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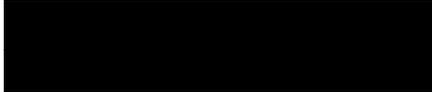


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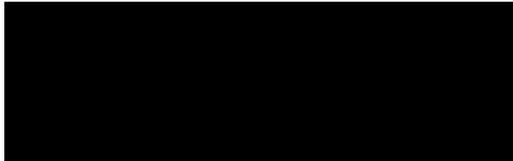
NOV 18 2003

IN RE: Petitioner:
Beneficiary:



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:



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 M. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a religious organization. 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 is qualified to engage in a religious vocation or occupation. The director also determined that the petitioner had not established 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.

On appeal, counsel submitted a statement and the petitioner resubmitted pertinent documents. Therefore, the record must be considered complete.

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

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).

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.

The first issue to be addressed is whether the petitioner established that the beneficiary is qualified to engage in a religious vocation or occupation.

The regulations at 8 C.F.R. §204.5(m)(2) define "Minister" as:

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.

In this case, the director's decision states, in part:

On review, it must be concluded that the evidence of record is insufficient to establish that the beneficiary is a qualified pastor. First, the petitioner has not explained the standards required to be recognized as an Islamic religious worker in its denomination or shown that the beneficiary has satisfied such standard.

On appeal, counsel indicates he is unsure if the director's response is intended for the petitioner, noting the reference to standards for recognition as an Islamic religious worker. Counsel states, "Respectfully, we point out that the beneficiary is a Christian pastor, not Islamic." The director's statement, as quoted above, is not relevant to the facts at hand, and is, therefore, withdrawn.

The director's decision discusses two other reasons for its determination that the beneficiary is not qualified to engage in the vocation of minister for the religious organization. The director states:

Second, you did not submit a letter from an authorized official of its denomination verifying the denomination recognition of his credentials as a pastor. The submission of a statement from an official of the individual church, and a statement from an official of another local affiliated church, cannot be accorded the necessary evidentiary weight to establish eligibility. Third, simply producing documents purported to be certificates of ordination, which are not based on theological training or education, is not proof that an alien is entitled to perform the duties of a pastor. Matter of Rhee, 16 I&N Dec. 607 (BIA 1978.) The petitioner did not describe the beneficiary's theological education qualifying him for ordination into a religious ministry...

The regulations at 8 C.F.R. § 204.5(3)(ii)(B) state, in part, that a petition requires "a letter from an authorized official of the religious organization in the United States" establishing that "if the alien is a minister, he or she 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 record contains letters from the petitioner, Reverend Bishop F. Scott Teets, Superintendent of the New York Metro District of the United Pentecostal Church (UPC), and his successor, Reverend Robert S. Carter. In a letter dated December 6, 2001, Reverend Carter states, "The New York Metro District is the governing body for local churches within our jurisdiction, the New York Metropolitan area." The record contains a 363-page bound "Directory, United Pentecostal Church International 2001." The directory lists both Reverend Teets and Reverend Carter in their capacity as officers of the New York Metro District of the UPC. The directory also provides information regarding the ordination and addresses of Reverend Teets and Reverend Carter. The director's reference to letters from an "official of the individual church," and from an "official of another local affiliated church," is made in error in this case, as the letters on behalf of this beneficiary are made by authorized officials of the religious organization in the United States.

A letter dated December 6, 2001, from the petitioner states that the beneficiary "is an ordained minister of the United Pentecostal Church International, ordained by the Iglesia Pentecostal de Venezuela (the Pentecostal Church of Venezuela), on February 22, 1995... [He] is engaged in full-time ministry at the United Pentecostal Church of Freeport... He is authorized to perform liturgical worship, including Liturgy of the Word, Communion Services, Baptisms and solemnization of Marriages in the State of New York." An earlier letter from the petitioner stated that the beneficiary possesses qualifications, including: a diploma dated February 17, 1990, from the Instituto Biblico 'Los Conquistadores,' Trujillo, Venezuela, following nine months of study in Pastoral Formation; a Baccalaureate in Theology based on formal studies at the same Bible Institute from 1990 to 1994; and numerous ongoing theological study and pastoral training programs. The petitioner states these accomplishments qualify the beneficiary to perform duties as its minister. The petitioner's letter provided a detailed description of duties and a breakdown of the hours, totaling approximately 37 hours per week, that the beneficiary spends in performance of his duties.

On appeal, counsel states, "The petitioner has, in fact, shown ample evidence that [the beneficiary] is trained theologically, and that he is a validly ordained minister of a large, mainstream, bona fide church organization, the United Pentecostal Church, International."

In view of the evidence submitted, and as the petitioner is an authorized official of the religious organization in the United States, its statement is in compliance with the requirements of 8

C.F.R. § 204.5(m)(3)(ii)(B). Therefore, the petitioner has established that the beneficiary is a minister of religion, and the petitioner has overcome this reason for denial.

The second issue to be addressed in this proceeding is the director's determination that the petitioner had not established 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 director's decision states, "The record does not establish that the beneficiary has been and will be employed in a religious occupation."

The petition was filed on March 16, 2001. Therefore, the petitioner must establish that the beneficiary was working continuously as a religious worker from March 16, 1999, until March 16, 2001. The petitioner indicated that the beneficiary last entered the United States on July 30, 1998, as a B-2 visitor with authorization to remain until January 8, 1999. On Part 4 of the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, the petitioner indicated that the beneficiary has not worked in the United States without permission, yet also submitted an "Attachment to Part 4, Explanation for Working Illegally." This explanation indicates that the beneficiary received an allowance and support from the congregation defined as "mostly goods for services," cash income from offerings, and that the earnings were reported to the Internal Revenue Service (IRS) as earnings of a self-employed worker.

The petitioner has submitted evidence that the beneficiary is qualified to perform duties as a minister. The petitioner also has submitted evidence that it has employed the beneficiary in the capacity of a minister. The bound volume, "Directory, United Pentecostal Church International 2001," at page 109 includes the beneficiary in its "Ministerial Directory" as a "General License" minister, and at page 315, lists the beneficiary as the pastor of the United Pentecostal Church of Freeport. The "Directory, United Pentecostal Church International 2000," on page 309, also lists the beneficiary as the pastor of the United Pentecostal Church of Freeport. The petitioner states, "While evangelization by instruction in Scriptures is a duty for all, it is a vocation of some." The description of the duties and the requirement of theological education establish that the position is not one that can be performed by a caring member of the congregation, but is one that requires specialized religious training.

While the petitioner has established that it has employed the beneficiary as a minister for part of the requisite timeframe, the petitioner has not established that the beneficiary was continuously

engaged as a religious worker for the full two years prior to the filing date of the petition. In the initial petition, the petitioner stated that "the position is scheduled to formally commence on: April 22, 2001..." The director requested, among other things, additional evidence relating to the beneficiary's continuous experience for the two full years prior to March 15, 2001, and copies of the beneficiary's individual 1999 and 2000 federal tax forms.

In response to the request for additional evidence, the petitioner stated in a letter dated December 6, 2001, that the beneficiary "has been active in evangelization work with the Freeport community since 1996, in the course of his periodic visits to the United States." The record, however, does not establish when the beneficiary began performing duties as the pastor of the United Pentecostal Church of Freeport. As noted above, the published UPC Directories list the beneficiary as pastor of the United Pentecostal Church of Freeport for the years 2000 and 2001. A copy of the directory for 1999 was not included. The record also contains a "General License in the United Pentecostal Church International," issued to the beneficiary on April 20, 2000, which states he is authorized to perform the functions of the Christian ministry. Because the petitioner has stated that it recognizes the beneficiary's 1995 ordination in Venezuela, it is unclear why this General License was then issued on this date in 2000, and whether the beneficiary was engaged as a pastor at the United Pentecostal Church of Freeport prior to this date.

The petitioner submitted the beneficiary's Internal Revenue Service (IRS) Form 1040, U.S. Individual Income Tax Return for the year 2001. The IRS Form 1040 for 2001 indicates the beneficiary received \$12,600 in wages, salaries and tips, and states his occupation is "Ordained Minister." The 2001 IRS Form W-2, Wage and Tax Statement, shows that the United Pentecostal Church of Freeport paid the beneficiary wages of \$12,600 and housing compensation of \$16,200. This is consistent with the audited Financial Statements for the United Pentecostal Church of Freeport, Inc. as of December 31, 2001, which lists "Pastoral Compensation" as \$28,800.

The record, however, fails to establish that the petitioner paid the beneficiary from March 16, 1999 until January 1, 2001, a significant portion of the requisite two-year period for this petition. The petitioner has stated that the beneficiary lived on his own resources and free-will offerings from the congregation. The attachment to the Form I-360 petition indicates that the beneficiary received an allowance and support from the congregation, cash income from offerings, and that the earnings were reported to the IRS as

earnings of a self-employed worker. However, the petitioner did not comply with the director's request to submit the beneficiary's IRS tax forms for 1999 and 2000. The record contains no other objective documentation to support these assertions. 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). Therefore, the petition must also be denied for these reasons.

Beyond the decision of the director, the petitioner must establish that it has extended a qualifying job offer to the beneficiary, in accordance with 8 C.F.R. § 204.5(m)(4). A letter dated February 28, 2001, from the petitioner to the beneficiary, indicates that the District will pay \$20,000 per year "and other considerations" for the next five years, after which there may be a review for additional benefits. As the beneficiary's IRS tax forms for 2001 indicate wages of \$12,600 and housing compensation of \$16,200, totaling \$28,800, this would appear inconsistent with the offer of \$20,000 per year "and other considerations." In a letter dated December 6, 2001, the petitioner, an authorized official of the church, states, "It is believed that his salary as a minister is sufficient to provide for his basic needs, considering the austere embracing of asceticism to which the pastor has committed." The authorized church official also states under separate cover that, "Our district will guarantee that [the beneficiary] and family will not need public assistance." These letters do not state that the beneficiary will be solely carrying on the vocation of a minister and do not address the solicitation of funds.

It is also noted that at Note 1, General, of "Notes to Financial Statements," the auditor indicates the Church was organized in 1993. However, the Certificate of Incorporation of the United Pentecostal Church of Freeport, filed with the State of New York, is dated January 25, 2001. The date of the establishment of the church should be clarified, as it may relate to the date on which the beneficiary commenced duties as a minister with a bona fide federally tax exempt organization. As the petition will be denied for the aforementioned reasons, these issues need not be addressed further in this proceeding.

In reviewing an immigrant visa petition, CIS 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.

ORDER: The appeal is dismissed.