

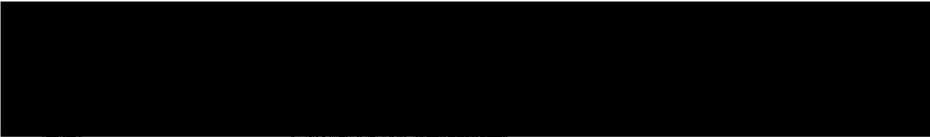
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Washington, DC 20529



U.S. Citizenship
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Services

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invasion of personal privacy



CI

FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: **AUG 02 2004**

IN RE: Petitioner: [Redacted]
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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

We note that the record lists several different suite numbers for the petitioner's address. We have opted to use the suite number that appears on the petitioner's printed letterhead. We further note that Angel Nuñez, who has identified himself as the petitioner's attorney of record, has also identified himself as an official of the petitioning entity. The mailing address of Mr. Nuñez's professional corporation matches the address on the petitioner's letterhead.

The petitioner is the United States headquarters of a Christian denomination based in Colombia. 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 the pastor of a member church. 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. In addition, the director determined that the petitioner had not established its ability to pay the beneficiary's salary.

On appeal, the petitioner submits financial documents and arguments from counsel.

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 regulation at 8 C.F.R. § 204.5(m)(1) 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)(ii)(A) requires the petitioner to demonstrate 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 March 10, 2003. Therefore,

the petitioner must establish that the beneficiary was continuously performing the duties of a pastor (minister) throughout the two years immediately prior to that date.

The beneficiary arrived in the United States as a B-1 visitor on February 22, 2003, only a few weeks before the petition's filing date. The beneficiary spent most of the two-year qualifying period outside the United States.

identified here as secretary of the petitioning church, states:

[The beneficiary] will begin performing his duties as a minister once [he has] received your approval and work permit. In the meantime he will be traveling to the US as a visiting missionary to visit our churches in [various cities]. . . .

[The beneficiary] has been performing duties as a pastor for the past five (5) years since June of 1998 in our church in Bogotá, Colombia.

The above letter indicates that, since his February 2003 arrival, the beneficiary has acted as a missionary rather than as a minister. asserts that this missionary work is unpaid, and that all alien religious workers in the denomination are unpaid volunteers while their petitions are pending "so as not to conflict with United States Immigration Laws and regulations." adds that these volunteers "receive room and board paid by the church in addition to a stipend for clothing, travel and necessities." We note that, in *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982), the Board of Immigration Appeals found that an undocumented alien religious worker could not evade penalties for unauthorized employment simply by working for room and board instead of a cash salary. has since claimed that the beneficiary has supported himself via a per diem from the church headquarters in Colombia.

general supervisor of the petitioning denomination in Bogotá, affirms that the beneficiary "has been working as a pastor since June of 1998." does not specify whether this work was full-time or part-time. The claim that the beneficiary worked full-time in Colombia comes from church officials in the United States, rather than any witness in Colombia who would be expected to have first-hand knowledge.

The director instructed the petitioner to "[s]ubmit a detailed description of the beneficiary's prior work experience," including evidence regarding any employment that the beneficiary has pursued outside the church. In response, the petitioner submits a letter from church officials in Colombia, affirming that the beneficiary "worked 36 hours per week" in that country. states that the beneficiary "also worked a second job as an executive for Avianca Air Lines . . . [until] November 30, 2002." This statement indicates that the beneficiary was an airline executive for all but three and a half months of the two-year qualifying period.

The director, in denying the petition, concluded that "[t]he immediate prior two years of experience was not salaried." This conclusion is insupportable, because the record contains a breakdown of the beneficiary's annual salary for the past several years, signed by a financial official of the denomination. The director's decision includes other, more defensible observations, such as an acknowledgement of the claim that the beneficiary was an Avianca executive until late 2002.

On appeal, Mr. Nuñez asserts:

The beneficiary before joining the church worked for [REDACTED] and in 1993 he joined the church and began to work concurrently with his duties in the church. As the beneficiary increased his duties with the church he made a decision to leave Avianca [with] which he severed all relations on November 30, 2002. His relationship with Avianca had diminished to a consultancy (less than five hours [per] week) because all of his working hours for the last five years have been full time and permanently with the church.

The statute and regulations require that, during the two-year qualifying period, the beneficiary must have been continuously carrying on the vocation of a minister. The term "continuously" has been interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948). In this case [REDACTED] as repeatedly averred that the beneficiary pursued another occupation with a commercial airline for most of the qualifying period, and that the beneficiary acted as a missionary (which the regulations term a religious *occupation*) rather than as a minister since his February 2003 entry into the United States as a nonimmigrant. Because of these activities, we cannot find that the beneficiary has continuously carried on the vocation of a minister throughout the two-year qualifying period. We note that this finding is without prejudice to a later petition, filed at such time as the beneficiary has accumulated two years of uninterrupted, full-time work *exclusively* as a minister.

The other issue in the director's decision concerns the petitioner's ability to pay the beneficiary's salary. The petitioner asserts that the beneficiary shall receive \$24,000 per year in cash, plus room, board, and other considerations, for total compensation worth \$47,500 per year.

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's initial submission includes copies of bank statements, showing that the petitioner opened a new account in August 2002, which a balance of nearly \$79,000 by the end of the following month. The balance in the account has fluctuated greatly since that time, varying between \$30,000 and \$100,000.

The director instructed the petitioner to submit further evidence of its ability to pay the beneficiary's proffered wage. In response, the petitioner has submitted more bank statements. The director denied the petition, citing the above regulation and stating that bank statements "do not reflect the [petitioner's] expenditures" or otherwise present a complete picture of the petitioner's assets and liabilities. On appeal, the petitioner submits still more bank statements.

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 non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Mr. Nuñez does not even acknowledge the regulatory list of acceptable documents, much

less explain why the petitioner is either unable or unwilling to provide any documentation from that list. The unavailability of a federal tax return is obviously understandable with regard to a tax-exempt organization, but this does not account for the unavailability of audited financial statements.

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.