beneficiary worked continuously in the occupation sought throughout the two years immediately before the filing of the petition. On appeal, the petitioner does not address or contest this finding. As noted above, the petitioner claims that the beneficiary received basic training as late as December 2000, and that the beneficiary's "employment . . . commenced from December 1999," more than eight months into the qualifying period.

The regulation at 8 C.F.R. § 204.5(g)(2) pertains to the next issue in this proceeding:

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 above-cited regulation at 8 C.F.R. § 204.5(g)(2) states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation.

The petitioner's initial letter does not address the issue of salary. The director therefore instructed the petitioner to submit evidence of its ability to pay the beneficiary's salary. The director stated "[i]f the [beneficiary's] past experience was gained on a volunteer basis, submit evidence that explains how the beneficiary supported herself/himself."

In response to the director's notice, the petitioner has indicated that the beneficiary "did receive a remuneration of \$600.00 dollars [sic] a month, he's currently receiving a remuneration of \$800.00 and free housing." The petitioner submits a "Remuneration Statement" indicating that the beneficiary received biweekly payments of \$300 from January 12, 2001 to October 19, 2001, and of \$400 from November 2, 2001 onward.

In the denial notice, the director stated that the petitioner had submitted no first-hand evidence to establish either the petitioner's ability to pay the beneficiary's wages, or the beneficiary's prior receipt of those wages. On appeal, the petitioner submits a copy of the above "Remuneration Statement" but provides no new evidence or argument on appeal.

Apart from the issue of the beneficiary's own salary, the petitioner's initial submission offered no information about any paid positions with the petitioning ministry. The director therefore requested further information such as "a list of the religious organization's salaried religious employees," as well as corroborating documentation such as "copies of Quarterly Withholding Statements." Such information would aid in establishing whether the petitioner has traditionally engaged salaried employees in the position offered to the beneficiary.

In response, the petitioner has submitted a notice from the Internal Revenue Service, dated May 11, 2000. The notice is a "form" document which instructs the petitioner to "see box(es) 12 checked below." The petitioner has submitted only the front page of this notice, which shows only boxes 1 through 6. Thus, the record does not show whatever relevant information may appear at box 12.

Article X of the petitioner's Constitution and Bylaws indicate that the petitioner "maintains no fixed monthly allowance to any pastor, evangelist, etc.; but there may be 'Out of Starvation' gifts . . . made available."

The director denied the petition in part because the petitioner has not shown that it maintains any full-time salaried employees. On appeal, the petitioner states that it "does not have salaried paid employees, religious or non-religious [because] we are a young Ministry and are just beginning to employ qualified Ministers." This explanation appears to conflict with the petitioner's own bylaws, which seem to rule out regular salaries altogether, although they allow for variable subsistence stipends. The record shows that the Internal Revenue Service issued a tax exemption letter to the petitioner on May 28, 1997, indicating that the petitioner had been in existence for, at least, nearly four years prior to the March 2001 filing date. By the time of the July 2002 appeal, the petitioner had supposedly been operating for over five years with no salaried staff.

The petitioner has provided no direct, documentary evidence to establish persuasively that it has ever paid the beneficiary, or anyone else in the same position, a salary. The petitioner has also failed to establish that other churches and associations in the same denomination traditionally regard the beneficiary's work as the work of full-time, salaried employees.

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.