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

ca

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street NW
Washington, DC 20536

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

NOV 14 2003

IN RE:

Petitioner:
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)

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 Citizenship and Immigration Services (CIS) 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.

Cindy N. Honey for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director of the 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 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) in order to employ her as a minister.

The director determined that the petitioner had not established that: it qualified as a bona fide nonprofit religious organization; the offered position is a qualifying religious vocation or occupation; the beneficiary was qualified for the position within the religious organization; it had the ability to pay the beneficiary the proffered salary; and that it had extended a valid job offer to the beneficiary.

On appeal, counsel submits a brief.

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, 2008, 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, 2008, 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).

Pursuant to 8 C.F.R. § 204.5(m)(1):

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.

The first issue to be addressed in this proceeding is whether the petitioner has established that the petitioner qualifies as a bona fide nonprofit religious organization.

The director noted that the Internal Revenue Service (IRS) letter notifying the petitioner that it had been recognized as a nonprofit religious organization was not addressed to the petitioner at the address indicated on the I-360 petition. The director, therefore, concluded that the petitioner had not

submitted sufficient evidence to establish that it is a bona fide nonprofit religious organization.

Pursuant to 8 C.F.R. § 204.5(m)(3), 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; or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3).

In this case, the IRS document contained in the record of proceeding is addressed to the petitioner at [REDACTED]

[REDACTED] The petitioner's address appears on the Form I-360 petition as [REDACTED]

In a notice dated November 19, 2001, the director instructed the petitioner to provide an IRS document recognizing the petitioner as a tax-exempt nonprofit religious organization at the address reflected on the petition. In response, the petitioner submitted another copy of the same IRS document submitted with the original petition. The petitioner has not submitted any documentation from the IRS recognizing it as a bona fide nonprofit religious organization at the address reflected on the petition, nor has the petitioner submitted any evidence to explain this discrepancy. The petitioner has failed to establish that it is a bona fide nonprofit religious organization. For this reason, the petition must be denied.

The second and third issues to be addressed in this proceeding are whether the petitioner has established that the offered position is a qualifying religious vocation and whether the petitioner has shown that the beneficiary is qualified for the position within the religious organization.

The director stated that the petitioner had not explained the standards required to be recognized as a minister in its church

or demonstrated that the beneficiary had satisfied such standards.

The term "minister" is defined 8 C.F.R. § 204.5(m)(2) as follows:

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.

On appeal, counsel states that the petitioner previously provided evidence to show that the offered position is a full-time traditional religious occupation requiring specialized training and that the beneficiary has such training. Counsel has not, however, provided any evidence to corroborate his statements. It was held in *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988) and *Matter of Ramirez-Sanchez*, 17 I&N Dec. (BIA 1980) that the assertions of counsel do not constitute evidence.

The petitioner states that the beneficiary's duties include: officiating in baptism; preaching; counseling; teaching; and visiting the sick, "among other duties". In response to the director's request for additional evidence, the petitioner submitted a document detailing the beneficiary's "weekly schedule." This document indicates that the beneficiary will officiate along with the pastor at baptism, communion, and other activities of the church; engage in intercessory prayer; organize activities for the congregation; work on the church's building project; put together fund-raising activities; teach a convert class; purchase supplies; and conduct home visitation. While the position of minister would normally qualify as a religious vocation, the majority of the duties of this particular position appear to be activities that are normally performed by lay preachers, deacons, or elders. Therefore, it is concluded that the petitioner has not established that the offered position qualifies as a religious vocation or occupation, and the petition must also be denied for this reason.

Pursuant to 8 C.F.R. § 204.5(m)(3)(ii)(B), if the alien is a minister, the petitioner must submit evidence to demonstrate that the beneficiary has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties.

In this case, the petitioner has provided photocopies of two "certificates of ordination" recognizing the beneficiary as an ordained minister and a "license" authorizing the beneficiary to perform the duties of a minister. All three of these documents were issued to the beneficiary by the petitioner, Redemption Tabernacle Pentecostal Church, on March 17, 1996. These documents are insufficient to establish that the beneficiary is a qualified minister. The petitioner has not explained the standards required to be recognized as a minister in its church or provided any information as to how ministers are traditionally selected and ordained by the church. Furthermore, there is no evidence in the record to show that the beneficiary obtained any formal theological training in order to qualify as a minister as defined in the regulation. 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 (BIA 1978). It is concluded that the petitioner has not shown that the beneficiary is qualified for the position within the religious organization, and the petition must also be denied for this reason.

The fourth issue to be addressed in this proceeding is whether the petitioner has shown that it has the ability to pay the beneficiary the proffered salary.

On appeal, counsel states that the petitioner has already provided a copy of its bank statements. Counsel further states that the petitioner does not have prepared financial statements, and cannot provide copies of any federal income tax returns because the church, as a nonprofit religious organization, is not required to pay federal income taxes or file federal income tax returns.

Pursuant to 8 C.F.R. § 204.5(g)(2):

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 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 annual reports, federal tax returns, or audited financial statements.

In this case, the petitioner has declined to provide financial reports, federal tax returns, or audited financial statements to demonstrate that it has the ability to pay the beneficiary the proffered salary. The petitioner has provided bank statements for the months of September and November 2001. Two bank statements, however, are not sufficient to demonstrate that the petitioner has sufficient resources to pay the beneficiary the proffered salary. Therefore, the petitioner has not shown that it has the ability to pay the beneficiary the proffered salary, and the petition must also be denied for this reason.

The final issue raised by the director is whether the petitioner has established that it has extended a valid job offer to the beneficiary.

The director determined that the petitioner had not submitted a valid job offer letter indicating: how the beneficiary would be solely carrying on the vocation of a minister; the amount of the beneficiary's salary; or, how she would be paid or remunerated.

On appeal, counsel states that the petitioner has extended a valid job offer to the beneficiary.

The term "job offer" is defined at 8 C.F.R. 204.5(m)(4) as follows:

Job offer. The letter from the authorized official of the religious organization in the United States must also state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration. . . . The documentation should clearly indicate that the alien

will not be solely dependent on supplemental employment or solicitation of funds for support.

In this case, the petitioner has not provided any information as to the amount of the beneficiary's salary or how she would be paid or remunerated. Furthermore, the petitioner has failed to demonstrate that the beneficiary would not be solely dependent on supplemental employment or solicitation of funds for support. Therefore, it is concluded the petitioner has not established that it has extended a valid job offer to the beneficiary, and the petition must also be denied for this reason.

Beyond the director's decision, the petitioner has not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two years preceding the filing date of the petition.

Pursuant to 8 C.F.R. § 204.5(m)(1):

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.

The petition was filed on April 27, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation from April 27, 1999 to April 27, 2001.

The regulations are silent on the question of volunteer work satisfying the requirement. The regulation defines a lay religious occupation in general terms as an activity related to a "traditional religious function." Such lay persons are employed in the conventional sense of salaried employment. The regulations require that in order to qualify for special immigrant classification in a religious occupation, the job offer for a lay employee of a religious organization must show that he or she will be employed in the conventional sense of salaried employment and will not be dependent on supplemental employment. See 8 C.F.R. § 204.5(m)(4). Because the statute requires two years of continuous experience in the same position for which special immigrant classification is sought, the AAO interprets the regulations to require that, in cases of lay

persons seeking to engage in a religious occupation, the prior experience must have been continuous salaried employment in order to qualify.

Furthermore, in evaluating a claim of prior work experience, the AAO must distinguish between common participation in the religious life of a denomination and engaging continuously in a religious occupation. It is traditional in many religious organizations for members to volunteer a great deal of their time serving on committees, visiting the sick, serving in the choir, teaching children's religion classes, and assisting the ordained ministry without being considered to be carrying on a religious occupation. It is not reasonable to assume that the petitioning religious organization, or any employer, could place the same responsibilities, the same control of time, and the same delegation of duties on an unpaid volunteer as it could on a salaried employee. For all these reasons, the AAO holds that lay persons who perform volunteer activities, especially while also engaged in a secular occupation, are not engaged in a religious occupation and that the voluntary activities do not constitute qualifying work experience for the purpose of an employment-based special immigrant visa petition.

In this case, the petitioner asserts that the beneficiary served as a "minister" on a voluntary basis during the period from April 27, 1999 to April 27, 2001. Therefore, the petitioner has failed to establish that the beneficiary was engaged continuously in a qualifying religious vocation or occupation for two years immediately preceding the filing date of the petition.

In reviewing an immigrant visa petition, the AAO 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. *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.