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U.S. Citizenship
and Immigration
Services



cl

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **SEP 23 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:



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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a congregation of the Association for the Integration of the Whole Person (AIWP). 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 minister and pastoral counselor. The director 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.

On appeal, counsel submits a brief.

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 an 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.”

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.

The petition was filed on April 25, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working in the religious occupation throughout the two-year period immediately preceding that date.

In a joint letter dated April, 20, 2001, [REDACTED] the founder of AIWP, and [REDACTED] a member of the board of directors, stated that the beneficiary became a member of the petitioning organization in 1998, and after completing her two-year training program, she was ordained a minister and pastoral counselor in June 2000. [REDACTED] pastoral leader for the petitioner stated that the beneficiary worked as an "apprentice and religious peer counselor" and "in the capacity of organizational and management support. She maintained our database, designed and produced our newsletter and workshop flyers, and did our large mailings. The compensation for this work was a combination of pay, tuition barter and volunteer."

The petitioner states that, during the period September 1998 to April 2000, the beneficiary participated in 11 workshops, of which six were a week long, four were over the weekend, and one was all day workshop. During these workshops, the beneficiary assisted with the preparations and participated in "spiritual ceremonies, rituals, mediations and teachings," performed counseling, participated in "mentoring and group processes led by various Elders," served as the on call apprentice where she was in charge of leading spiritual and meditative groups, and administered and practiced "Reiki healing" and "completing the requirements needed for her receiving her Master level Reiki Degree." The record contains a copy of a June 20, 2000 "Ministerial Ordainment" issued to the beneficiary by the petitioner.

The petitioner has not established that the beneficiary was employed in religious work prior to June 2000. The statute and regulation clearly require that an alien have work experience in the religious occupation for the two years immediately preceding the filing of the petition. Section 203(b)(4)(iii) of the Act, 8 U.S.C. § 1153(b)(4)(iii); 8 C.F.R. § 204.5(m)(3)(ii)(A). Study for work in an eventual occupation is not work experience in the occupation as required as required by the regulation.

Further, the record does not establish that between workshops, the beneficiary was engaged in a religious occupation. The petitioner stated that the beneficiary maintained the petitioner's database, designed and produced its newsletter and workshop flyers, and did large mailings.

The regulation at 8 C.F.R. § 204.5(m)(2) offers the following definition of a "religious occupation":

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. 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. Persons in such positions would reasonably be expected to perform services directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

Citizenship and Immigration Services (CIS) 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.

This work performed by the beneficiary between workshops was primarily secular in nature, and the petitioner has not established the relationship of this type of work to that of a minister and pastoral counselor. Although the petitioner stated that the beneficiary was an "apprentice and religious peer counselor," the evidence suggests that this work was part of the beneficiary's training process.

On appeal, counsel asserts that CIS deliberately chose to consider the beneficiary as working in a vocation as a minister, thus rendering her prior work experience inapplicable as she had experience as a peer counselor. Counsel argues that CIS should have considered whether the beneficiary was qualified under the categories of religious professional or religious occupation. Nevertheless, the petitioner has not established that the beneficiary worked continuously in a religious vocation, profession or occupation for two full years preceding the filing of the visa petition.

Beyond the decision of the director, the petitioner has not established that it is a bona fide nonprofit religious organization. This deficiency constitutes an additional ground for dismissal of the appeal.

The regulation at 8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

(3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with § 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 § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

To address this requirement, the petitioner submitted a copy of an August 27, 1984 letter from the Internal Revenue Service (IRS) to the AIWP, granting the organization tax exempt status under section 501(c)(3) of the Internal Revenue Code (IRC) as an organization described in sections 170(b)(1)(A)(i) and 509(a)(1) of the IRC. The letter does not indicate that the IRS granted AIWP a group exemption for its subordinate units.

The documentation submitted by the petitioner suggests that AIWP considers itself a single entity with local "congregations" that can exist worldwide, and therefore apparently believes that the single tax-exemption granted by the IRS applies to each "congregation." The record is equally clear, however, that the various "congregations" are separate organizations, each responsible for its own income, property, assets and liabilities. See "Answers In Support of Ministers" and Mel Suhd letter of April 24, 2001.

The petitioner must either provide verification of individual exemption from the IRS, proof of coverage under a group exemption granted by the IRS to the denomination or proof that none is required, or such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the IRC as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement, if applicable, and a copy of the organizing instrument of the organization which contains a proper dissolution clause and which specifies the purposes of the organization.

The petitioner also failed to establish 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.

The record does not establish that the petitioner will employ the beneficiary as a minister and pastoral counselor. The petitioner states that the beneficiary will function as the petitioner's minister and pastoral counselor at its Midwest congregation, and would assist in the further development of the petitioner's "Vision Quest" program and developing its European outreach program. However, the record contains a copy of a document indicating that the beneficiary will lead her own congregation of AIWP. Additionally, as discussed above, the documentation reflects that each congregation is a separate and distinct organization, responsible for its own income, property, assets and liabilities.

Further, the petitioner indicates that the beneficiary's compensation will be dependent upon the donations she generates through her work as minister and pastoral counselor. Self-employment is not qualifying employment for the purpose of an employment based visa petition. The petitioner states that it will compensate the beneficiary only for the "organizational work like newsletters and flyers," and only up to \$500.00 per month.

The petitioner's failure to extend a qualifying job offer to the beneficiary constitutes an additional ground for dismissal of the appeal.

Additionally, assuming that the petitioner can establish that it is the beneficiary's employer, it has not established that it has the ability to pay the beneficiary. The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part, that:

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 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 annual reports, federal tax returns, or audited financial statements.

As evidence of its ability to compensate the beneficiary, the petitioner submitted a letter from its accountant, who stated that the petitioner "has always met its payroll and its tax liability and has the ability to employ an additional religious worker." The accountant further states that the petitioner has a balanced budget and an audited financial statement; however, the petitioner failed to submit a copy of the audited statement or any other evidence of its financial status.

The above-cited regulation 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 evidence to establish its ability to compensate the beneficiary. This deficiency is an additional ground for dismissal of the appeal.

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.