



U.S. Citizenship
and Immigration
Services

C-1



FILE:



Office: TEXAS SERVICE CENTER

Date:

AUG 03 2004

IN RE:

Petitioner:

Beneficiary:



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:



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.

for

Robert P. Wiemann, Director
Administrative Appeals Office

PUBLIC COPY

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.

The petitioner is an association of churches. 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 a religious assistant. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a religious assistant 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, or that the beneficiary had entered the United States to carry on religious work.

On appeal, the petitioner submits additional 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 May 11, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a religious assistant throughout the two years immediately prior to that date.

Rev. Oleg Matveychuk of the petitioning organization states the beneficiary "has been continuously employed by our Church Mission in Ukraine since October, 1993." A partial copy of the beneficiary's passport in the record indicates that the beneficiary has been in the United States since February 18, 2000, and previously

entered the United States on May 7, 1999; it is not known when the beneficiary left the United States after the earlier visit. The beneficiary has thus spent more than half the two-year qualifying period in the United States. Given this extended period in the United States, it is not accurate to state that the beneficiary has continuously worked for a church in the Ukraine during that time.

A joint letter from several church officials in Eastern Europe attest that the beneficiary "has been actively working among the Slavic peoples" and a member of a church in Chernovtsy since 1993. The letter is dated June 14, 2000, four months after the beneficiary's arrival in the United States. Another letter states that the beneficiary is "a worker in God's harvest." The letters offer no other description of the beneficiary's work in Ukraine.

The beneficiary states that his duties in Ukraine from 1993 to 2000 were to "[o]rganize church groups, counsel and occasionally preach sermons, perform missionary work, lead bible study groups. Visited prisons, orphanages, hospitals, distribute bibles to the people, preached at revival meetings and rallies." [REDACTED] states "[t]he duties of the Religious Assistant position include conducting youth group sessions and training other youth group leaders. . . . Other duties include counseling church members, especially teenagers, and assisting the Pastor as requested."

The director requested further information about the beneficiary's past work. In response, the petitioner submits copies of annual pay statements, showing that the beneficiary has been on the petitioner's payroll since 1993. [REDACTED] states that the beneficiary "has been working for the [petitioner] from 1993 until the present time, with no interruptions." [REDACTED] states that the beneficiary's duties "include organizing programs in churches, preaching gospel, conducting missionary work, conducting bible study lessons, work in orphanages, working with youth, visiting hospitals [and] prisons, leading evangelical meetings, and leading prayer meetings. [The beneficiary] has also been helping to organize a new affiliated church in Ashville, NC." This description shares many common elements with the earlier description of the beneficiary's work in Ukraine.

The director denied the petition, having determined that the petitioner had not adequately demonstrated the beneficiary's past experience or that the position offered to the beneficiary qualifies as a religious occupation. The director stated "[t]he petitioner has not demonstrated that the beneficiary worked full-time or will work full-time for the petitioner or that he was paid a salary." The petitioner has, as noted, submitted documentation of salary payments to the beneficiary. The petitioner has also maintained that its employees are not permitted to engage in any other employment.

On appeal, the petitioner submits a letter from an official of [REDACTED] in Chernovtsy, indicating that the beneficiary held a "full-time position" at that church "from October of 1993 until June of 2001." While the beneficiary was in the United States during much of the period specified, the petitioner has explained that the beneficiary had obtained his B-1/B-2 visa in order to work in the United States on behalf of his home church in Ukraine.

Counsel argues that the petitioner's previous submissions ought to suffice to demonstrate the beneficiary's continuous employment. While these documents consistently refer to the beneficiary as a full-time employee of the petitioning organization, there is no documentation to show that the beneficiary was paid after December 31, 2000. The beneficiary's annual compensation in Ukraine never exceeded \$364, or 17.5 cents per hour. The petitioner asserts that it has covered the beneficiary's expenses in the United States, but the petitioner has provided no first-hand, contemporaneous documentation to support this claim. Indeed, the record as a whole shows as systematic deficiency of contemporaneous documentation; the record consists

largely of witness letters, describing, well after the fact and in general terms, what the beneficiary has done in the past. The beneficiary's work over the past decade appears to have generated little evidence apart from annual salary statements which, although they purport to pertain to work done in Ukraine, show the payments in United States dollars.

Upon careful consideration of the materials submitted by the petitioner, we cannot conclude that the evidence is sufficient to show the beneficiary's continuous (i.e., uninterrupted), full-time work throughout the two-year qualifying period. The documentation, particularly with regard to the beneficiary's work in the United States, is fragmentary at best.

Regarding the beneficiary's intended future work for the petitioner, the director quoted regulations and stated "[t]he petitioner must also submit evidence that the beneficiary is qualified for the position." The director did not, however, specify how the evidence of record is supposedly deficient in this area. The petitioner has described the position offered, which appears to pertain to qualifying religious functions, and the record contains copies of diplomas and certificates that attest to the beneficiary's qualifications.

The next issue concerns the petitioner's ability to pay the beneficiary's salary. 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 submits copies of budget reports and other financial documents. There is no indication that these documents were prepared through an audit of the petitioner's finances. The petitioner has submitted documentation of payments that the beneficiary received in Ukraine until 2000, but there is no documentation of what compensation, if any, the beneficiary has received in the United States, where he had supposedly been working without interruption for over a year at the time of filing. The petitioner has stated that the beneficiary's "compensation is \$250 per week in wages plus room and board and all travel expenses." It is not clear whether the costs of room and board are deducted to the \$250 per week, or whether those expenses are provided over and above a weekly payment of \$250. The most recent payroll documentation reflects salary payments of 17.5 cents per hour throughout the year 2000, during which year the beneficiary spent all but seven weeks in the United States rather than in Ukraine.

The director, in denying the petition, reiterated the regulatory requirements for establishing ability to pay. 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 petitioner, on appeal, neither resolves this deficiency by submitting proper documents, nor makes any attempt to explain the absence of these documents. General pronouncements of confidence in one's financial solvency cannot suffice in this regard. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

The final issue raised in the director's decision concerns the beneficiary's entry into the United States. Section 101(a)(27)(C)(ii)(III) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(III), requires that the alien seeking classification "seeks to enter the United States" for the purpose of carrying on a religious vocation or religious occupation. In this instance, the beneficiary originally entered the United States as B-1/B-2 nonimmigrant. Thus, the director concluded, the beneficiary did not enter the United States solely for the purpose of working as a religious assistant.

This finding is not defensible. The AAO interprets the language of the statute, when it refers to "entry" into the United States, to refer to the alien's intended *future* entry *as an immigrant*, either by crossing the border with an immigrant visa, or by adjusting status within the United States. This is consistent with the phrase "*seeks to enter*," which describes the entry as a future act. While an alien's lack of valid nonimmigrant status would raise questions of admissibility at the adjustment stage, under current law these factors not inherently disqualify the beneficiary for the classification sought. We therefore withdraw this particular finding by the director.

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.