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CA



FILE: [Redacted] Office: VERMONT SERVICE CENTER

Date: JUN 17 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

The petitioner seeks classification of 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), in order to perform services as a youth pastor/worship director, at a "consolidation" salary of \$500 biweekly. The term "consolidation" has not been explained by the petitioner.

The director denied the petition on multiple grounds in a decision dated March 13, 2003. Specifically, the director determined that the petitioner had not established that: (1) the proposed position qualifies as a religious occupation; (2) the beneficiary is qualified to engage in a religious vocation or occupation; (3) the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for two years immediately preceding the filing date of the petition; and, (4) a qualifying job offer has been extended to the beneficiary.

On April 12, 2003, a Form I-290B, Notice of Appeal, was submitted by Rev. Dr. Gaudencio J. Soriano, one of the petitioner's Executive Officers, Philippine District, and the petitioner's titular Bishop/Founder and General Superintendent. On appeal, Rev. Dr. Soriano provides a brief statement, a letter, and resubmits documentation previously contained in the record of proceeding.

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 Revenue 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) states, in pertinent part:

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 alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or 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 Revenue Code of 1986 at the request of the organization. All three types of 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.

There is little information contained in the record of proceeding that describes the petitioner. In support of the petition, the petitioner submitted a "Certificate of Incorporation" for the State of New Jersey, indicating that its purposes include encouraging and promoting evangelism, worship and praise, and the edification of the Christian believer. There is no indication as to the petitioner's size or its number of salaried employees.

The record reflects that the beneficiary is a native and citizen of the Philippines, who was last admitted to the United States as a nonimmigrant visitor for business (B-1) on October 10, 2001. The beneficiary has remained in the United States unlawfully since October 21, 2001, the date of expiration of his authorized period of admission. The Form I-360, Petition for Amerasian, Widow or Special Immigrant, indicates that the beneficiary has not been employed in the United States without the permission of Citizenship and Immigration Services (CIS).

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

The first issue raised by the director to be addressed in this proceeding is whether the petitioner has established that the proposed position qualifies as a religious occupation.

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

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.

The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an "activity relating to a traditional religious function." CIS interprets the term "traditional religious function" to require a demonstration that the duties of the position are related to the religious creed or beliefs 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.

On November 19, 2002, the director requested the petitioner to submit evidence "to establish that the proposed position is a valid religious position that is recognized within the structure of the petitioner's

organization.” In response, the petitioner submitted a letter, dated November 27, 2002, describing the duties of the position as follows:

Worship, Youth Counselor, Assisting the Bishop in matter [sic] relating to the youth, marriage, burials, and other Ministerial sacerdotal functions. To preach Gospel of Jesus Christ, to oversee Worship department of the Ministry and perform other duties as assigned by the Bishop.

The director determined that the petitioner had not established that the proposed position is a traditional religious occupation requiring special training or a full-time commitment, or that the duties of the position could not be performed by a dedicated and caring member of the congregation.

On appeal, the petitioner has submitted no new information or documentation with regard to this issue.

Based on a review of the record, the AAO concludes that the petitioner has failed to establish that the proposed position qualifies as a religious occupation. The petitioner has not submitted evidence that the proposed position of youth minister/worship director 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. For this reason, the petition must be denied.

The second issue raised by the director is whether the petitioner has established that the beneficiary is qualified to engage in a religious vocation or occupation.

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; and . . .

(D) That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother, or that the type of work to be done relates to a traditional religious function.

With the initial filing of the petition, the petitioner submitted an academic transcript from the Tribal Gospel Mission Institute in the Philippines showing that the beneficiary attended two years of pastoral ministry studies from 1998 through 2000, and was issued a certificate by that institute on April 1, 2000, for having completed the prescribed courses for pastoral ministry. The petitioner also submitted a letter, dated March 18, 2002, stating that the beneficiary has been an ordained minister of the petitioning organization since December 1999, and a “Certificate of Ordination” issued by the petitioner to the beneficiary on December 10, 1999.

The director determined that the petitioner had not established the standards required for the position or that the beneficiary had satisfied such standards.

On appeal, the petitioner asserts that the beneficiary is “the only qualified minister to handle our Youth and Music Ministry.”

Based on a review of the record, the AAO concludes that the petitioner has failed to establish that the beneficiary is qualified to engage in a religious vocation or occupation. The petitioner has not provided evidence to establish the qualifications required for the position or shown how the beneficiary has fulfilled those requirements. For this additional reason, the petition must be denied.

The third issue raised by the director to be addressed in this proceeding is whether the petitioner has established that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for two years immediately preceding the filing date of the petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that:

All three types of 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 petition was filed on April 15, 2001. Therefore, the petitioner must establish that the beneficiary was continuously engaged in a qualifying religious vocation or occupation for the two-year period beginning on April 15, 1999.

The legislative history of the religious worker provision of the Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 (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. *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 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 or 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).

The term “continuously” is also 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 studies. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he or 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).

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 or 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 salaried. To be otherwise would be outside the intent of Congress.

With the initial filing of the petition, the petitioner submitted a "Certification" from [REDACTED] District Superintendent of the [REDACTED] (FRCI) in Pangasinan District, Philippines. Rev. [REDACTED] states that the beneficiary performed services as a "Young People President and the Music Director" at an FRCI church in the Pangasinan district from 1998 until 2000. Rev. Paloay further states the beneficiary was assigned to perform these services as his "practicum," while enrolled in Bible school.

On appeal, the petitioner states: ". . . [The beneficiary] is financially assisted by our Jersey City congregation pending your approval of his green card . . ."

The petitioner has made no claim, and submitted no evidence to establish, that the beneficiary had been employed by the petitioner, or any other religious organization, as a full-time, salaried religious worker from April 15, 1999 through to the date of filing the petition on April 15, 2001. Furthermore, the petitioner has not provided a detailed description and evidence of the beneficiary's means of financial support in this country. Based on the above discussion, and absent a detailed description of the beneficiary's employment history and source of financial support in the United States, supported by corroborating evidence such as certified tax documents, the AAO is unable to conclude that the beneficiary had been engaged in a religious occupation throughout the two-year qualifying period. For this additional reason, the petition must be denied.

The final issue raised by the director to be addressed in this proceeding is whether the petitioner has established that it has extended a qualifying job offer to the beneficiary.

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 a letter dated March 18, 2002, [REDACTED] states that the petitioning organization "will not allow [the beneficiary] to become a public charge, as he shall be remunerated upon approval of this petition and he shall be on a weekly remuneration of \$250 with other fringe benefit [sic] as decided by the board." In a letter dated November 27, 2002, [REDACTED] indicates that the beneficiary will be paid a salary of \$500 biweekly, in addition to accommodation and transportation.

On appeal, [REDACTED] states: ". . . [o]ur congregation in Jersey City take's [sic] care for [the beneficiary's] personal needs and we assure you that he will not be a burden financially by [sic] our government. . . ." Rev. Dr.

Soriano further indicates that the beneficiary is provided lodging at the Bishop's parsonage and that the church takes care of the beneficiary's daily needs.

Here, the petitioner has not clearly stated that the beneficiary will not be solely dependent on supplemental employment or the solicitation of funds for support. For this reason, as well, the petition must be denied.

Beyond the decision of the director, the petitioner has not submitted sufficient evidence to establish its ability to pay the beneficiary the proffered wage.

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

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 not submitted its annual reports, federal tax returns, or audited financial statements. Therefore, the petitioner has not complied with the documentary requirements of 8 C.F.R. § 204.5(g)(2).

The petitioner has also not submitted sufficient evidence to establish that it qualifies as a bona fide non-profit religious organization. Although the petitioner states that it is a bona fide non-profit religious organization, there is a discrepancy in the documentation provided concerning that status. The address noted on the letter of tax-exempt recognition issued by the Internal Revenue Service (IRS) is different from that of the petitioning organization. The petitioner has not explained this discrepancy. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

In reviewing an immigrant visa petition, CIS must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the beneficiary in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of B. Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.