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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

[redacted]

SEP 26 2003

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]

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 a missionary. The director determined that the petitioner had not established that the beneficiary has worked, or would work in the future, full-time in a qualifying religious occupation.

On appeal, counsel states that a brief is forthcoming within 30 days. To date, eleven 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 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." The petitioner must also establish that the position offered qualifies as a religious vocation or occupation, as defined at 8 C.F.R. § 204.5(m)(2).

Rev. Dr [redacted] pastor of the petitioning church, states "we require the services of two Arabic-speaking Christians to serve as Missionary-at-large to the Arab community, to work closely with and under the supervision of Salam Arabic Lutheran Church in Brooklyn and its pastor." The initial submission contains nothing from Salam Arabic Lutheran Church or its then-unidentified pastor. Rev [redacted] states "[t]his position cannot be filled by dedicated and caring members of the congregation, since they lack linguistic and cultural skills." The petitioner is "predominately [sic] a German church." Rev. [redacted] does not explain why a local Arabic church must recruit Arabic-speaking missionaries from the congregation of a "predomina[nt]ly . . . German church" instead of filing its own petition on behalf of this beneficiary.

Rev [redacted] states that the beneficiary's duties are as follows:

1. Recruit and train others as lay leaders to carry on the ministry of the church and basic missionary work.
2. Visit with the sick at the hospitals and visit the male sick at home. (In the Arabic culture a man can't visit with a woman.)
3. To celebrate the worship service with the Pastor on Sundays and other occasions of the church and fulfill his part.
4. To hold worship service in the absence of the Pastor or in case of emergency.
5. To teach the faith and hold Bible studies in the Arabic language.
6. To teach confirmation class to the youth of the church in the Arabic language.
7. To oversee the maintenance of the church and the readiness of the church for worship service.

The I-360 petition form indicates that the beneficiary entered the United States on August 16, 1977, under an F-1 student visa. The visa (reproduced in a photocopy of the beneficiary's passport) was issued so that the beneficiary could study at Bob Jones University, Greenville, South Carolina. Rev [redacted] in his introductory letter, states that the beneficiary "gained his experience as a Missionary with Salaam Arabic Church from September 1997 to the present time." Because Salaam Arabic Church is located in Brooklyn, New York, there is no way that the beneficiary could have been working there as a missionary while, at the same time, studying at Bob Jones University which is roughly 600 miles south of Brooklyn.

To resolve this very serious discrepancy, the director instructed the petitioner to submit "[c]opies of the beneficiary's course transcripts from all college courses taken in the U.S., plus copies of

any diplomas he has received." The director also requested evidence, such as Form W-2 Wage and Tax Statements, to establish "how the beneficiary has supported himself financially from June 1999 to present."

In response, the petitioner has submitted various documents. In a cover letter, counsel describes this evidence. The only evidence submitted that relates to the beneficiary's education in the United States is a letter from Rev [redacted] of Salam Arabic Lutheran Church, who states that the beneficiary "completed a course in becoming an outreach person 'missionary.'" Rev [redacted] does not specify when the beneficiary took this course, but does indicate that the beneficiary "worked with us from September 1997 to Present. The church provided a salary of seven thousand five hundred dollars a year plus all expenses." The petitioner produces no documentation, such as check stubs or bank records, to verify these payments. The record contains no contemporaneous documentary evidence at all regarding the beneficiary's claimed missionary work from 1997 onward.

In a new letter, Rev [redacted] repeats the above work schedule and states that most of the beneficiary's duties will occupy between three and eight hours per week, with fifteen hours devoted to "the maintenance of the church." Rev. [redacted] also states that no tax documents are available for the beneficiary because he did not file income tax returns. The petitioner's uncle, [redacted] states that the beneficiary has lived in Mr. [redacted] Brooklyn home "since August 1997 to present" because the beneficiary "is not making enough money to rent an apartment by himself."

The director denied the petition, stating that the petitioner has not persuasively demonstrated that the beneficiary has been, or will be, engaged in a qualifying religious occupation. The director cited several grounds for this finding. The director stated that the beneficiary's work in "church maintenance," which occupies more time than any other single duty, "sounds like possibly nonreligious janitorial or cleaning duties." The director noted the petitioner's failure to submit the requested Forms W-2, and asserted that the petitioner did not explain why these documents were not submitted. The director also noted that the beneficiary purportedly entered the United States to study at Bob Jones University, but the petitioner claims that the beneficiary has been in New York since his entry and the petitioner has provided no transcripts from any college or university. The director stated "[i]f the beneficiary has been living in New York since August 1997, he apparently entered the United States illegally and has been residing illegally in the United States since August 1997."

On appeal, counsel states that the beneficiary "did not in fact enter the United States illegally." The petition form instructed the petitioner to show the expiration date of the beneficiary's current nonimmigrant status. The petitioner wrote "D/S," short for "duration of status," meaning that the beneficiary's F-1 student visa would remain valid as long as the beneficiary remained a student (and, by implication, the visa would not be valid if he did not maintain student status). There are only three possible scenarios regarding the beneficiary's student status. Either he studied at Bob Jones University, he studied at another institution, or he did not study at all.

If the petitioner attended Bob Jones University, which was the sole basis for his admission into the United States, then counsel is correct that the beneficiary entered legally. However, this explanation is valid only if the beneficiary did not, in fact, work in Brooklyn from 1997 onward as claimed. Thus, to claim that the beneficiary honored the terms of his nonimmigrant student visa requires the stipulation that the petition is grounded on false information. It remains that the petitioner ignored the director's explicit request for the beneficiary's transcripts from Bob Jones University, and after the director mentioned the issue again in the denial notice, counsel's appeal statement avoids the issue entirely. Counsel contends on appeal that "[a]ll evidence requested by the Service was in fact submitted," but "[a]ll evidence requested" included college transcripts. The record contains no transcripts, and the cover letters submitted do not refer to any such transcripts, making it unlikely that the transcripts were submitted and later misplaced.

The issue of the distance between Brooklyn and Greenville could be resolved, without abandoning the beneficiary's student status, if the beneficiary transferred from Bob Jones University to a college or university in or near Brooklyn. There is, however, no evidence at all that the beneficiary transferred to a Brooklyn-area university in this manner, nor has the petitioner ever claimed that such is the case. Therefore, we have no reason to give serious consideration to this possibility.

It is possible that the petitioner never attended Bob Jones University or any other university in the United States, but rather went to Brooklyn immediately or shortly after his arrival. The beneficiary's passport was stamped in New York, and there is no evidence that he ever left that area. If this is the case, then the evidence suggests that the beneficiary entered the U.S. in bad faith, with no intention to undertake the studies that formed the sole basis for his admission. If this, in turn, is the case, then the beneficiary has demonstrated his disregard for the grounds of his admission, and we have no reason to believe that he intends to work as a religious worker, any more than he intended to study at Bob Jones University. If, as the petitioner claims, the beneficiary was a paid worker at Salam Arabic Lutheran Church but filed no tax returns to report this income, then we have yet another demonstration of the beneficiary's disregard for federal law and the beneficiary's good faith becomes an even more prominent consideration. If the beneficiary has not honored the terms of his nonimmigrant visa, or his obligation to file annual income tax returns, then there is no reason to believe that the beneficiary will honor the terms of any immigrant classification granted to him.

The record is entirely devoid of contemporaneous documentary evidence to establish the beneficiary's whereabouts and activities between his August 1997 admission and the June 2001 filing of the petition. The petitioner has consistently claimed, however, that the beneficiary was in Brooklyn the entire time, in which case he never studied at Bob Jones University, and thus never fulfilled the sole condition for his admission. If the petitioner's claims are to be believed, then the inescapable conclusion is that the beneficiary has no lawful immigration status. Even if the beneficiary did enter legally, intending in good faith to study at Bob Jones University, the petitioner's claims indicate that the beneficiary abandoned that intention almost immediately.

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).

Counsel states "[t]he 15 hours weekly 'church maintenance' referred to religious duties and not 'janitorial duties' and is supported by evidence." Counsel does not specify the nature of this evidence. While the director's determination that "'church maintenance' sounds like possibly nonreligious janitorial or cleaning duties" could be dismissed as speculation, counsel is incorrect that the evidence of record establishes the nature of "church maintenance." The petitioner has not elaborated upon the nature of this "church maintenance" except to state that it involves "the readiness of the church for worship service," which could reasonably be interpreted to involve cleaning the area and optimizing its physical appearance. The record establishes no non-custodial usage of the phrase "church maintenance." This is one more ambiguity in a record of proceeding that consists largely of conflicting and unsubstantiated claims.

Review of the record reveals an additional issue. The regulation at 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 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 states that the beneficiary will receive $1,300 per month. The petitioner submits a copy of its "Interim Annual Report" for 1999 but this document lists only the funds budgeted for 1999 and 2000. Under "Actual" income and expenditures, the report indicates that figures are not yet available.

In an unsigned letter dated December 27, 2001, the petitioner indicates that it "has at present two persons on its payroll, one is the pastor and the other . . . the church secretary." Thus, as of late 2001, the petitioner employed no paid missionaries, full-time or otherwise. The petitioner submits a copy of its proposed budget for 2001, with the 2000 budget included for comparison. Neither budget includes any funds for missionaries. The budget indicates that the petitioner anticipated $174,172 in expenses and $175,800 in income, leaving an excess of only $1,628 from which to

draw the beneficiary's salary. Thus, the record not only lacks qualifying financial evidence, it also shows that the petitioner did not plan or set aside funds to pay anyone in the beneficiary's position during the year that the petition was filed. This discrepancy is consistent with the overall pattern evident in the record, of unsubstantiated claims that are inconsistent with the minimal documentation that precedes the filing of the petition.

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.