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20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: APR 06 2005
WAC 03 009 50034

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

Robert P. Wiemann, Director
Administrative Appeals Office

APR0605-21C1203
www.uscis.gov

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California 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 pastoral assistant. 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 or that the position qualified as that of a religious worker.

On appeal, counsel submits a brief and additional documentation.

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) 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."

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 October 10, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as a pastoral assistant throughout the two-year period immediately preceding that date.

In his letter of September 30, 2002, the petitioner's senior pastor, ~~_____~~ T. Lucamilao, stated that the beneficiary had served in "a professional capacity as Pastoral Assistant for the past six years; now in his seventh year of service, he is the interim Pastor of the church he started in Corona, CA." Although Pastor ~~_____~~ outlined a list of duties that the beneficiary will perform in the proffered position, his letter is unclear as to whether or not the beneficiary performed those duties during the qualifying two-year period. Further, the petitioner submitted no documentary evidence to substantiate the beneficiary's employment with the petitioner. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In response to the director's request for evidence (RFE) dated May 23, 2003, the petitioner submitted a "certification" from Pastor ~~_____~~ Lucamilao, which stated:

Since October 2000 up to October 2002, [the beneficiary] was assigned by our church to assist [the] Senior Pastor . . . of Cornerstone Christian Fellowship of Moreno Valley (CCCFM) [sic] . . . CCFM, one of our daughter /mission churches . . . While serving in that church, [the beneficiary's] duties and responsibilities were as follows:

- | | |
|--|----------|
| a) Conducted worship service | -2 hours |
| b) Conducted Home Bible Study | -8 hours |
| c) Conducted visitation and extended pastoral care | -4 hours |
| d) Supervised work of church volunteers | -4 hours |
| e) Led prayer meetings | -2 hours |
| f) Conducted evangelism campaigns | -4 hours |
| g) Planned and coordinated fund-raising events | -4 hours |
| h) Provided spiritual guidance to church members | -4 hours |
| i) Performed other assignments given by his Pastor | -4 hours |

He also assisted on several occasions in officiating at weddings, baptisms and children's dedication services. For his services, he was given an honorarium of \$500 per month (\$250 from CCFM and \$250 from [the petitioner]).

The petitioner also submitted a July 25, 2003 letter from Pastor Lacanilao, in which he stated:

When a church in Moreno Valley, Ca – the Cornerstone Christian Fellowship of Moreno Valley – was organized in 1993, [the beneficiary] and his wife decided to help this church get started. He served as a Deacon, a volunteer position, before he became a Pastoral Assistant. At the same time, he decided to pursue his studies to make him better equipped for church work. He was ordained Minister of the Gospel on June 17, 2002.

[The beneficiary] was connected with The Keith Companies as engineering draftsman from February 1987 to April 3, 2001. He resigned the company to devote more time to his church planting work . . . His wife, who is a licensed cosmetologist and earning an average of \$1,600 a month, . . . and the income she is receiving plus the \$500 monthly honorarium/love gift he is getting from CICC and CCF of Moreno Valley are enough to meet their basic needs.

The petitioner submitted copies of the beneficiary's 2002, 2001 and 2000 Forms W-2, Wage and Tax Statements, which reflect that the beneficiary was paid approximately \$8,415 by Aquilar Engineering, Inc in 2002; approximately \$9,006 by Aquilar Engineering and \$17,638 by The Keith Companies, Inc. in 2001, and \$50,719 by The Keith Companies in 2000. The petitioner submitted no documentary evidence to corroborate the beneficiary's employment with the petitioner. *Id.*

On appeal, counsel asserts that Citizenship and Immigration Services' (CIS) "interpretation of the applicable law ignores the normal rules of statutory constructions, and is erroneous on its face." Counsel states that the regulation uses the term "work" as opposed to "employment" and does not mention "salary" at all. Counsel further asserts that, under the CIS interpretation, monks and nuns would not qualify as religious workers, as they receive no salary.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

In the rare case where volunteer work might constitute prior qualifying experience, the petitioner must establish that the beneficiary, while continuously and primarily engaged in the traditional religious occupation, was self-sufficient or that his or her financial well being was clearly maintained by means other than secular employment.

The evidence clearly indicates that the beneficiary was dependent upon secular employment for financial support and was not continuously engaged as a "pastoral assistant" for two full years prior to the filing of the visa petition.

Further, the duties of the proffered position indicate that the position is that of pastor as opposed to pastoral assistant. The duties as outlined by the petitioner do not reflect that the beneficiary, who was ordained as a minister in June 2002, will be "assisting" the pastor of the church. The evidence submitted by the petitioner reflects that the beneficiary incorporated the Cornerstone Christian Fellowship of Corona as its pastor on October 21, 2002. Other evidence in the record indicates that the beneficiary is the pastor of the church in Corona. Further, the petitioner stated in its September 30, 2002 letter that the beneficiary was serving as interim pastor of the church he stated in Corona, and counsel states on appeal that the beneficiary currently serves as an ordained minister.

The beneficiary must be working for two full years preceding the filing of the visa petition in the same vocation, profession or other religious occupation for which he or she seeks entry into the United States. The evidence does not establish that the beneficiary has been working as a pastoral assistant or as a minister for two full years prior to the filing of the visa petition.

The director also determined that the petitioner had not established that the proffered position qualified as that of a religious worker.

Pursuant to 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work in a religious occupation. 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 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).

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.

The petitioner's constitution and bylaws do not identify the position of pastoral assistant in its list of church personnel. They do provide, however, that a ministerial staff may be called and employed based on the needs of the church. The constitution and bylaws provide that upon determining the need for such positions, a job description must be written. The petitioner submitted no evidence that it had formally outlined the duties of the position in compliance with its constitution.

On appeal, counsel asserts that the duties of the proffered position "clearly are demonstrative of an individual that has a calling to a religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows . . . [emphasis omitted]. Both the position of Pastoral Assistant and Church Planter/Founder demonstrate a clear commitment to the religious denomination and life." Counsel's assertions are without merit as there is no indication that the position of pastoral assistant requires the taking of vows or any similar commitment.

Counsel also submits on appeal a document labeled "pastoral assistant duties," however, there is no indication that the duties are applicable to the position within the petitioning organization. Similarly, the fact that the position is defined in the Dictionary of Occupational Titles does not establish that the position is recognized as a religious occupation within the petitioner's denomination.

The petitioner submitted no evidence that the position of "pastoral assistant" is defined and recognized by the Southern Baptist Convention, its governing body, or that it is traditionally a permanent, full-time, paid position within the petitioner's denomination.

As discussed above, however, the evidence clearly indicates that the proffered position is that of pastor. The evidence is sufficient to establish that the position of pastor is a religious vocation or occupation within the meaning of the statute and regulation.

Beyond the decision of the director, the petitioner has not established that the beneficiary's prospective U.S. employer qualifies as a bona fide nonprofit religious organization. This deficiency constitutes an additional ground for denial of the petition.

Section 203(b)(4) of the Act provides that the alien must be seeking entry into the United States for 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).

According to the petitioner, the beneficiary will continue to work at the church that he established in Corona, California. The petitioner stated, and provided evidence, that the beneficiary incorporated the church and registered it as a separate corporate entity with the state of California. The May 3, 2002 letter from the Internal Revenue Service (IRS) granting the petitioner tax-exempt status under section 501(c)(3) of the Internal Revenue Code does not indicate that the exemption applies to any of the petitioner's subordinate units.

For the employing organization, 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 petitioner, or such documentation as is required by the IRS to establish eligibility as a tax-exempt nonprofit religious organization. Such documentation to establish eligibility for exemption under section 501(c)(3) includes: a completed IRS Form 1023, a completed Schedule A attachment, if applicable, and a copy of the articles of organization showing, *inter alia*, the disposition of assets in the event of dissolution.

The petitioner submitted no evidence that the Cornerstone Christian Fellowship of Corona, the petitioner's prospective employer, is a bona fide nonprofit religious organization, exempt from taxation as required by the statute and regulation.

Additionally, beyond the director's decision, the petitioner has not established that the beneficiary's prospective employer has the ability to pay the beneficiary the proffered wage. The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. 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 indicates that the beneficiary will be compensated at the rate of \$1,500 per month. The petitioner submitted no evidence of the ability of the beneficiary's prospective employer, the Cornerstone Christian Fellowship of Corona, to pay the proffered wage. For this additional reason, petition must be denied.

[REDACTED]

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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.