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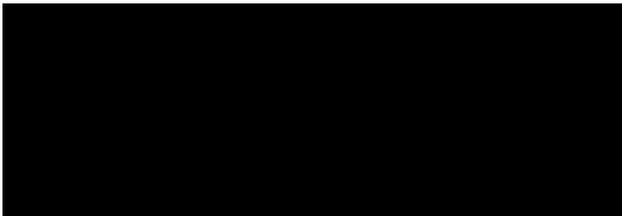
U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: TEXAS SERVICE CENTER

Date: 11 12 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:

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.

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, 8 U.S.C. § 1153(b)(4), to perform services as a Sunday school teacher. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a Sunday school teacher immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary, its ability to pay the beneficiary's wages, or that the beneficiary entered the United States with the intention of performing qualifying religious work.

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 April 15, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a Sunday school teacher throughout the two years immediately prior to that date.

The petitioner's initial submission contained no information about the beneficiary's work history. The director therefore instructed the petitioner to provide this required information. In response, the petitioner has indicated that the beneficiary teaches Sunday school, and receives "\$500 monthly for 40 hours per monthly" [sic].

The director, in denying the petition, found that the petitioner had not provided any information about the beneficiary's prior work history, and thus the petitioner had failed to establish that the beneficiary possesses the necessary experience. An unsigned statement submitted on appeal indicates that the beneficiary worked at a sister church in Haiti before coming to the United States, and has been continuously working as a Sunday school teacher. The statement contains no dates, few details, and it lacks documentary corroboration. For example, the statement indicates that the beneficiary has been paid for her work, but the petitioner submits no documentary records to reflect these payments.

The petitioner does not explain why this information was not provided when the director first asked for it. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. Given the petitioner's earlier failure to address a direct request for this evidence, the AAO is not obligated to consider the petitioner's new claims. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). Furthermore, the claim is unsubstantiated and at times so vague as to be unverifiable.

We also note that, according to the petitioner's statements, the beneficiary worked forty hours per month, which is not full-time employment. Part-time employment is not continuous activity as a religious worker. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

The next issue is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definition:

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation at 8 C.F.R. § 204.5(m)(2) states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

Citizenship and Immigration Services (CIS) therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

Further, while the determination of an individual's status or duties within a religious organization is not under the purview of CIS, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within CIS. Authority over the latter determination lies not with

any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

The beneficiary's duties are "third and fourth grade Sunday school teacher," "visiting and praying with the church's members," and "visiting the sick people in the hospitals."

The director, in denying the petition, stated that the petitioner has not shown that the beneficiary's work represents a traditional religious function routinely performed by full-time paid employees. On appeal, the petitioner submits a copy of a certificate, showing that the beneficiary completed "Sunday School Training" in 1997. This document does not establish that the petitioner's denomination routinely considers Sunday school teachers to be full-time paid employees, rather than volunteers from the congregation or part-time employees, as the beneficiary appears to be.

We note, also, that the petitioner claims that the beneficiary worked as a Sunday school teacher, for the same denomination, prior to entering the United States. The petitioner had earlier indicated that the beneficiary entered the United States in 1982. Thus, the beneficiary was purportedly working as a Sunday school teacher within the same denomination for at least fifteen years before she obtained the training certificate that is supposedly required for the job.

The next issue concerns the petitioner's ability to pay the beneficiary's proffered wage. 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 has submitted copies of bank statements, which reflect a considerable bank balance but which do not present a complete financial picture including the petitioner's assets and liabilities. The director denied the petition in part because the petitioner failed to provide the documentation required by the regulations. On appeal, the petitioner does not address this finding except for the general assertion that the beneficiary has been paid for her work. No evidence supports this claim.

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).

The final issue raised in the director's decision concerns the beneficiary's entry into the United States. Section 101(a)(27)(C)(ii)(I) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(I), 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 director concluded the beneficiary did not enter the United States solely for the purpose of working as a Sunday school teacher.

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. We therefore withdraw this particular finding by the director.

The sparse information provided by the petitioner indicates that the beneficiary is, at best, a part-time employee of the petitioning church, which would explain why the petitioner supposedly pays the beneficiary only \$500 per month, which is unlawfully low for full-time employment. The petitioner has not credibly established that the beneficiary is, and has been continuously employed in a traditional religious function.

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.