

U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[REDACTED]

File: [REDACTED]

Office: NEBRASKA SERVICE CENTER

Date: MAR 28 2003

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

Petition: 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)

IN BEHALF OF PETITIONER: [REDACTED]

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 immigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a 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), to perform services as a minister. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition. The director also determined that the petitioner had not established that it had the ability to pay the beneficiary the proffered wage.

On appeal, counsel submits a statement.

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).

8 C.F.R. § 204.5(m) (1) states, in pertinent part:

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 alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or 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 Revenue Code of 1986 at the request of the organization. All three types of 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.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

The first issue raised by the director is whether the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

The petition was filed on April 17, 2001. Therefore, the petitioner must establish that the beneficiary was working continuously as a minister from April 17, 1999 until April 17, 2001. The record indicates that the petitioner last entered the United States as a B-2 visitor on June 10, 1998. Part 4 of the Form I-360 submitted by the petitioner indicates that the beneficiary has worked in the United States without permission. The petitioner indicates that while not aware of any specific outside employment for the beneficiary, the beneficiary is provided with a stipend "from time to time" for the services he provides to the church. No evidence in support of this assertion is included in the record.

In an undated letter, the petitioner stated that the beneficiary began his fulltime duties with the petitioner in July of 1998. The petitioner asserted that the beneficiary conducted services for the petitioner even before the church was fully organized, and that he carried out these duties without interruption. The petitioner indicated the duties of the beneficiary as follows:

[H]e conducts our various services on Wednesdays, Fridays, Saturdays, and Sundays and other non scheduled [sic] or routine services like revivals or meetings and seminars. He works every Sunday from 9:00 A.M. to 4 P.M. conducting Bible studies, preaching sermons and other administrative duties. On Wednesdays [sic], he conducts the Praise Worship service and counseling. His work Schedule is 9 to 5 P.M. Tuesday to Friday. This excludes the time spent in the services. He works well in excess of 40 hours per week. Sometimes when he is not on the Church premises, he is also conducting spiritual work like visitation and other job related duties for the church. He is responsible for the couples [sic] fellowship and the pre-marital classes required by the church policy. On Friday nights, he conducts a night vigil after work hours from late at night to early hours of the morning. Between 10:00 P.M. and 1:00 A.M. [sic] He conducts marriage, christenings, funerals, thanksgiving and other services as the need may arise from time to time. He also does the administrative office work in the church office like paying rent, securing vendor and other types of utility services, book keeping [sic] and telephone follow-ups. He is responsible for purchases and maintaining a database of members. Recently, he also does the new member and visitor follow-ups. He deputises [sic] for the Pastor-in-Charge when he is unavailable. He oversees the church disciplinary [sic] committee and formulates responses to changing environmental pressures to keep the church an adequate vehicle for social change and reformation.

In another document, the petitioner identified additional and/or different duties performed by the petitioner.

On Fridays he conducts a spiritual warfare night vigil, which involves praise worship, prayers and songs between 11pm and 1am.

He also conducts a deliverance service on the Friday of every month between 10pm and 1am to free member [sic] of satanic attacks....

He was also appointed the secretary of the parish, saddled with administrative responsibilities such as paying rents, water, electrical and telephone bills, arranging for necessary repairs in the church, maintaining a database for members both old and new and ensuring security of the church properties.

These administrative duties are often done during the

week. He reports to the Pastor-in-charge of the Church on daily basis. [sic]

He is also involved in evangelizing for new members and bringing them to Christ. He conducts spiritual healing services every Saturday between 4pm and 6pm.

He also assists the Pastor-in-charge with other important duties as baptism, sanctification of members' new cars, houses, shops and business premises as the need may arise.

No additional evidence of these assertions is included in the record. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Also included in the record is a statement dated May 15, 1999, which states that the petitioner was organized in early 1999, and began holding regular worship meetings on April 4, 1999, with prayer vigils beginning on April 2, 1999. The petitioner also submits a few programs and a listing of service and programs offered by the church.

In another statement, the petitioner indicated that the beneficiary is a member of the church's Board of Elders. The petitioner also submitted a few weekly church programs and schedules, one of which lists the beneficiary as the parish secretary, another featuring one of the beneficiary's articles.

In addition, the petitioner stated that the beneficiary acts as the secretary of the parish and performs all of the petitioner's administrative responsibilities, including all account and building maintenance purchases, membership database upkeep, and security of the church property. These additional duties performed by the beneficiary are comprehensively administrative and clerical in nature, and are not considered to come within the purview of a qualifying religious vocation or occupation.

It also is noted that an undated listing of the petitioner's church membership lists the beneficiary as a member of the church and not as an employee. While the listing indicates positions such as the pastor, an "evang.," an "elder," and 4 reverends, it lists the beneficiary only as an attendee "bro."

On appeal, counsel contends that the Bureau erred in its decision. Counsel also contends that the evidence is clear and provides sufficient proof that the beneficiary meets the requirements. Counsel asserts that there is no need for the beneficiary to receive salaried employment or be a full-time employee to meet the statutory and regulatory requirements. Counsel states:

It is an abuse of discretion for service [sic] to render an opinion as to the ability of an employer to reasonably place responsibilities on an employee and for the employee to fully accept and carry out those responsibilities....This is not a secularly advertised position, not in this case netiher [sic] is that how for the most parts [sic] religious occupations are filled [sic] so to speculate into the nature and conduct of the parties during the relationship will be arbitrary and capricious. By its very nature, religious organizations [sic] have the privilege and ability to command the respect, obedience and compliance of all its members and or anybody who subscribes to its beliefs without any force of restrain and without even being employees or receivng [sic] and [sic] financial benefit from the organization.

The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Further, the Bureau rejects these arguments of counsel. Determining the status or the duties of an individual within a religious organization is not a matter under the Bureau's purview; determining whether that individual qualifies for status or benefits under our immigration laws is another. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

Although the record does list some duties of the beneficiary, it does not provide a comprehensive description of the beneficiary's activities during the two-year period immediately preceding the filing date of the petition. The unsupported assertions contained in the record do not adequately establish that the beneficiary was continuously performing the duties of a qualifying religious vocation or occupation throughout the two-year period immediately preceding the filing date of the petition. The record contains no evidence that the beneficiary was paid wages by the petitioning organization during the entire two years immediately preceding the filing date of the petition, nor that the work performed was on other than a volunteer basis. Therefore, the petition must be denied.

The second issue raised by the director in this proceeding is whether the petitioner has had the ability to pay the beneficiary the proffered wage since the filing date of the petition. 8 C.F.R. § 204.5(m)(4) requires that each petition for a religious worker must be accompanied by a qualifying 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 the terms of payment for services or other remuneration. In

addition, 8 C.F.R. § 204.5(g)(2) requires that the employing religious organization submit documentation to establish that it has had the ability to pay the alien the proffered wage since the filing date of the petition. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

The petitioner stated that the beneficiary would be paid \$29,450.00, plus benefits.

In a document that the petitioner completed for submission to the Internal Revenue Service (IRS) for tax exemption status, no salaries and wages are indicated as paid. Net income for 2001 is indicated as \$19,052, with \$10,693.00 for 2000, and \$3,649.00 for 1999.

The petitioner's "Balance Sheet" dated July 24, 1999, indicates total cash assets as \$4,125.96, with a surplus of income over expenditures indicated as \$3,926.27 for the period of May 16 to July 24, 1999. Only \$2,900.00 is indicated as paid for "travel evangelism--pastor" during 2000, with no other expenditures for personnel or any salaries or wages paid during 1999 or 2000. The financial documentation provided does not support the petitioner's assertions that the beneficiary has been provided with a stipend throughout his association with the petitioner.

Another document indicates that the financial statements were prepared on the accrual basis of accounting in conformity with standards promulgated by the AICPA in its audit guide. This document, however, is a facsimile and is not signed or noted as to the accounting agency that prepared the documentation.

The petitioner also has submitted two different bank account statements for November 2001 indicating balances of \$7,837.94 and \$2,487.61. The evidence cannot be considered, however, as a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

On appeal, counsel contends that the record demonstrates that the beneficiary has been paid for his services. However, no evidence of any payments made to the beneficiary has been included in the record. Counsel states that the fact that the beneficiary also will reside on the petitioner's premises explains the discrepancy between the amount reported as the beneficiary's projected earnings and the petitioner's ability to pay this amount. Counsel also states that there is nothing in the record that demonstrates that the beneficiary cannot pay the wage and that letters submitted attest to this assertion.

The petitioner has not furnished the church's annual reports,

federal tax returns, or audited financial statements. The documents submitted do not satisfy the regulatory requirements. The petitioner has not adequately established that the needs of the petitioning entity will provide permanent, full-time religious work for the beneficiary in the future. The petitioner has not demonstrated that it has extended a valid job offer to the beneficiary, or established its ability to pay the beneficiary the proffered wage. For this additional reason, the petition may not be approved.

Beyond the decision of the director, 8 C.F.R. § 204.5(m)(3)(ii)(D) requires a petitioner for a special immigrant religious worker to show that the alien is qualified in the religious occupation. In addition, to establish that the job offered is a religious occupation, a petitioner for a special immigrant religious worker must show the religious nature of the work, the religious training required to do the job, and how the alien has met the training requirements. To establish that the job offered is a religious vocation, a petitioner must show that the job requires the taking of vows or a permanent commitment to a religious life, and that the alien has taken the requisite vows or made the requisite commitment. 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; specific, prescribed religious training or theological education is required; the position is defined and recognized by the governing body of the denomination; and, the position is traditionally a permanent, full-time, salaried occupation within the denomination.

Included in the record is a statement dated February 19, 2001, from the "founder" and "overseer" of the Christ Progressive Prayer Church in Lagos, Nigeria, indicating that the beneficiary has been an ordained minister since November 28, 1991.

In a document describing the beneficiary's "Pastoral Works," the petitioner states that the beneficiary was ordained "about ten years ago" and that he has been working as a volunteer with the church since 1991. Also included in the record is a facsimile of a "Certificate of Ordination" in "The Gospel Ministry" certifying the beneficiary as a minister for the Christ Progressive Prayer Church on November 28, 1991. The issuance of a document entitled "certificate of ordination" by a religious organization does not conclusively establish that an alien qualifies as a minister for immigration purposes. *Matter of Rhee*, 16 I&N Dec. 607, 610 (BIA 1978).

The petitioner states that the beneficiary is qualified to perform the duties of the position, yet lists no qualifications necessary to prepare an individual for these duties. The petitioner has submitted insufficient evidence to establish that the position qualifies as that of a religious worker. The record fails to

reflect that the beneficiary's activities for the petitioning organization require any religious training or qualifications. The petitioner has not demonstrated that its position of "minister" is a qualifying religious vocation or occupation, since those duties identified indicate that this position consists of activities normally expected of an active member of a religious congregation rather than a position that would be filled by a salaried employee who completed training in preparation for a career in religious work. Further, the record fails to reflect that any training obtained by the beneficiary qualifies him to perform the duties of a religious vocation or occupation. The beneficiary has not been shown to be qualified to engage in a religious vocation or occupation. For these additional reasons, the petition may not be approved.

Another issue not raised by the director in his decision is whether the petitioner qualifies as a bona fide nonprofit religious organization as stated in 8 C.F.R. § 204.5(m)(3)(i). This section states, in pertinent part:

(3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit 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;

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit 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. This documentation includes, at a minimum, a completed Internal Revenue Service Form 1023, the

Schedule A supplement which applies to churches, and a copy of the organizing instrument of the church which contains a proper dissolution clause and which specifies the purposes of the organization.

The petitioner has not submitted evidence to comply with the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A). Therefore, the petitioner must submit the evidence as required in 8 C.F.R. § 204.5(m)(3)(i)(B).

The petitioner has submitted: an IRS Employer Identification Number form dated April 15, 1999; only the first page of the petitioner's Articles of Incorporation filed in the State of Illinois on February 5, 1999; a copy of the IRS Package 1023, Application for Recognition of Exemption; and, a State of Illinois State Tax Exemption notice dated September 10, 1999. The submissions do not meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A) or (B). Thus, the petition also must be denied for this reason.

Discrepancies encountered in the evidence presented are called into question in the petitioner's ability to document the requirements under the statute and regulations. These discrepancies in the petitioner's submissions have not been explained satisfactorily. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

In reviewing an immigrant visa petition, the Bureau must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.