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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: NEBRASKA SERVICE CENTER

Date:

AUG 21 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, Nebraska 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 pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a pastor immediately preceding the filing date of the petition.

On appeal, counsel asserts that the grounds for denial are speculative, fueled by the director's "desire to deny the application."

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 30, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a pastor throughout the two-year period immediately preceding that date.

In a letter submitted with the initial filing [REDACTED] president of the petitioning church, states that the beneficiary "has been hired to work full time (40 hrs a week) for the petitioner, and that the beneficiary "will . . . develop group Bible Studies, Sunday School and general teaching of the Scripture." [REDACTED] does not specify the beneficiary's job title, nor does he indicate that the beneficiary has already performed those duties.

The petitioner submits a translated letter, dated March 2, 2001, from Rev. Dr. Milton Armijos Vidal, pastor of the Iglesia Evangelica Asamblea de Dios Ecuatoriana, who indicates that the beneficiary has been a "member of our church since July 10, 1985" and adds that the beneficiary "has performed the duties of a deacon and local labor. He had need [sic] doing pastoral work in Canton Pucara Gualaceo and Azoguez." The record contains other documents confirming that the beneficiary joined the Assembly of God Church on July 10, 1985.

The director instructed the petitioner to submit evidence of the beneficiary's membership in the petitioner's religious denomination, and his activities during the two-year qualifying period. The director also requested "the job title of the offered position" and a description of the duties and requirements for that position.

In response, the petitioner has submitted several letters from [REDACTED] who states:

[The petitioner] is offering a Pastor position to [the beneficiary]. His duties will be the following:

1. Develops and supervise Sunday School groups (Children, adults, etc.) 20%
2. Develops Bible Studies at homes 20%
3. Pastoral visitation to Hospitals 10%
4. Pastoral visitation to Jails 10%

5. Pastoral visitation to Community activities 10%
6. Develops Christian Campaigns 10%
7. Pastoral duties in Church office 20%

This is a new full time position; no other person has been previously employed in this position.

The beneficiary has proven to conform to the educational training necessary to perform the duties as a Pastor.

██████████ lists the following "religious and educational training" requirements:

To be an active Evangelical Christian based on the Holy Scriptures "The Bible"
Able to Understand, interpret and teach the Holy Scriptures "The Bible"
Prior Background in the Pastoral Ministries'
Good Morals and character
Good testimony as a good citizen and/or alien.

██████████ "administering the sacraments" and "preaching and teaching the Word of God" among the pastor's duties. Much of this language is taken from the petitioner's bylaws, which also indicate that the pastors of that church "shall provide the church with an accurate record of their pastoral acts" (Article II, Section 2). The same section of the bylaws refers to a "Senior Pastor," a title which the petitioner has never claimed the beneficiary has held or will hold.

██████████ states that the beneficiary has been a member of the congregation of the petitioning church since March 1999, and works "in this compensated position of free will offering. We have provided room and board until the special immigration status is granted." Mr. Salgado adds that the petitioner "is a Non-denominational Church."

The petitioner submits a copy of the beneficiary's ordination certificate from 1992, along with a translation, indicating that the beneficiary "was ordained public[ly] and solemnly to Holy Ministry" in the Ecuadoran Assembly of God Church.

In denying the petition, the director stated that "the petitioner has failed to establish that the beneficiary has been engaged solely as a minister of the religious denomination for the two-year period." The director observed that the beneficiary was ordained by the Assembly of God denomination, whereas the petitioning church is non-denominational. The director stated that the petitioner had failed to establish the "standards of ordination" for the petitioning church.

On appeal, counsel states that "the regulations establish no such standards," and asserts that the beneficiary's "duties, therefore, are the determining factor." Counsel quotes the percentage breakdown of duties listed above. That breakdown purports to account for 100% of the beneficiary's time and duties, yet it does not include officiating at Sunday services or performing sacraments such as baptisms. The church's bylaws refer to a "Senior Pastor," who would appear

to be responsible for worship services, sacraments, and other duties traditionally performed by the clergy.

The regulatory definition of a minister at 8 C.F.R. § 204.5(m)(2) states that the term "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." The petitioner has provided no indication that the beneficiary has performed ministerial activities. The petitioner has not shown that teaching Sunday school, "visitation to community activities" and other listed duties are limited to authorized members of the clergy.

The petitioner's by-laws, as noted above, require pastors to keep "an accurate record of their pastoral acts." Although the director denied the petition in part because of a lack of evidence regarding the beneficiary's work, the petitioner's appeal does not include materials from such a record.

Furthermore, notwithstanding counsel's observations regarding the exact wording of the regulations, the director has correctly noted that the beneficiary was ordained in a denomination other than that of the petitioning church, and the record does not establish that the petitioner has officially recognized this ordination. Here again it is relevant to note that while the petitioner has made general assertions about what is expected of "pastors" in general, the breakdown of the beneficiary's own duties does not include those functions.

The director stated:

To satisfy the two-year continuous work experience requirement, it must be shown that the past activity was equivalent to the offered position, that it was engaged in as an occupation, and that it constituted a religious occupation. . . . There must also be a showing that the work involves a significant time commitment, well beyond that of a typical congregant or lay volunteer. This ordinarily involves full-time salaried employment.

Elsewhere, the director indicated that "incidental volunteer activities do not constitute qualifying work experience."

On appeal, counsel states that the petitioner has never "referred to [the position] as 'volunteer,' part time, intermittent, or supported by outside employment. These are glosses added by the Service in its desire to deny the application. The Service has assumed facts not supported by the application, the documents, or common sense." The burden of proof, however, is not on the Bureau to show that the work was part-time, but on the petitioner to establish that the work was continuous and full-time. Counsel does not meet this burden of proof by noting that the petitioner has never referred to the position as part-time.

The petitioner has listed what the beneficiary's "duties will be," discussed what the beneficiary "shall" do as pastor, and referred to the beneficiary as a "candidate" for a pastoral position. These repeated and consistent uses of the future tense do not imply past employment. The petitioner

states that the beneficiary has been a member of the congregation "since March 1999," but does not state that the beneficiary began acting as a pastor immediately upon joining the congregation, or shortly thereafter. The only indication that the beneficiary has served as a pastor is a sentence that begins "[e]ver since the Beneficiary has been in this compensated position. . . ." As noted above, the record contains no trace of the detailed records that, by the church's own rules, pastors are required to keep.

Simply put, the petitioner has not claimed that the beneficiary worked full-time exclusively as a pastor throughout the two-year qualifying period. Counsel, on appeal, never explicitly makes such a claim either. Instead, counsel cites fragments of a letter out of context, creating the false impression that the letter dates the beneficiary's pastoral activities back to March 1999. Counsel also observes that the petitioner's letters do not contain flatly disqualifying language, but the absence of such language does not compel a finding of eligibility.

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 petitioner indicates that the beneficiary will be paid \$15,000 per year.

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. In this instance, the petitioner has not submitted any of the required types of evidence. The petitioner has submitted only bank statements, which do not provide a complete, reliable picture of the petitioner's financial status.

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.