



U.S. Citizenship  
and Immigration  
Services

*[Handwritten scribbles and markings]*

[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date: JUN 15 2004

IN RE:

Petitioner:

[Redacted]

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:

[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.

*[Handwritten signature]*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont 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 special projects coordinator. The director determined that the petitioner had not established (1) its status as a qualifying tax-exempt religious organization, (2) that the beneficiary had the requisite two years of continuous work experience in the occupation immediately preceding the filing date of the petition, (3) that the occupation qualifies as a religious occupation, or (4) the petitioner's ability to pay the beneficiary's proffered salary.

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).

Rev. Clifton Martin, senior pastor of the petitioning church, states that the church intends to employ the beneficiary full-time in the position of special projects coordinator for \$400.00 per week.

The first issue raised by the director concerns the petitioner's tax exemption. 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.

A November 14, 2000 letter from the Internal Revenue Service indicates that a church with the same name as the petitioner "is included in a group ruling issued to Rhema Bible Church, which is located in Tulsa, Oklahoma." The letter was sent to a post office box in Philadelphia. The petitioner's letterhead and other documentation do not show this post office box number.

The director requested evidence to link the exemption letter with the petitioner's current address, thus demonstrating that the petitioner and the exempt entity are one and the same. In response, the petitioner submits another copy of the same letter, which was sent to a post office box rather than to the mailing address shown on all of the petitioner's documents.

The director denied the petition, stating that the petitioner had failed to establish that it was the church that had received the exemption letter from the Internal Revenue Service. On appeal, the petitioner submits a copy of the Certificate of Affiliation showing that a Philadelphia church with the petitioner's name is a recognized affiliate of RHEMA Bible Church. This certificate basically repeats the essential information on the exemption letter – specifically, that a church in Philadelphia is covered by RHEMA Bible Church's group exemption. It does not establish that the petitioner is the church that holds the post office box shown on the letter.

The petitioner has, however, also submitted copies of bank statements sent to the same post office box. This shows that the petitioner is in possession of multiple pieces of correspondence sent to a church with the same name in the same city. Furthermore, <http://www.phillyrandr.com/members.html>, a web site listing various Pennsylvania churches, lists the petitioning church. It shows both the street address documented in the record, as well as the post office box listed on the exemption letter. Given this evidence, it is far more reasonable to conclude that the petitioner is the church named on the exemption letter, than to conclude that the petitioner has fraudulently attempted to co-opt the identity of another church with the same name. Similarly, it is more reasonable to conclude that the petitioner possesses the exemption letter and bank statements because it was the original recipient, than to assume that it forged them, or that it acquired another church's legitimate documents via some other means. In short, the preponderance of the available evidence indicates that the petitioner is a qualifying tax-exempt entity. We hereby withdraw the director's finding to the contrary.

The next issue concerns the beneficiary's past experience. 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." Similarly, 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 February 8, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as a special projects coordinator, or performing essentially the same duties, throughout the two years immediately prior to that date.

In its initial correspondence, the petitioner described the position offered to the beneficiary, but did not indicate that the beneficiary has already undertaken these duties. Rev. Martin stated only generally that the beneficiary "is well qualified for the position of Special Projects Coordinator based on her extensive experience as both counselor as well as management information systems." Therefore, the director requested detailed information regarding the beneficiary's past work during the qualifying two-year period. In

response, the petitioner stated that the beneficiary is highly trained and well qualified for the position offered, but the response contains no details about the beneficiary's work from February 2000 to February 2002.

A letter addressed to the beneficiary, dated January 22, 2003, states "[w]e are looking forward to working with you" and "[t]he leadership is very excited about the prospect of your joining the congregation." These statements make sense only if, as of January 2003, the beneficiary was not yet a member of the congregation, working with officials of the petitioning church. Clearly, then, the beneficiary has no qualifying past experience with the petitioning church, and the petitioner must turn elsewhere for documentation of the beneficiary's experience during the qualifying period.

The petitioner has submitted copies of training certificates that the beneficiary earned in the 1990s and in 2000, the most recent being a certificate in "Crisis Prevention and Intervention Training," issued by Elwyn Inc. Staff Development in December 2000. These certificates do not establish that the beneficiary was already employed as a project coordinator in February 2000; rather, they indicate that the beneficiary was still pursuing necessary training several months after that date. There is no indication that any of the certificates are from religious rather than secular entities. The certificates neither state nor imply that the beneficiary worked for any church or religious organization at any point during the 2000-2002 qualifying period.

The director denied the petition, in part because the petitioner failed to establish that the beneficiary worked in a qualifying occupation during the 2000-2002 qualifying period. On appeal, counsel repeatedly refers to the beneficiary with the title "Pastor," and states "[i]n . . . 1986, [the beneficiary] was ordained assistant Pastor/Christian Counselor by the Foursquare Gospel Church." A 1986 ordination certificate confirms this assertion. The certificate was issued in Africa, a decade and a half before the qualifying period. This certificate does not, and cannot, establish that the beneficiary engaged in full-time, qualifying employment between February 2000 and February 2002.

The director had specifically requested evidence regarding the beneficiary's work between 2000 and 2002, and despite more than one opportunity to submit such evidence, the petitioner has remained silent about this period, offering only very general assertions to the effect that the beneficiary is experienced at her job.<sup>1</sup> There is no indication in the record that the petitioner has even attempted to satisfy the two-year experience requirement. The absence of this mandatory evidence is, by itself, sufficient grounds for denial of the petition and dismissal of the appeal, even without considering the other grounds cited by the director.

The next issue concerns the nature of the position offered. 8 C.F.R. § 204.5(m)(2) defines a religious occupation as 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.

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<sup>1</sup> The Form I-360 Petition itself includes the question "Has the person this petition is for ever worked in the U.S. without permission?" The petitioner answered the questions immediately above and below, but not this question. An instruction elsewhere on the form indicates that failure to "completely fill out the form" could result in denial. Counsel prepared the petition form, as shown by his signature on that form. Coupled with the nature of the other information provided by the petitioner, this appears to be not an accidental omission, but part of a sustained pattern of apparently refusing to provide any information about the beneficiary's employment history.

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 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 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).

states that the beneficiary's duties include "coordinating statistics for the ministry," "plan and coordinate reading workshops for youth and adults," "coordinate counseling programs for the ministry" and "teach adult education classes."

Asked for more information, has stated that the beneficiary's "primary assignment will be counseling young men and women especially unwed teens and those who are at risk of out of wedlock pregnancy from biblical perspectives and precepts." The beneficiary's position would also involve "bible studies, visitations, prayer sessions, counseling, liaising with other churches and agencies and attending all church events and church workers' meeting[s]." Rev. Martin indicates that the position is "a full-time appointment with a minimum of 32 hours per week."

The director denied the petition, stating that "a full time position, for immigration purposes is 35 hours per week," not the 32 hours specified by the petitioner. The director also questioned whether counseling, of the type undertaken by the beneficiary, is intrinsically religious work as opposed to secular employment that happens to take place in a religious setting.

On appeal, counsel argues that the beneficiary's "Counseling training and experience in both secular and non secular Counseling will be very useful in changing the lives of single parents, teen moms and children that require Counseling and ultimately lead them to Jesus Christ." asserts that the beneficiary's work "will entail a minimum of thirty-seven hours a week." discusses the importance of reproductive health counseling, particularly since the advent of dangerous diseases such as AIDS, but he does not demonstrate that the petitioning denomination regards the beneficiary's principal duties as traditional religious functions. The fact that the beneficiary's training certificates are primarily from secular sources suggests that the work is fundamentally secular in nature.

The final issue concerns the petitioner's ability to pay the beneficiary's salary of \$400.00 per week, or \$20,800.00 per year. 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 initial submission contained no financial documentation at all, and therefore the director instructed the petitioner to submit evidence of its ability to pay the proffered wage. In response, the petitioner has submitted a copy of a February 2002 bank statement, reflecting a balance of \$4,174.79 at the beginning of the month and \$4,286.95 at the end of the month. A more recent bank statement from December 2002 showed an opening balance of \$5,115.05 and a closing balance of \$3,750.66. These bank statements do not readily demonstrate that the petitioner has a sufficient flow of income to ensure its ability to pay the beneficiary \$400.00 per week.

Counsel states “[t]he most current self-audit performed on the Church record was done in 1999.” Counsel indicates that the response includes a copy of a financial report prepared in that year, but we can find no such document in the record.

The director denied the petition, stating that copies of bank statements were insufficient to establish ability to pay. On appeal, counsel contends “[t]he regulation did not provide any exhaust[ive] example of acceptable evidence of the petitioner’s ability to pay the beneficiary,” but that “the court listed three examples,” including bank statements, in an unnamed decision. It appears that counsel is citing an unpublished appellate decision, which has no force as precedent.

The regulation does, in fact, list acceptable forms of evidence of 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 same regulation indicates that the petitioner is free to submit other kinds of documentation, but only *in addition to*, rather than *in place of*, the types of documentation listed above. 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).

A new “Statement of Activities,” submitted on appeal, indicates that the petitioner’s revenues for 2002 exceeded its expenses by only \$4,482. Like the bank statements, this material does not establish the petitioner’s ability to pay the beneficiary over \$20,000 per year. Even if bank statements were sufficient evidence, those bank statements would still have to be consistent with the petitioner’s ability to pay the proffered wage; it cannot suffice simply to demonstrate that a bank statement exists, without regard to the information in that bank statement. Counsel does not explain how the bank statements and other materials could reasonably be construed to show the petitioner’s ability to pay the proffered wage.

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.