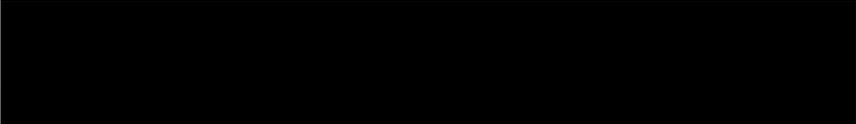


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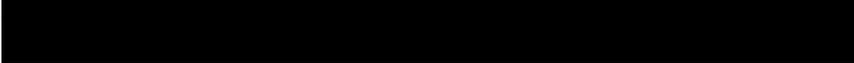
U.S. Citizenship
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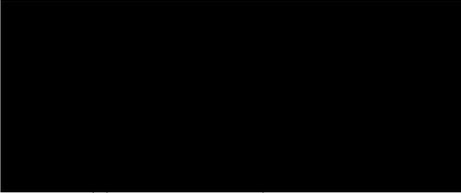
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FILE:  Office: TEXAS SERVICE CENTER Date: **AUG 04 2004**

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 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

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

The petitioner is a church. 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 an assistant pastor. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition or that the beneficiary possessed the required two years membership in the denomination. The director also determined that the petitioner had not established that the beneficiary was qualified for the religious worker position within the religious organization, or that it had extended a valid job offer to the beneficiary.

On appeal, counsel submits a brief and duplicates of previously submitted documentation.

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) echoes the above statutory language, and 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 December 4, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a pastor throughout the two-year period immediately preceding that date.

The petitioner submitted a June 2001 statement from Taik Soon Yim, senior minister of the [REDACTED] in which he stated that the beneficiary served as “administration” education minister for the church from October 1997 to the date of the letter. [REDACTED] states that the beneficiary’s job duties included “assigning senior minister in ministration and other church affairs.” [REDACTED] also included a list of the beneficiary’s duties; however, it is unclear from the listed duties whether or not the beneficiary actually functioned in the role of a minister.

The regulation at 8 C.F.R. § 204.5(m)(2) defines minister as:

[A]n 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.

The record contains a copy of a “certificate of graduation” certifying that the beneficiary received a Master of Divinity degree from the [REDACTED] graduating in 1999. The record also contains a “[REDACTED] Ordination” certifying that the beneficiary was ordained a minister at the Adelpnos Seoul Presbytery on October 20, 1999.

The evidence does not reflect whether or not ordination within the petitioner’s denomination carries with it the authority to perform traditional religious rites such as performing marriage, baptism, or interment ceremonies. There is no evidence that the beneficiary has performed such services in the past and no indication that he is expected to do so in the proffered position. The record therefore does not establish that the beneficiary is a minister within the meaning of the regulation.

The regulation at 8 C.F.R. § 204.5(m)(2) further states, in pertinent part, that:

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

The record does not establish that the beneficiary was required to demonstrate a commitment to a religious life such as by taking vows. The record does not establish that the beneficiary has a religious vocation.

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 full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

In a request for evidence (RFE) dated March 12, 2003, the director requested that the petitioner submit evidence to establish that the beneficiary was continuously employed in the religious occupation for the two years immediately preceding the filing of the visa petition, to include evidence of remuneration for his services. In response, the petitioner submitted a May 2003 letter from Reverend Yim, who states that based on

the "original filed in this office," the beneficiary received 17,550,000 won for his services in 1999, 18,750,000 won in 2000 and 6,250,000 won in 2001. Although in separate documents, Reverend Yim states he has personal knowledge of the beneficiary's job duties and work hours, he referred to the beneficiary as a female in this document. This raises questions as to the reliability of the information provided by Reverend Yim. The petitioner submitted no further documentation regarding the salary received by the beneficiary from the Adelphos Central Presbyterian Church, such as pay vouchers, checks, or receipts from the beneficiary acknowledging the payments received.

On appeal, counsel asserts that the RFE requested submission of "appropriate" evidence of compensation received by the beneficiary, and that CIS cannot deny the petition based on the petitioner's inability to provide evidence identified only at the time of the decision. Counsel further asserts that the petitioner submitted "the only appropriate evidence available." This argument is unpersuasive. The records used by [REDACTED] in his summation do exist, as evidenced by his statement. Further, counsel seems to assert that it is the petitioner who has the authority to decide the nature and sufficiency of evidence provided. Documents submitted to establish eligibility for visa preference programs must have evidentiary value and be based on objective proof. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Counsel additionally blames the US immigration system for the beneficiary's three months break in employment and his failure to have two full years continuous employment in the religious occupation prior to the filing of the visa petition. According to counsel, the beneficiary entered the US in July 2001, but was required to file a Form I-129, Petition for a Nonimmigrant Worker, to obtain an R-1 visa in order to have permission to work.

These requirements are set by Congress within its Constitutional authority to make laws. Under the statute governing this visa petition, which CIS administers and enforces, the petitioner has not established that the beneficiary has the requisite continuous work experience in the religious occupation for two full years immediately preceding the filing of this visa petition.

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

According to the petitioner, the main duty of the proffered position is to support and assist the pastor. Other specific duties of the position include establishing subcongregations in the church, attend services, and preach in the absence of the pastor. According to Reverend Yim, the beneficiary served as education minister at the [REDACTED] and was responsible for leading evangelical education, leading and teaching volunteer work for church members and counseling church members and youth groups.

Although the petitioner does not identify all of the duties involved in supporting and assisting the pastor, it is reasonable to assume that it includes duties similar to those that the beneficiary performed in his previous job. Further, although the record does not establish that the beneficiary has ever preached a sermon, he does have

religious training and is an ordained minister within the denomination. The evidence is sufficient to establish that the beneficiary is qualified for the position within the denomination.

The petitioner must also demonstrate that a qualifying job offer has been tendered.

The regulation at 8 C.F.R. § 204.5(m)(4) states, 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 its letter of November 2001, the petitioner outlines the job responsibilities of the proffered position and states that the job is expected to encompass at least 40 hours per week. Compensation is set at \$24,000 per year. Documentation submitted in response to the RFE in June 2003 indicates that the beneficiary is one of four paid employees of the church with a salary of \$24,000 yearly. The evidence is sufficient to establish that the petitioner has extended a valid job offer.

Beyond the decision of the director, the petitioner has not established that it had the ability to pay the proffered salary as of the date the petition was filed.

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.

The petitioner submitted a proposed budget for 2001, and revenue and expense budget proposals for 2003. The petitioner also submitted a copy of the status of its checking account as of June 2003.

The above-cited regulation 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. Furthermore, although the petitioner states that it has employed the beneficiary, apparently under an R-1 status, it provides no evidence of compensation it has paid to the beneficiary.

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.