



U.S. Citizenship
and Immigration
Services

C1



FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: SEP 15 2004

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
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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 (the Act), 8 U.S.C. § 1153(b)(4), to perform services as an associate pastor. The director determined that the petitioner had not established that: (1) the beneficiary had the requisite two years of continuous work experience as an associate pastor immediately preceding the filing date of the petition; (2) it had offered the beneficiary a qualifying position as a minister; or (3) the beneficiary entered the United States with the intention of working as a minister.

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) 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 November 19, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an associate pastor throughout the two years immediately prior to that date.

Rev. [REDACTED] senior pastor of the petitioning church, states that the beneficiary "is in active part-time duties as a minister with Invading Forces Ministries," a Bahamian church under the same denomination as the petitioning church. Denise Mather, founder/president of Invading Forces Ministries, states that the beneficiary "is an active part of our ministry and has been for seven (7) years, four of which were spent in part time ministry." David B. Ash, founding apostle of Living World Christian Outreach, states

that the beneficiary "is an ordained minister" and "an active part-time minister with Invading Forces Ministries." James Allen Smith, founder and pastor of Living Water Tabernacle, states that the beneficiary "is an ordained minister and part-time clergyman of Invading Forces Ministries." The beneficiary's resume indicates that he has been an associate pastor for Invading Forces Ministries since 1997.

The director requested additional evidence to establish that the beneficiary possesses the two years of continuous experience required by the statute and regulations. In response, Rev. ██████ states that the beneficiary has worked 30 hours per week. Rev. ██████ asserts that the beneficiary paid no income taxes in the Bahamas, because "[t]he Government [of the Bahamas] only taxes products and goods coming into the country. . . . The Bahamas is a third world country and is not set up like the United States of America."

The beneficiary arrived in the United States on November 14, 2001, as a B-2 nonimmigrant visitor. Rev. Woody states "[t]he beneficiary entered the United States to participate in church activities as a form of fellowship and personal training. . . . The Beneficiary was compensated by family's personal savings from home, and support as a guest of the church here in the states as [the] beneficiary continued in observation and training."

The director denied the petition, stating that the petitioner has not established the beneficiary's continuous employment throughout the two-year qualifying period. The director stated "the time spent in B-2 visitor status will break the continuous work experience."

The information provided by the petitioner describes the beneficiary's past work only in terms of his work in the Bahamas, from which the beneficiary had departed a year before the petition was filed. On appeal, Rev. ██████ states that a new letter, "document A1," shows that "Beneficiary has been professionally employed for two years immediately preceding the filing of this petitioner [sic]." The document labeled "A1" is a letter from Denise Mather, reiterating the beneficiary's employment at Invading Force Ministries from "July 7, 1997 through October 28, 2001." This covers less than half of the two-year period *immediately* prior to the filing date, i.e., November 19, 2000 through November 19, 2002. Apart from general descriptions of the beneficiary as "active," the record does not demonstrate or imply that the beneficiary continuously worked as a minister between his November 2001 arrival in the United States and the filing date a year later.

Furthermore, the petitioner has consistently indicated that the beneficiary's past work has been part-time. In a 1980 decision, the Board of Immigration Appeals determined that a part-time minister of religion was not continuously carrying on the vocation of minister. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

Based on the above, we affirm the director's finding that the record does not establish the required two years of experience immediately preceding the filing date.

The next issue is whether the position offered to the beneficiary qualifies as that of a minister. The regulation at 8 C.F.R. § 204.5(m)(2) defines "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.

Rev. Woody states:

[The beneficiary] is an ordained minister . . . authorized to perform the functions of an associate pastor in our church, which include conducting worship, officiating at weddings, funerals, and other sacramental functions. . . .

His primary duties will be: to organize the Evangelism ministry which includes ministry for the hearing impaired, to conduct prayer meetings, lead worship services, visit the sick and infirm, counseling, advisement and officiate at christenings, funerals, weddings, as well as other sacerdotal functions.

The petitioner submits a copy of a Certificate of Ordination, issued by the petitioning church on March 24, 2000, and signed by Rev. [REDACTED]

In a subsequent submission, Rev. [REDACTED] asserts that the beneficiary's duties include baptismal services, funeral services, weddings, pulpit ministry, and other related functions, in addition to assuming the duties of the senior pastor during that official's absence.

In denying the petition, the director stated "[t]he beneficiary is not an ordained member of the clergy," but elsewhere acknowledged the petitioner's submission of a certificate of ordination. The director cited *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978), which indicates that merely holding a certificate of ordination is not sufficient to establish that one is a minister. That case, however, dealt specifically with a "minister of music" whose duties were plainly distinct from those of a member of the clergy. The duties listed for this beneficiary, including officiating at weddings and other sacraments, appear to conform to the generally understood duties of ordained clergy. It is not clear why the director found that the beneficiary's intended future duties are not those of an authorized member of the clergy (i.e., an ordained minister). Therefore, we withdraw this finding by the director.

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 . . . solely for the purpose of carrying on the vocation of a minister." In this instance, the beneficiary entered the United States as a B-2 nonimmigrant visitor. Thus, the director concluded, the beneficiary did not enter the United States solely for the purpose of working as a minister.

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.

While not all of the director's cited grounds for denial are justified by the record, the petitioner has failed to demonstrate the beneficiary's continuous employment as a minister during the qualifying period. The record is ambiguous at best as to whether the beneficiary has worked in the United States at all, and in the Bahamas, his part-time work does not meet the interpretation of "continuous" established by case law. Therefore, we affirm the denial of the petition.

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.