



U.S. Citizenship
and Immigration
Services



FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: SEP 28 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.

A handwritten signature in cursive script that reads "Mari Johnson".

ea Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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 a minister. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition, or that the beneficiary possessed the necessary qualifications for the position.

On appeal, the petitioner submits documentation regarding the beneficiary's training, ordination, and past work.

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 January 22, 2003. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a minister throughout the two years immediately prior to that date.

_____ director of the Language Division of the Florida Baptist Convention, states that the beneficiary "was ordained as a Baptist Minister of the Gospel in 1995. Since that time, he has been serving in a ministerial capacity in Paraguay and, for almost a year, here in the United States." This vague assertion cannot suffice to establish the necessary experience. _____ offers no information about precisely

where the beneficiary worked, or the nature of his duties, and his assertion that he knows the beneficiary cannot suffice to establish that [REDACTED] has reliable, specific knowledge of the beneficiary's employment activities in Paraguay. The letter is dated January 13, 2003; therefore, the assertion that the beneficiary has acted as a minister "for almost a year . . . in the United States" indicates that, before January 2002, the beneficiary did not work as a minister in the United States.

The director instructed the petitioner to submit evidence to establish the beneficiary's activities during the two-year qualifying period. In response [REDACTED] of the petitioning church states that the beneficiary "was employed as interim pastor to the Hispanic Mission on May 1, 2001 . . . until November 1, 2001 when he became the full time pastor to the Hispanic Mission which is a part of" the petitioning church. This assertion does not cover the entire qualifying period, which spans from January 2001 to January 2003.

The petitioner submits copies of Form W-2 Wage and Tax Statements, indicating that the petitioner paid the beneficiary \$1,750.00 in 2001 and \$20,775.00 in 2002. The significant disparity between annual sums indicates that the beneficiary received payment for only a small portion of 2001. Even if we were to assume that the petitioner began paying the beneficiary on November 1, 2001, his 2001 salary is considerably less than one-sixth of his 2002 salary. Therefore, the Forms W-2 raise more questions than they answer.

The director denied the petition, stating that the petitioner has failed to provide sufficient documentation of the beneficiary's employment during the qualifying period. On appeal, Pastor Riley states:

[The beneficiary] has been a Baptist Minister since November 1995. . . . He was working as a Pastor in his country Paraguay at Iglesia [REDACTED] from 1995 to 2000. On September 1, 2000 he was selected to participate in a Clinical Pastoral Education Training [program] at the Baptist Medical Center in Jacksonville, Florida where he performed chaplaincy duties; receiving a stipend of no less than \$18,000. [The beneficiary] was at the hospital until August 2001.

The beneficiary's claimed work in Paraguay falls entirely outside the 2001-2003 qualifying period, and therefore cannot establish eligibility. A certificate from "Baptist Health" indicates that the beneficiary "satisfactorily completed FOUR UNITS CLINICAL PASTORAL EDUCATION RESIDENCY" between September 1, 2000 and August 31, 2001. The record contains nothing from the hospital to show that the beneficiary's duties there closely match his intended duties at the petitioning church (the positions of hospital chaplain and church pastor are not identical).

The above chronology leaves a substantial gap between August 2001, when the beneficiary is said to have left Baptist Medical Center, and the date that the beneficiary began working for the petitioner. The record offers conflicting accounts of when that date was. The petitioner's initial submission indicated that the beneficiary began working for the petitioner in early 2002 ("almost a year" before January 13, 2003), but the petitioner has later claimed that the employment began November 1, 2001. The petitioner's payments to the beneficiary in 2001 amount to approximately one-twelfth of its 2002 payments to the beneficiary, suggesting roughly one month of employment in 2001 (assuming no change in the beneficiary's wage rate).

The petitioner has provided vague and not entirely consistent information regarding the beneficiary's employment during the qualifying period. The petitioner has not demonstrated that the beneficiary *continuously* carried on the vocation of a minister from January 2001 through January 2003.

The next issue is whether the petitioner has shown the beneficiary to be qualified for the position offered, as required by the regulation at 8 C.F.R. § 204.5(m)(3)(ii)(B). The petitioner's initial submission contained no first-hand evidence of the beneficiary's credentials or qualifications as a minister. The director, therefore, instructed the petitioner to submit evidence that the beneficiary meets the requirements of the position. The petitioner responded to this notice, but did not submit the evidence requested. The materials submitted all concerned other aspects of the director's request.

The director denied the petition, in part because "the petitioner has not submitted evidence that shows that the beneficiary is qualified for the offered position." On appeal, the petitioner submits copies of the beneficiary's seminary diplomas and ordination certificate. The petitioner offers no explanation for its failure to submit these documents in response to the director's earlier request. Given this earlier failure to submit the required evidence, we are not obliged to consider it on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988), limiting appellate consideration of evidence requested, but not submitted, prior to denial.

We add that, even if this information were given full consideration, the other basis for denial (regarding the beneficiary's past experience) would still stand. Thus, the new documents, by themselves, cannot change the outcome of the appellate decision. The petitioner has not demonstrated that the beneficiary possesses the necessary continuous experience, and therefore the petition cannot be approved.

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.