



U.S. Citizenship
and Immigration
Services

61

[REDACTED]

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date:

SEP 15 2004

IN RE:

Petitioner:

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:

[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.

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 Form I-360 petition identifies Coral Gables Foursquare Church as the petitioner. The petitioner, however, must sign part 9 of the Form I-360. In this instance, part 9 bears the signature of the alien beneficiary rather than that of any church official. Thus, the alien beneficiary is, in effect, the petitioner, because he, rather than the church, has taken legal responsibility for the accuracy and content of the petition. Because the attorney who filed the appeal represents the alien, this change has no practical effect on the validity of the appeal.

The petitioner seeks classification 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 music minister for Coral Gables Foursquare Church. The director determined that the petitioner had not established that (1) he had the requisite two years of continuous work experience as a music minister immediately preceding the filing date of the petition; (2) the position of a music minister qualifies as a religious occupation; (3) Coral Gables Foursquare Church is able to pay the petitioner's salary; or (4) he entered the United States with the intention of working for the church.

On appeal, counsel argues that the petitioner has submitted sufficient evidence to establish eligibility.

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 March 4, 2003. Therefore, the petitioner must establish that he was continuously performing the duties of a music minister throughout the two years immediately prior to that date.

Rev. Alicia M. Navarro, senior pastor of Coral Gables Foursquare Church, states that the petitioner "has been an active member of this congregation since December of 2000. He has worked as a minister in the music ministry since then. . . . He has been working forty (40) hours per week, including Saturdays and Sundays. His salary has been \$250.00 per week." Rev. Navarro states that the petitioner is the church's "only salaried employee"; Rev. Navarro works without pay for the church, earning her livelihood as an attorney.

The petitioner submits copies of canceled checks, showing that the church paid the petitioner \$250 per week. The checks are dated between July and October 2002, and December 2002. The petitioner does not explain the absence of earlier checks, or checks from November 2002.

The director requested "a detailed description of the beneficiary's prior work experience . . . accompanied by appropriate evidence (such as cop[ies] of pay stubs or checks, W-2's or other evidence as appropriate." In response, the petitioner has submitted photocopies of Form 1099-MISC from 2001 and 2002, with incomplete handwritten notations indicating that the church paid \$13,000 in "Nonemployee compensation." The petitioner's name does not appear on either of the documents.

The petitioner submits copies of pay receipts, dated at weekly intervals between December 2000 and July 2001. The receipts, signed by Rev. Navarro, indicate that the petitioner was paid in cash. There are few gaps in the sequential numbering of the receipts, indicating, for instance, that the church issued no receipts to anyone but the petitioner between January and July of 2001.

The petitioner submits copies of his individual tax returns from 2001 and 2002, indicating that he reported \$14,000 in "gross receipts" while employed as a "worship minister." This amount differs from the \$13,000 shown on each of the incomplete Forms 1099-MISC. The petitioner's 2001 tax return is dated May 29, 2003, indicating that he did not file this return until almost two months after the director's April 8, 2003, request for additional evidence. This reduces the evidentiary weight of the tax return, because it is not contemporaneous evidence; rather, it appears to have been created specifically to address the director's request.

The director denied the petition, in part because the petitioner had provided insufficient documentation of his experience during the two-year qualifying period. On appeal, counsel asserts that "all of the evidence shows" that the petitioner entered the United States more than two years before the March 2003 filing date "and started working with the church immediately." Counsel also asserts that the petitioner has documented the church's weekly salary payments through receipts and, later, canceled checks. Counsel does not mention the missing documentation from November 2002.

Closer review of the evidence of record is illuminating with regard to the petitioner's activities between March 2001 and March 2003. The Form I-360 petition indicates that the petitioner arrived in the United States on December 1, 2000. The petitioner's initial submission includes a partial copy of the petitioner's passport. Page 10 of the passport bears an entry stamp dated December 1, 2000, following the issuance of a C-1 nonimmigrant visa on November 22, 2000 (attached to page 9). All of this is consistent with Rev. Navarro's statement that the petitioner "has been an active member of this congregation since December of 2000."

The passport also, however, shows (on page 13) a second C-1 nonimmigrant visa, issued on March 14, 2001, in Nassau, Bahamas. Both of the petitioner's C-1 visas bear the annotation "S.S. Norway." Because C-1 is a visa classification for crew members, the annotation indicates that the petitioner was a crewman on the S.S. Norway. Stamps on page 12 of the passport show that the petitioner entered the Dominican Republic on April 22, 2001, and departed that country on May 27, 2001. Thus, the petitioner's passport places him outside the United States for at least two and a half months in early 2001, identified as a crewman on a cruise ship. Pages 4-7, 14-23, and 26-43 of the passport are not included in the record.

We note that, following the director's request for additional evidence, the petitioner submitted another copy of his passport, but this second copy omits pages 12 and 13, the portions that place him on the crew of a cruise ship outside the United States in early 2001.

The statute and regulations require two years of *continuous* experience in the occupation or vocation, immediately prior to the petition's filing date. The term "continuously" has been interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948). Rev. Navarro has claimed that the petitioner "has never worked for any other institution," but the information in the petitioner's passport indicates that the petitioner *did* pursue another occupation during the qualifying period, manning what appears to be a cruise ship and visiting the Bahamas and the Dominican Republic. Given the above information, it is difficult to conclude that the petitioner has *continuously* worked as a minister of music throughout the 2001-2003 qualifying period.

The stamps in the petitioner's passport indicate that he was in Nassau on March 14, 2001, and in the Dominican Republic from April 22 to May 27 of the same year. The purported pay receipts in the record, however, indicate that the church paid the petitioner in cash on March 18 and 25, April 1, 8, 15, 22, and 29, and May 6, 13, 20, and 27 of that year. This represents a very serious discrepancy, which raises grave issues of credibility. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988).

In an effort to determine the extent of the petitioner's absences from the United States, the AAO consulted a government database that tracks the entries and departures of nonimmigrants. This database indicates that the petitioner did indeed enter the United States on December 1, 2000, as claimed and as shown in his passport. The petitioner arrived via American Airlines flight 978, apparently to meet the S.S. Norway for its outbound voyage. The database further indicates that the petitioner departed the *next day*, December 2, 2000.

The database shows no further entries by the petitioner until May 27, 2001, the date his passport shows that he left the Dominican Republic. This is consistent with his apparent presence in Nassau in March 2001. The petitioner arrived on American Airlines flight 882, and departed the United States again on June 3, 2001. The record contains no further record of any lawful admission as a nonimmigrant, which seems to suggest that the petitioner re-entered the United States without inspection.

The information from the database thus indicates that the beneficiary was in the United States for only four days between December 1, 2000 and June 3, 2001, and left again after that date. We therefore conclude that the pay stubs and employment letters that purport to place the beneficiary in Florida, working for the church, are fraudulent.

If the pay receipts are fraudulent (and it is not clear how they could be authentic, given the beneficiary's documented absence from the United States), then it appears that the petitioner would be inadmissible to the United States, pursuant to section 212(a)(6)(C)(i), 8 U.S.C. § 1182(a)(6)(C)(i). Because admissibility determinations lie outside the present proceeding, we will not discuss this issue in depth.¹

The next issue is whether the petitioner seeks employment in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

Minister means 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.

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.

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

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.

¹ We reiterate, here, that the pay receipts show the signature of Rev. Alicia M. Navarro, who has stated that she "works without pay, since by God's grace I support myself working as an attorney." We note that there is an Alicia M. Navarro who practices law at 3121 Ponce de Leon Blvd., Coral Gables, Florida, which is the same address as counsel's law office. This information suggests that Rev. Navarro practices law at counsel's firm. It is not clear whether willfully false statements, made in the capacity of a pastor by a person who is also an attorney, would trigger the disciplinary provisions of 8 C.F.R. §§ 292.3(d) or 1003.102.

Rev. Navarro asserts that the petitioner "is responsible for the praise and worship service on Sunday mornings, he is also responsible for the praise and worship service for the youth group on Friday nights, he started training the youth in different musical instruments and also in the dynamics of praise and worship, he is also responsible for training and ministering of the choir."

The petitioner submits a copy of the Articles of Incorporation and Bylaws of the International Church of the Foursquare Gospel. Article X of the Bylaws lists various "Special Ministries," but there is no mention of any "music ministry." Paragraph 12.2.1. of Article XII states:

In order to have active status a Foursquare minister must carry current International Foursquare credentials and must be engaged in Foursquare ministry as a director, officer, supervisor, pastor, evangelist, missionary, an endorsed Chaplain, staff minister, teacher in an approved Foursquare Bible College or training institution or ministries as designated by the Board (or an officially recognized retiree of one of the foregoing).

The director instructed the petitioner to provide further details about the position offered. In response, Rev. Navarro states:

He is the praise and worship minister, and as such, his duties include being in charge of all the praise and worship during all services, teach music and instruments to registered students of several foursquare churches and other churches, he is the programmer for all evangelistic events, which always include music and praise and worship, he directs the choir, which he teaches and trains, he is also involved with the youth group in musical training.

Rev. Navarro indicates that the church "has about 50 members at this time," with "approximately 35 people" attending any given service.

The director concluded "[t]he petitioner has not submitted adequate evidence and/or justification to substantiate a valid job offer for the amount of members in the church to support a full time music minister." On appeal, counsel states that the director erroneously considered the petitioner's position under the regulations governing religious occupations. Counsel asserts "[t]he position was filed under the 'vocation' definition . . . [the petitioner] is a minister and has been a minister for many years."

In *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978), the Board of Immigration Appeals held that a "music minister" who does not perform the functions of ordained clergy is not a "minister" for immigration purposes. *Id.* at 610. Furthermore, with regard to the petitioner practicing some other religious vocation, there is no evidence of vows or other permanent commitment, nor is there any evidence that the denomination (the International Church of the Foursquare Gospel) operates any religious order or otherwise engages workers in any vocation other than that of ministers (i.e., ordained clergy).

The record shows that the petitioner has received at least some payments from the church, but we acknowledge the director's concerns that the church is very small and has no other paid workers. These factors, when coupled with the serious credibility issues relating to the petitioner's travel abroad in early 2001, raise legitimate questions about whether the church has extended a *bona fide* job offer to the petitioner. The background documents regarding the International Church of the Foursquare Gospel do not indicate that the denomination routinely employs paid, full-time music ministers. Because the petitioner has submitted fraudulent documents in support of the petition, we see no reason to give any credence to the petitioner's unsupported claims regarding the nature of his purported church duties. Because Rev. Navarro's signature

appears on the fraudulent pay receipts, Rev. Navarro's credibility as a witness is also irreparably compromised.

The next issue concerns the church's ability to pay the petitioner's salary of \$250 per week (\$13,000 per year). The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

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's initial submission includes balance sheets, showing total church assets of \$3,329.94 as of December 31, 2001 and \$1,988.40 a year later. Accompanying profit and loss statements for 2001 and 2002 include \$13,000 in "Ministry Salaries" among the church's annual expenses, consistent with the assertion that the petitioner is the only salaried employee, earning \$250 per week. These statements, however, represent the petitioner's claims rather than corroboration for those claims.

As noted above, the initial submission shows checks paid to the petitioner during the last half of 2002. This evidence does not show consistent payments to the petitioner. A request for further evidence yielded the incomplete Forms 1099-MISC, referenced above, and an "Income Statement" claiming that the church accumulated \$15,294.91 in income during the first five months of 2003, leaving current assets of \$1,988.40 after expenses. The petitioner has also submitted copies of more canceled checks, dated January through May of 2003. The petitioner also submits new copies of previously submitted checks.

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 petitioner is free to submit other kinds of documentation, but only *in addition to*, rather than *in place of*, the types of documentation required by the regulation. 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).

The director denied the petition, in part because of the lack of the required documentation of the church's ability to pay the petitioner's salary. Counsel asserts, on appeal, that the church has in fact paid the petitioner the proffered salary, and therefore the church's ability to make those payments should not be at issue. A memorandum from an official of Citizenship and Immigration Services (CIS) supports this general principle: "CIS adjudicators should make a positive ability to pay determination . . . [when t]he record contains credible verifiable evidence that the petitioner . . . has paid or currently is paying the proffered wage." Memorandum from William R. Yates, Associate Director of Operations, *Determination of Ability to Pay under 8 CFR 204.5(g)(2)* (May 4, 2004).

The above memorandum, however, demands *credible* evidence of past payments. As discussed above, the evidence of the petitioner's payments includes several pay receipts issued at a time when the petitioner's passport shows him to have been outside the country. Once again, the credibility issues arising from the petitioner's own evidence come into play here. Because the pay receipts are not reliable as evidence, the petitioner's failure to submit the documents required by 8 C.F.R. § 204.5(g)(2) resurfaces as a valid ground for denial of the petition.

The final issue raised in the director's decision concerns the petitioner's entry into the United States. Section 101(a)(27)(C)(ii)(III) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(III), requires that the alien seeking classification "seeks to enter the United States" for the purpose of carrying on a religious vocation or religious occupation. In this instance, the petitioner entered the United States as a C-1 nonimmigrant member of the crew of the S.S. Norway, and remained unlawfully in the United States. Thus, the director concluded, the petitioner did not enter the United States for the purpose of working as a music 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. While the petitioner's unlawful presence in the United States may raise questions of admissibility at the adjustment stage, under current law this factor does not inherently disqualify the petitioner for the classification sought. We therefore withdraw this particular finding by the director. This finding does not, however, in any way mitigate the serious credibility issues discussed elsewhere in this decision.

For the reasons outlined above, we cannot find that the petitioner has submitted credible evidence to establish eligibility as a special immigrant religious worker. Rather, it appears from the available evidence that the petitioner has some level of association with the Coral Gables Foursquare Church, but that he was on the crew of a cruise ship during part of the two-year qualifying period, and that the petitioner concealed and/or falsified evidence to create the appearance of continuous church employment during that time. The petitioner has attempted to gain an immigration benefit by fraud.

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.