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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

AUG 15 2003

File: Office: VERMONT SERVICE CENTER

Date:

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:

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 that the beneficiary had the requisite two years of continuous work experience as an assistant 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 proposed salary.

On appeal, the petitioner submits new documents and arguments from counsel.

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 April 9, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as an assistant pastor throughout the two-year period immediately preceding that date.

Reverend Mulchand Mattai, pastor of the petitioning church, states:

[The beneficiary] joined our congregation in February 1999. As an ordained minister, he soon used his skills to counsel and guide parishioners. . . .

Specifically, [the beneficiary] is designated as my assistant. In that capacity, he is involved in preparing sermons, supervises the band and ushers, and oversees the men’s ministry. He also oversees the Sunday School which is conducted by a minister.

A Form G-325A Biographic Information sheet submitted with the petition does not show any employment for the beneficiary from 1996 to 2001.

The director instructed the petitioner to submit additional information regarding the beneficiary and the petitioner, such as documentation of the petitioner’s ability to pay the beneficiary’s salary and evidence to show how the beneficiary has supported himself. In response, the petitioner has submitted several letters, each jointly signed by the beneficiary and by Rev. [REDACTED]. One letter states that “[f]rom April 1999 to present the beneficiary has been receiving a weekly stipend from the church, relatives and close friends, he is also receiving money and groceries as love gifts from members of his congregation.” A second letter states “[t]he beneficiary had never filed for federal income tax return, as he does not have a Social Security number, and is not employed.” A third letter states that from “April 1999 to present the beneficiary has held no jobs religious or nonreligious.” A fourth letter states that the beneficiary and Rev. [REDACTED] are the church’s only

“paid employees.” The contradictions between these various letters are obvious; the petitioner has “no job” and “is not employed” but is a “paid employee” receiving a “weekly stipend.”

The director denied the petition, stating that the petitioner’s evidence “does not persuade us that the beneficiary has been a full-time religious worker for the required 2-year period, and that he would be a full-time religious worker in the job offered, and that [the petitioner] will support him financially.”

On appeal, counsel attempts to explain the contradictory claims by stating that the beneficiary “was receiving a stipend. Given the type of compensation, it was concluded that [the beneficiary’s] work association with the church was not employment in the strict sense.” Counsel states that the petitioner was unaware that “the Service is reading the term ‘worker’ in such [a] broad sense.” It is not clear what is “broad” about defining a worker as someone who performs tasks for payment.

The petitioner, on appeal, submits no contemporaneous documentation from within the two-year qualifying period. Instead, the petitioner submits a letters from the pastor of another local church, who asserts that the beneficiary has been an assistant pastor at the petitioning church for “several years.” The general president of the Association of International Gospel Assemblies, Inc., states that the beneficiary has been a licensed minister since December 22, 1997, but does not indicate where the beneficiary has worked. These submissions are not contemporaneous evidence of full-time employment and cannot suffice to overcome the director’s stated grounds for denial.

The petitioner also submits a certificate presented to the beneficiary, which reads in full:

APPRECIATION

In recognition of outstanding performance

[The beneficiary]

is hereby presented with this certificate of outstanding leadership and understanding. The recipient is entitled to all the rights and privileges associated with this award, and to full recognition of same.

Presented on October twenty-fourth

Nineteen hundred ninety nine.

The certificate contains minimal information. It does not identify the entity that presented the certificate, and it does not provide any coherent explanation of why the beneficiary received it.

Counsel states “the income of the petitioner is clearly sufficient to pay the beneficiary, as it has paid others within the church.” According to the petitioner, only two individuals receive compensation, Rev. [REDACTED] and the beneficiary, and the petitioner has not specified the amount of this compensation. The petitioner has submitted no documentation such as canceled checks to establish how much, if at all, the petitioner has paid the beneficiary during the qualifying two years.

8 C.F.R. § 204.5(g)(2) states that evidence of a petitioner's ability to pay the proffered wage "shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements." The petitioner has submitted a copy of a bank statement, but none of the types of required evidence. Counsel's vague and unsubstantiated assertion that the petitioner's congregation is growing cannot compensate for the absence of required documentary evidence. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

We note that the petitioner has also failed to submit the required documentation to establish its 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 documentation establishing exemption from state taxation, but not from federal taxation, nor has the petitioner submitted the documentation required to establish eligibility for federal tax exemption.

The sparse documentation submitted with this petition is insufficient to meet the petitioner's burden of proof, and the petitioner, on appeal, has not overcome the deficiencies and inconsistencies noted by the director.

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.