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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

PUBLIC COPY

[redacted]

SEP 04 2007

File: [redacted] Office: VERMONT SERVICE CENTER Date:

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]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 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 assistant pastor. The director determined that the petitioner had not established (1) that the proffered position constitutes a qualifying religious occupation, (2) that the beneficiary had the requisite two years of continuous work experience as an assistant pastor immediately preceding the filing date of the petition, (3) its ability to pay the beneficiary's proffered wage, or (4) its status as a qualifying tax-exempt religious organization.

On appeal, counsel states that a brief is forthcoming within 30 days. To date, over ten months after the filing of the appeal, the record contains no further submission and a decision shall be made based on the record as it now stands.

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 concerns the nature of the beneficiary's occupation. Regulations at 8 C.F.R. § 204.5 offer the following relevant definitions:

> *Minister* means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.
>
> *Religious occupation* means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed and practice of the religion.

The Bureau therefore 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.

Rev. [redacted] senior pastor of the petitioning church, states that the beneficiary "is offered the position of an Assistant Pastor," and that her duties would include the following:

1. Preaching the gospel of Jesus Christ
2. Laying hands and pray for the sick
3. Provide leadership training for our church workers
4. In charge of the Women's Ministry (Women of Virtue Ministry)
5. Director of Visitation and Counseling Department
6. Provide leadership for inner mission's outreaches
7. Coordination of retreats, seminars, workshops and related protocols
8. Instructor in Sunday School

Regarding the beneficiary's qualifications, Rev [redacted] states "[t]he beneficiary has a Bachelor of Science in Economics" and that she "facilitated satellite churches for New Covenant Church of

Ibadan . . . and Glory Tabernacle of Ibadan" in addition to holding "leadership positions with Aglow Ministry." Rev. [redacted] adds "[t]he beneficiary has received extensive training at our Leadership Training School of the Local church in 1998 and 1999. . . . She is a licensed minister with this organization effective . . . November 1999." The petitioner submits a copy of a "Certificate of License" issued to the beneficiary on November 26, 1999, indicating that the beneficiary "has given evidence of a calling by God into ministry as Evangelist."

The director instructed the petitioner to submit evidence to show that the beneficiary's position requires advanced training or education beyond the religious knowledge of a dedicated member of the congregation. The director also requested a copy of the beneficiary's certificate of ordination, if the beneficiary had one. In response, the petitioner has submitted another copy of the beneficiary's 1999 Certificate of License, which counsel refers to as the beneficiary's "certificate of ordination." The record contains no evidence that the beneficiary is qualified to perform, or in fact has performed, the full range of duties of authorized clergy, such as the sacraments.

The petitioner submits an independent evaluation of the beneficiary's educational credentials, indicating that the beneficiary's "four-year degree [from] a Nigerian university is equivalent to a US Bachelor's degree." The beneficiary's qualifications as an economist are not in dispute, because they are not relevant to the matter at hand. The petitioner has not claimed or demonstrated that the position of associate pastor requires, or has anything to do with, a bachelor's degree in economics. The beneficiary's college transcript shows no course work in religion or theology.

The petitioner has also submitted a photocopy of the beneficiary's passport. This document, issued on September 25, 1996, identifies the beneficiary's occupation as "Businesswoman" although the beneficiary had purportedly been a church official for six years prior to that date.

Furthermore, the petitioner has also submitted a booklet celebrating the petitioner's tenth anniversary in 2001. The booklet includes profiles of several church staffers. The beneficiary's profile states that the beneficiary "came to the United States in 1997 and has since become a certified Microsoft Systems Engineer." The booklet refers to the beneficiary as an "intercessor" rather than as an "assistant pastor."

The director stated that the petitioner failed to establish that the beneficiary's position requires any specialized training or qualifications. The director cited *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978), in which the Board of Immigration Appeals stated "[w]e do not agree that the issuance of a piece of paper entitled 'certification of ordination' by a religious organization should be conclusive as to who qualifies as a minister for immigration purposes." The Board noted that the certificate in question was "[not] based on . . . any theological training or education" and that there was no evidence that the alien had actually performed the duties reserved for authorized members of the clergy.

On appeal, Rev. [redacted] states that, in the Pentecostal denomination, "[o]rdination is confirmation of the ability to execute the duties [of the clergy] effectively, not a permission to do so." Rev.

states that these duties include "religious sacraments, water baptism, child dedications, marriages and any other ordinances of the church. . . . [The beneficiary] performs these duties." The record contains no documentation (such as copies of executed marriage licenses) to show that the beneficiary has, in fact, performed these duties. Significantly, the petitioner's original list of the beneficiary's duties did not include religious sacraments, water baptism, child dedications or marriages.

The petitioner contends, on appeal, that the beneficiary qualifies for classification as a minister. Pursuant to section 101(a)(27)(C)(ii)(I) of the Act and 8 C.F.R. § 204.5(m)(1) and (4), an alien minister seeking special immigrant religious worker classification must seek to enter the U.S. *solely* to work as a minister. The record, however, indicates that the beneficiary "came to the United States in 1997 and has since become a certified Microsoft Systems Engineer." This information indicates that the beneficiary has, in recent years, obtained vocational training in an indisputably secular occupation with no discernible connection to her claimed duties as a minister. This training, reported by the petitioner itself to its congregation, does not readily suggest that the beneficiary (whose means of support since 1997 has never been adequately explained) has been, or will be, solely employed in the vocation of a minister. Outside employment is permissible for aliens in a non-ministerial religious occupation, but then the question arises as to why the petitioner claims on appeal that the beneficiary is in fact a minister who performs the full range of duties of authorized clergy. 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. 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. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

For the above reasons, we concur with the director's findings regarding the beneficiary's occupation. The next issue regards the beneficiary's employment during the two-year qualifying period.

The regulation at 8 C.F.R. § 204.5(m)(1) 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."

Rev states that the beneficiary had been "an Associate Pastor of Satellite churches . . . from 1990 through 1997" and "a licensed minister" with the petitioner since November 1999, but he does not indicate the beneficiary's duties (if any) for the petitioner between 1997 and her November 1999 licensure.

The director requested evidence to establish the beneficiary's employment throughout the two-year qualifying period. In response, the petitioner has submitted another copy of Rev. [redacted] earlier letter, already discussed above. The petitioner also submitted the tenth anniversary booklet, discussed above, which indicates that, as of 2001, the petitioner referred to the beneficiary as an "intercessor" rather than an assistant pastor.

In denying the petition, the director noted that the letter from Rev [redacted] refers to employment from 1990 to 1997 and does not cover the two years immediately prior to the petition's September 2001 filing date. On appeal, the petitioner submits several documents (mostly copies of previously submitted exhibits) and a three-page letter from Rev. [redacted] but nothing submitted on appeal addresses the issue of the beneficiary's employment from March to November of 1999. Because the petitioner has not contested this finding, and because we find no fault in the director's discussion of this issue, the director's finding stands.

The regulation at 8 C.F.R. § 204.5(g)(2) pertain to the next ground for denial:

> *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.

With regard to the petitioner's finances, Rev. [redacted] tates "[w]e potentially have over $1.2 million in real estate property and expect a gross income of over $300,000 in fiscal year 2000. . . . We believe that the petitioner has the ability to sufficiently provide for" the beneficiary. The petitioner's initial submission includes a balance sheet, indicating $6,465.32 in current assets as of December 31, 1999. There is no indication that the balance sheet was prepared following an audit of the petitioner's finances.

In response to a request for further evidence, the petitioner submits copies of quarterly tax returns reflecting total wages between $4,550 and $5,550 per quarter. These returns only address compensation paid to workers, and do not require a full accounting of the petitioner's finances. The petitioner also submits copies of Form W-2 Wage and Tax Statements, indicating that Rev. [redacted] earned $9,750 in 2000, and his spouse earned $9,650 the same year. Form W-3, Transmittal of Wage and Tax Statements, indicates that these two individuals were the only paid employees in 2000. Their combined wages of $19,400 are consistent with the above quarterly payments. This documentation indicates that the beneficiary was not a paid employee of the petitioning church in 2000. The petitioner also submits copies of bank statements showing end-of-the-month balances of $1,790.83 in January 2001 and $1,083.59 in February 2001.

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 materials described above do not fit the regulatory requirements.

The director noted that the petitioner has provided only "an assertion that the beneficiary will be paid $34,000.00 a year." The director found that the petitioner's unsupported assertion is not sufficient to establish the petitioner's ability to pay the proffered wage.

On appeal, Rev[redacted] states "[w]e have the ability to pay [the beneficiary] but cannot do it until she is permitted" to work in the United States. Rev. [redacted] discusses the church's recent growth. By regulation, the petitioner must establish its ability to pay the beneficiary's salary as of the petition's filing date.

The petitioner submits copies of bank statements from the first half of 2002, reflecting monthly balances above $2,500 but below $3,000. These bank statements do not present a complete picture of the petitioner's financial status. Furthermore, the statements do not show that the petitioner has over $2,500 to pay the beneficiary each month, because any salary paid to the beneficiary in one month is no longer in the bank account to pay the next month's salary. The bank balances are successive rather than cumulative. Twelve monthly balances of $3,000 each do not add up to an annual balance of $36,000; rather, those balances simply show that the petitioner's net cash reserves are holding steady at $3,000. The petitioner has not, on appeal, established that it is able, and has been able since the March 2001 filing date, to pay the beneficiary's proffered salary of $34,000 per year.

The final issue in contention regards the petitioner's status as a tax-exempt religious organization. 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

The petitioner has submitted an exemption acknowledgement letter from the U.S. Internal Revenue Service (IRS), but the director observed that the letter was sent to an address that differs from the petitioner's address. Therefore, the director concluded, the petitioner has failed to show that this letter pertains to the petitioning entity.

While the IRS letter shows an address different from the one on the petitioner's letterhead, the petitioner has submitted a church bulletin from 1998 which shows the address on the IRS letter as

the church's "temporary address." The petitioner, on appeal, submits a new IRS letter, sent to the petitioner's current address. This new letter would overcome the director's finding even if the 1998 bulletin were absent from the record. We withdraw the director's finding in this regard, but the director's other findings, each of them sufficient to warrant denial of the petition, stand.

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.