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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street N.W.
Washington, D.C. 20536



File: WAC 00 015 53707 Office: CALIFORNIA SERVICE CENTER Date:

NOV 19 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: SELF-REPRESENTED

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 employment-based immigrant visa petition was denied by the Director, California Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner 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 failed to establish its ability to remunerate the beneficiary. The director also determined that the petitioner had failed to establish that it had extended a valid job offer to the beneficiary. The director noted that the church claimed a congregation of only 49 members, yet had filed petitions for a total of 12 alien ministers, which brought into question the credibility of the job offer.

On appeal, the petitioner attempts to explain discrepancies and omissions in the record. The petitioner asserts that the church now has 152 members, a two-story building with rooms available to low-income members, and a parking lot accommodating 30 cars. The petitioner further states that the organization was funded for missionary purposes and that the reason it needs to legalize its ministers is so they can travel to missions in Central America and Mexico preaching the word of God and return to the United States without any problems.

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).

The petitioner is described as a Christian Pentecostal independent church having an affiliation with seven other small churches in Mexico. It states that it was funded for missionary purposes and has a congregation of 152 members.¹

The beneficiary is a native and citizen of Guatemala who entered the United States without inspection on December 31, 1991, and has resided since such time in unlawful status. The Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, indicates that the beneficiary has not been employed in the United States without CIS authorization.

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

The director determined that the petitioner had not demonstrated its ability to pay the beneficiary the proffered wage.

The regulations at 8 C.F.R. § 204.5(g)(2) state, in pertinent part, that:

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.

The petition was filed on October 22, 1999. Therefore, the petitioner must have established its ability to pay the beneficiary

¹ As of the date of filing the petition, the petitioner indicated that it had 49 members. On appeal, the petitioner states, and provides documentation to establish, that it now has 152 members.

the offered wage at that time.

The record reflects that the petitioner has also filed Form I-360 visa petitions for at least an additional 12 alien workers. Therefore, the petitioner must specify the wages offered and provide proof of its ability to pay the sum of those wages.

The petitioner has provided copies of IRS Forms 990, Return of Organization Exempt from Income Tax, for the years 1998, 1999 and 2000. The returns are not certified and there are no annual reports or audited financial statements contained in the record of proceeding to corroborate the information contained in the uncertified returns.

The petitioner has provided no evidence that it is exempt from federal income tax, and therefore eligible to file IRS Form 990. The petitioner has submitted a letter from the IRS indicating that an entity entitled "Estudiando Las Escrituras," located at 2705 E. Florence Avenue, Huntington Park, California, was granted exemption from federal income tax on June 30, 1998. However, there is no documentation contained in the record to establish the affiliation between "Estudiando Las Escrituras" and the petitioner.

The petitioner has submitted two 1999 IRS Forms 990. One shows a total of \$115,206 in contributions, the other shows a total of \$265,230. There is no statement from the petitioner contained in the record to explain this inconsistency.

The record also contains inconsistent information concerning the wages paid to the beneficiary. The petitioner's 1999 IRS Form 990 indicates that it paid the beneficiary \$10,500, while the beneficiary's 1999 IRS Form W-4, Wage and Tax Statement, reflects that he received only \$3,300 in wages from the petitioner.

Doubt cast on any aspect of the evidence 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).

Based on the above discussion, it is concluded that the evidence submitted by the petitioner is insufficient to satisfy the requirements of 8 C.F.R. § 204.5(g)(2). For this reason, the appeal will be dismissed.

The director also found that the petitioner had not demonstrated that a qualifying job offer had been tendered to the beneficiary.

The regulations at 8 C.F.R. 204.5(m)(4) state, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

In this case, the petitioner has not identified the specific terms of the beneficiary's future remuneration. The petitioner has also not stated how the beneficiary will be solely carrying on the vocation of minister or how he will not be dependent on supplemental employment or the solicitation of funds for support. It is, therefore, concluded that the petitioner has not tendered a qualifying job offer. For this reason as well, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has failed to adequately establish that: (1) it is a qualified religious organization; (2) the beneficiary is a qualified, ordained minister; and (3) the beneficiary has been continuously and solely carrying on the vocation of a minister for the two-year period immediately preceding the filing of the petition. Since the appeal will be dismissed for the reasons stated above, these issues need not be examined 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).

Inherently, CIS must consider that the possible rationale for the instant petition is the church's desire to assist an alien member of its congregation to remain in the United States for purposes other than provided for under the special immigrant religious worker provisions. Based on the record as constituted, the petitioner has not adequately demonstrated that it has either the ability or the intention to remunerate the beneficiary in a permanent salaried position or that the beneficiary seeks to enter the United States solely to pursue this vocation.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that

burden has not been met.

ORDER: The appeal is dismissed.