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FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: JUN 21 2004

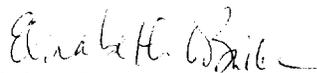
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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)



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 (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 a religious instructor. The director also 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 the proffered position qualified as that of a religious worker. The director further determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization. The petitioner's motion to reopen and reconsider was forwarded to the AAO pursuant to 8 C.F.R. § 103.3(a)(2)(iv).

On appeal, counsel submitted a brief and additional evidence.

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.”

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 May 9, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as a religious instructor throughout the two-year period immediately preceding that date.

According to [REDACTED] the senior pastor of [REDACTED] the beneficiary's previous church in India, the beneficiary was employed at the church as a religious worker from December 1996 to March 2002. [REDACTED] states that the beneficiary's salary ranged from Rs. 1,950 to Rs. 3,750 per month, and that he worked the following hours: 9:00 a.m. to 3:00 p.m. Monday through Friday, 3:00 p.m. to 6:00 p.m. on Saturday, and 6:00 a.m. to 7:30 a.m. and 10:00 a.m. to 1:00 p.m. on Sunday. [REDACTED] states that the beneficiary's duties included conducting daily chapel services, teaching Bible lessons, assisting the senior pastor in the worship services, matrimonial services, funeral services, youth counselor and church organist.

The director determined that there was no evidence to substantiate that the beneficiary received any compensation for religious work during the relevant two-year period and no evidence of any prescribed religious training for the position he held.

On appeal, the petitioner submitted a statement from the beneficiary's previous church detailing his salary for the period December 1999 to February 2002. The petitioner also submitted pay vouchers for the same period. The beneficiary began working for the petitioner in March 2002. The petitioner also submitted documentation that it compensated the beneficiary for work at its daycare center beginning in March 2002.

The record does not establish that the beneficiary worked continuously in a qualifying religious occupation for the two years immediately preceding the filing of the visa petition. The position held by the beneficiary at the [REDACTED] is not clearly the same occupation as the proffered job. The job responsibilities as outlined by the petitioner encompass only a couple of the duties mentioned by Reverend Paul. Further, with the petitioner, the beneficiary began a new occupation in March 2002, and thus did not work the full immediate two years in the religious occupation he had previously held in India.

The statute requires two years of experience in the occupation for which the beneficiary seeks entrance into the United States. The record does not establish that the beneficiary meets this requirement.

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 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

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit 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. This documentation includes, at a minimum, a completed Internal Revenue Service Form 1023, the Schedule A supplement which applies to churches, and a copy of the organizing instrument of the church which contains a proper dissolution clause and which specifies the purposes of the organization.

The petitioner submitted a 1974 letter from the Internal Revenue Service granting group tax-exempt status to the [REDACTED] and its affiliated organizations. On appeal, the petitioner submits a telephone and organizational listing for the [REDACTED] Florida, which lists the petitioner. However, the record contains no documentation or statement from the [REDACTED] attesting that the petitioner falls under the group tax-exempt status of the organization.

The evidence presented does not establish that the petitioning organization qualifies as a nonprofit religious organization.

The record reflects that the beneficiary entered the United States on a B-2 visa in 2002. The director determined that the petitioner had not established that the beneficiary's sole purpose for entering the United States was to work for the petitioner or any other religious organization.

We withdraw this determination by the director. The regulation does not require that the alien's initial entry into the United States must be solely for the purpose of performing work as a religious worker. "Entry," for purposes of this classification, would include any entry under the immigrant visa granted under this category or would include the alien's adjustment of status to the immigrant visa.

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.