



U.S. Citizenship
and Immigration
Services

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FILE:

Office: TEXAS SERVICE CENTER

Date:

JUL 23 2004

IN RE:

Petitioner:

Beneficiary:

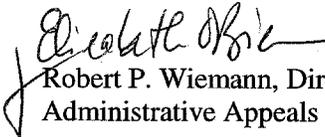
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

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 minister. The director determined that the petitioner had not established (1) that the beneficiary had the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition; (2) that the position offered was that of a minister; or (3) the petitioner's status as a qualifying tax-exempt organization.

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 3, 2003. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a minister throughout the two years immediately prior to that date.

The petitioner submits copies of materials from International Family Church, Columbia, South Carolina, dated between mid-2001 and early 2003. Apart from the fact that several officials of that church share the beneficiary's surname, the relevance of these documents (which never mention the beneficiary himself) is not clear.

[REDACTED] area coordinator of Teen Action International, states that the beneficiary "is an Ordained Minister of the Gospel. He is affiliated with us as member and Religious minister since 1979 and as ordained minister since 1983." [REDACTED] area director of Charisma Family Church International (affiliated with Teen Action International) and [REDACTED] (founder of Teen Action International) offer similar assertions. Documents in the record indicate that Teen Action International is "also known as" International Family Church, which in turn is affiliated with the petitioning church. The petitioner submits a copy of the beneficiary's Certificate of Ordination, issued December 18, 1983 by International Family Church.

None of these letters offer such critical details as *where* the beneficiary was purportedly acting as a minister. The Form I-360 petition indicates that the beneficiary entered the United States on June 30, 2002, some eight months prior to the filing date. Therefore, the beneficiary cannot have been continuously acting as a minister at any one church, either in the United States or elsewhere. Assertions by officials of an entity with churches in both countries, attesting to the beneficiary's work as a minister, are insufficient to provide a credible account of the beneficiary's work history. The 2003 directory of the International Family Church lists the beneficiary as being in India.

The director requested additional details and documentation regarding the beneficiary's work during the qualifying period. The configuration of the record makes it difficult to determine precisely which documents accompanied the petitioner's response to the notice. The director's denial mentions only "evidence [of] the beneficiary's prior work experience."

The petitioner has submitted a letter from [REDACTED] administrator of Teen Action International. The printed letterhead shows addresses in India, the United Kingdom, and New York, but the signature has been attested by a South Carolina notary public. [REDACTED] lists the beneficiary's annual salary in rupees, despite the petitioner's earlier claim that the beneficiary is in the United States. Similarly, two "Wage/Salary - Tax & Leave Statements" in the record state that the beneficiary worked in India throughout the period from January 1, 2001 to November 15, 2002. A Form W-2 Wage and Tax Statement issued by the petitioner states that it paid the beneficiary \$2,100 in 2002, consistent with only a few weeks of employment. These tax documents suggest that the beneficiary arrived in the United States several months later than previously claimed.

The petitioner submits a notarized original of the employment agreement between the beneficiary and the petitioner [REDACTED] CEO of the petitioning church, signed this document on October 1, 2002, six weeks before the end of the period covered by the beneficiary's wage statement from India.

Also submitted on appeal is a letter from [REDACTED] who asserts that "[f]or the last 35 years [the beneficiary] has been in ministry and has served as [REDACTED] Hospital in India." This brief assertion appears to contain the most detail the petitioner has ever provided about the beneficiary's work in India. The petitioner has not shown that a hospital chaplain performs the full range of duties normally ascribed to an authorized (i.e., ordained) minister in the denomination. The record contains no documentation from the hospital itself (which Rev. Raiborde has not identified). Meanwhile, tax documents in the record indicate the beneficiary's job title in 2001 and 2002 is "Religious Minister & Translator." The regulation at 8 C.F.R. § 204.5(m)(2) classifies religious translators as working in a non-ministerial religious occupation. Thus, confusion continues with regard to what the beneficiary was actually doing during the two-year qualifying period.

The regulations at 8 C.F.R. § 204.5(m)(1) and (3)(ii)(A) require that the beneficiary must have carried on *the* vocation or occupation, rather than *a* vocation or occupation, indicating that the work performed during the qualifying period should be substantially similar to the intended future religious work. The underlying statute, at section 101(a)(27)(C)(iii), requires that the alien "has been carrying on such . . . work" throughout the qualifying period. An alien who seeks to work as a parish minister has not been carrying on "such work" if employed as a hospital chaplain or translator for much of the preceding two years.

We cannot conclude that the beneficiary, throughout the two-year qualifying period, has been performing essentially the same duties that the petitioner intends for the beneficiary to perform in the United States. Therefore we uphold the director's finding that the petitioner has not satisfied the two-year experience requirement.

The next issue is whether the petitioner seeks to employ the beneficiary in a qualifying position. The regulation at 8 C.F.R. § 204.5(m)(2) defines a "minister" as an 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.

states:

[The beneficiary] has his Ordination Certificate showing that the International Family Church, which is affiliated to Christian Center Church officially, recognizes him as a Minister in our denomination. This authorization allows him to conduct religious worship services, perform religious rites, sacraments, ordinances, duties and ceremonies in keeping the doctrine of our church. It allows him to perform child dedications, minister baptisms, to celebrate the sacrament of Holy Communion, to solemnize weddings and officiate at funerals. He is commissioned to give Biblical counsel to members of the congregation in crisis.

As Minister in our denomination, he conducts worship services, preaches in crusades, teaches in seminars and evangelizes through various Gospel outreaches. He gives Biblical counsel to families and to individuals and teaches the Scriptures and is involved in pioneering various gospel ministries in unreached areas.

In a separate letter, states that the beneficiary's 40-hour weekly schedule is to consist of such activities as "Preaching [at] Sunday services," "Teaching Catechism and foundational Biblical Doctrines," "Neighborhood Evangelism" and teaching "classes to teach the dangers of Drug and Alcohol." As noted above, the record contains a copy of a Certificate of Ordination issued to the beneficiary in 1983.

The director determined that the petitioner had not shown that the job offer was permanent, or that "the beneficiary is authorized to perform sacerdotal rights [sic] and traditions." The petitioner, however, had indicated that the beneficiary's duties include baptisms, communions and weddings, which are not generally functions delegated to lay workers.

While the record is, in some ways, deficient, it is not clear what led the director to conclude that the beneficiary's duties in the United States would not be those of a *bona fide* minister (a question which is separate from the question of whether the beneficiary has acted solely as a minister throughout the qualifying period). We find that the petitioner has established that the position offered is that of a minister.

The final issue raised by the director regards the petitioner's tax status. 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 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 section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

The petitioner states that the church is a member of the International Family Church, which, in turn, is covered by the group exemption held by [REDACTED]. The petitioner submits letters from Rev. [REDACTED], [REDACTED] New York, who states that Christian Center Church is exempt from federal income taxation, and that "the [REDACTED]s in USA are affiliated with Christian Center." The letter does not mention the petitioning church in South Carolina. The petitioner's submission did not include any documentation from the Internal Revenue Service (IRS) to establish its tax-exempt status. Instead, [REDACTED] urges the reader to contact the IRS for verification. The burden is on the petitioner to provide documentation of its tax-exempt status; it cannot suffice for the petitioner simply to recommend that we contact the IRS for this information.

The record contains an [REDACTED] directory, which lists several entities in the United States including the petitioning church. This directory also lists, in the same section that includes the petitioning church, the names of various individuals, as well as several corporations which do not appear to be typical church activities, such as [REDACTED] and [REDACTED]. These corporations are identified as "partners"; the extent of their corporate ties to International Family Church are undisclosed. If they have no ties to the church at all, then obviously inclusion in the directory is not definitive evidence of affiliation with International Family Church.

The petitioner submits copies of Exempt Organization Certificates, which the New York State Department of Taxation and Finance issued to Golden Heights Christian Center and the Christian Center Church of Monroe County, both in Brockport, New York. These documents do not show that the petitioner, a South Carolina-based church, is exempt from *federal* taxation under section 501(c)(3) of the Internal Revenue Code. Letters from witnesses in India assert that Golden Height Christian Center, like the petitioner, is affiliated with Teen Action International, but the record does not clarify the nature of the relationship between these entities.

On appeal, the petitioner has submitted a copy of a 1984 IRS letter, indicating that [REDACTED] of Monroe County, New York, is a tax-exempt church. The letter does not state whether or not this is a group exemption, extending to all affiliated or subordinate churches.

The record continues to lack definitive, objective documentation to establish that the petitioning church is covered by [REDACTED]'s tax exemption. We note that the [REDACTED] lists the petitioner and a cleaner in the same section, and the directory does not mention [REDACTED] at all. The petitioner has no explanation for the complete lack of official documentation establishing a formal connection between the exempt entity and the petitioning church.

The regulations describe the documentation that is necessary to establish that the employer is a qualifying tax-exempt religious organization. The petitioner has not submitted the required documentation.

While the determination of an individual's status or duties within a religious organization is not under the purview of Citizenship and Immigration Services (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 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.