



U.S. Citizenship
and Immigration
Services

[REDACTED]

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: AUG 03 2004

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)

ON BEHALF OF PETITIONER:
[REDACTED]

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

for

PUBLIC COPY

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

The petitioner is a "non-denominational Christian organization." It seeks to classify 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 "resident missionary pastor." The director determined that the petitioner had not established its status as a tax-exempt religious organization. The director also determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience immediately preceding the filing date of the petition. The director further determined that the petitioner had failed to establish that it had extended a valid job offer to the beneficiary, that the beneficiary was qualified for the position within the religious organization, or that the petitioner had the ability to pay the beneficiary the proffered salary.

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).

The regulation at 8 C.F.R. § 204.5(m)(3)(i) 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 § 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 § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

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 (IRS) 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 IRS to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code (IRC) of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS 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.

With the petition, the petitioner submitted a copy of a letter dated September 23, 1999, in which the IRS made an advance ruling that the petitioner was tax-exempt under section 501(c)(3) of the IRC as a publicly supported organization under sections 509(a)(1) and 170(b)(1)(A)(vi). The advance ruling was effective from December 4, 1998 to December 31, 2002. On appeal, the petitioner submits a May 12, 2003 letter from the IRS, confirming the petitioner's tax-exempt status under sections 509(a)(1) and 170(b)(1)(A)(vi). The petitioner also submitted a copy of its "Certificate of Restated Articles of Incorporation."

On appeal, counsel acknowledges that sections 509(a)(1) and 170(b)(1)(A)(vi) pertain to several types of organizations. Counsel argues that the evidence submitted "provide detailed, concrete, physical evidence that the [petitioner] is a 'church' pursuant to the definitions of the [IRC], and that [it] is tax exempt under IRC section 501(c)(3) 'as it relates to religious organizations.'" The language of the regulation is clear, nonetheless. Absent a letter from the IRS granting tax-exempt status as a religious organization, the regulation requires the petitioner to submit "such documentation" as is required by the IRS to establish eligibility for tax exemption as it relates to religious organizations. The petitioner has submitted none of the documentation required by the regulation, and therefore has not established its bona fides as a tax-exempt religious organization under section 501(c)(3).

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. 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 regulation 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."

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) 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 June 12, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working in the religious occupation throughout the two-year period immediately preceding that date.

We note first that the duties of the proffered position involve "interfacing" with the petitioner's partner churches, organizations and individuals, providing "pastoral oversight" of the petitioner's outreach projects, visiting the petitioner's missionary outposts in Africa, organizing special programs, organizing quarterly missions and prayers conferences, and "other duties as may be assigned by the Board of directors."

The petitioner submitted a copy of a "Certificate of Ordination" recognizing the beneficiary as an ordained minister of the Glorious Covenant Church in Nigeria. According to the beneficiary, he helped to found the petitioner, and left the Glorious Covenant Church in 1999 to work with the petitioner full time as a missionary and "trainer of persons to perform pastoral and missionary work." The mission of the petitioner, according to the brochure submitted as evidence, is to "transform lives into the image of our Lord Jesus Christ, by training, equipping, maturing and deploying men and women into the harvest field to accomplish great commission."

The evidence indicates that the position offered, regardless of the job title, is that of a trainer and missionary and not that of a minister. The petitioner must therefore establish that the beneficiary's qualifying two-year experience was as a missionary and trainer.

To establish that the beneficiary has the requisite two years experience, the director, in her Notice of Intent to Deny dated April 9, 2003, requested that the petitioner submit "appropriate persuasive documentary evidence (such as copy of beneficiary's pay stubs, U.S. IRS W-2s or W-4, tax records citing [the] beneficiary, or other documented evidence as appropriate." In her decision, the director noted that the petitioner had failed to provide any proof of the beneficiary's prior experience.

On appeal, counsel asserts that the director erred in determining that the beneficiary did not possess the required work experience based on the petitioner's failure to submit evidence that the beneficiary was paid a salary during the relevant time frame. Counsel further asserts that the requirement that prior experience be salaried "is not grounded in reason" and is "unfounded as a matter of law." Citing *St. John the Baptist Ukrainian Church v. Novak*, an unpublished 2000 decision of a federal district court in New York, counsel argues that the court "overturned the Service's position that the 2 years prior experience in a religious occupation must be full-time, paid employment," and "scaled back all the extraneous qualifications of 'payment.'"

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication

being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be generally full-time and salaried. To hold otherwise would be contrary to the intent of Congress.

Counsel's reliance upon the court's "holding" in *St. John the Baptist Ukrainian Church v. Novak* is misplaced. The decision in that case was a stipulation and order of remand and dismissal. The court made no specific findings of fact and set no legal precedent. Furthermore, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.

In its letter accompanying the petition, the petitioner stated that the beneficiary had been carrying out the duties of the proffered position for the past three years. The petitioner submitted a statement from the beneficiary, in which he stated that he has worked full time with the petitioner since December 1999. According to the beneficiary, he serves as executive director of missions with the petitioner, and does "everything from fundraising, preaching, providing spiritual guidance, feeding the poor . . . building churches,

creating renewable food resources, training pastors, and establishing an organized religious and social center for development." The petitioner submitted a few photographs of the beneficiary apparently engaged in various activities on behalf of the petitioner, and a copy of a diagram of the hierarchy of the petitioner, showing the beneficiary as the executive director of missions. However, the petitioner submitted no substantive corroborative evidence of the beneficiary's prior work experience with it. 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).

On appeal, counsel states that although the beneficiary received no salary from the church, he was compensated for his services. He references the letter from the beneficiary in which he states that he received \$4,000 in cash from the petitioner in April 2000 for his "personal support and the support of the missions." The beneficiary also claimed to have received from the petitioner \$4,000 in November 2000, \$500 in January 2001, and \$2,500 in 2002. This money also appears to have been for "personal compensation and for the missions." The petitioner provided no evidence in the form of vouchers, signed receipts, or other documented evidence that it had given this money to the beneficiary. There is no evidence in the record to indicate how much of the money given to the beneficiary was for personal compensation and how much was intended for use of the missions.

The beneficiary also claimed to have received "love offerings" from those to who he ministered, however the petitioner provides no evidence to establish the nature, extent or frequency of these offerings. *Id.*

The petitioner has submitted no substantiating evidence to establish that the beneficiary was continuously engaged in the religious occupation for the full two years prior to the filing of the visa petition.

The director determined that the petitioner had not established that it has made an offer of permanent employment to the beneficiary.

In its letter accompanying the petition, the petitioner stated that it was offering the beneficiary a full-time, permanent position. Although the petitioner also stated it was including a copy of the offer of employment, the offer was not part of the original proceedings. On appeal, the petitioner submits a copy of a May 16, 2002 letter to the beneficiary in which it offers him a full time appointment as resident missionary pastor and pastoral overseer of the petitioner's "School of Intercessions the Prophets." The proffered salary is \$1,500 per month.

We find that the petitioner has overcome this objection of the director.

The director also determined that the petitioner had not established that the beneficiary was qualified for the position.

The director determined that the petitioner had not established that the beneficiary was qualified to perform the sacerdotal duties of a minister, and therefore had not established that the beneficiary was qualified for the proffered job. As discussed above, however, the duties of the proffered position do not entail ministerial duties. The proffered position, as defined by its job duties and despite its job title, is missionary and trainer.

Additionally, as discussed above, the petitioner has submitted no corroborative evidence of the beneficiary's qualifications or experience for this position. The only evidence in record are the unsupported statements of the beneficiary and general unsupported statements of the petitioner. The evidence is insufficient to establish that the beneficiary is qualified for the position with the organization.

A petitioner must also demonstrate its ability to pay the proffered wage.

The regulation at 8 C.F.R. § 204.5(g)(2) states, 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.

On appeal, counsel asserts that the petitioner has demonstrated its ability to pay the proffered salary by its remuneration of the beneficiary in the past and by its proven ability to raise funds. Nonetheless, the regulation states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. In this instance, the petitioner has submitted no evidence to establish its ability to pay the beneficiary a salary. The record does not establish that the petitioner has ever remunerated the beneficiary for services he may have performed for the petitioner.

The record reflects that the beneficiary entered the United States on a B2 visa in 2002. The director determined that the petitioner had not established that the beneficiary's sole purpose for entering the United States was to work for the petitioner.

We withdraw this determination by the director. The regulation does not require that the alien's initial entry into the United States to be solely for the purpose of performing work as a religious worker. "Entry," for purposes of this classification, would include any entry under the immigrant visa granted under this category or would include the alien's adjustment of status to the immigrant visa.

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.