



U.S. Citizenship
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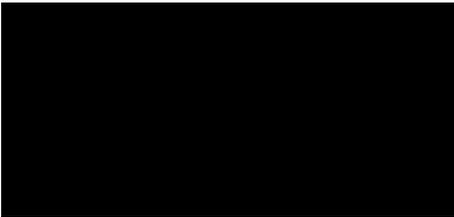
FILE: LIN 04 248 50261 Office: NEBRASKA SERVICE CENTER Date: DEC 22 2005

IN RE: Petitioner:
Beneficiary:



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

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

The self-petitioner seeks classification 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 she 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 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 issue on appeal is whether the petitioner established that she had been continuously employed in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(1) 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 September 7, 2004. Therefore, the petitioner must establish that she was continuously working as an associate pastor throughout the two-year period immediately preceding that date.

The proffered position is that of associate pastor at Centenary United Methodist Church. In a letter dated August 26, 2004, [REDACTED] the directing pastor of Centenary United Methodist Church, stated that the petitioner had served as youth pastor and student associate pastor at Belmont United Methodist Church from June 23, 2002 to May 30, 2004, and began serving as an associate pastor with the Centenary United Methodist Church on July 1, 2004.

The position description for the proffered position at Centenary United Methodist Church indicates that the associate pastor will work with the youth committee and act as the "spiritual director" of the youth, preach at least once a month at Sunday and Saturday services, teach the confirmation classes, conduct weddings and funerals as needed, and do home and hospital visitations.

The petitioner submitted a July 15, 2004 letter from the treasurer of Belmont United Methodist Church "confirming" her employment as a "student minister." According to the treasurer, the petitioner began work for the Belmont United Methodist Church as a part-time employee on June 23, 2002 and worked for that organization until May 30, 2004, earning \$244.32 per week. The petitioner submitted copies of pay stubs reflecting that she received payments approximately every two weeks from the Belmont United Methodist Church beginning in July 2002 and ending in June 2004. Reverend Doctor [REDACTED], senior pastor for the Belmont United Methodist Church stated in an undated letter, "Belmont United Methodist Church employs [the petitioner] as our Youth Pastor and Student Associate Pastor . . . This position requires an ordained minister, a candidate for ordination, or a theological school student preparing for ordained ministry." Although Dr. [REDACTED] stated that a copy of the position description was attached to his letter, no such documentation appears in the record.

The petitioner also submitted a July 13, 2004 letter from the office manager of Centenary United Methodist Church, indicating that the church has employed the petitioner as an associate pastor since July 1, 2004 at the rate of \$2,766.68 per month. However, the petitioner submitted no evidence to corroborate her employment with the Centenary United Methodist Church. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *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 April 19, 2005, the petitioner resubmitted Dr. [REDACTED] undated letter including the copy of the position description of a youth pastor. According to the job description, the primary duty of the youth pastor is to guide youth ages 12 to 18. This requires the youth pastor to

“recruit, train, and lead a ‘team’ of adult and youth workers.” Other job responsibilities listed included visitations, “ministry in the world,” and counseling teachers on the curriculum and presentation techniques. A May 5, 2005 letter from Dr. [REDACTED] indicated that the petitioner worked “twenty plus hours per week.”

A May 4, 2005 letter from Reverend [REDACTED] indicated that the petitioner worked at least 40 hours per week with the Centenary United Methodist Church. The petitioner also submitted a May 6, 2005 letter from the Illinois Great Rivers Conference of The United Methodist Church, which stated that the petitioner “was an associate pastor subject to appointment to a specific congregation” in the conference during the months of May and June 2004. “Her duties during this time included moving her household from Ohio to Illinois. She was paid a moving allowance of \$2838.77. She was also allowed 15 days of vacation during this period.”

The petitioner submitted no additional evidence, such as canceled paychecks, pay vouchers, authenticated work schedules or other documentary evidence, in response to the RFE that corroborates her employment with the Centenary United Methodist Church. *See id.*

The regulation at 8 C.F.R. § 204.5(m)(2) defines minister as:

[A]n 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.

In his cover letter accompanying the petitioner’s response to the RFE, counsel stated:

[The petitioner] respectfully requests the USCIS to find that she is working in a professional capacity in a religious occupation. She is not asking that she be found to be a minister of religion because she was not authorized to conduct all of the duties usually performed by authorized members of the clergy until she was issued her first Local Pastor’s License on September 16, 2003.

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.

On appeal, the petitioner submits a July 19, 2005 letter from Dr. [REDACTED] who states that the petitioner "performed all the duties required of an associate pastor in the United Methodist Church during her employment with Belmont United Methodist Church." Dr. [REDACTED] further states that *The Book of Discipline of the United Methodist Church* "charges each local church's Pastor-Parish Relations Committee with developing and approving job descriptions and titles for associate pastors, noting that the term has the broad meaning of any pastoral appointment in a local church other than the pastor in charge." The excerpt from *The Book of Discipline of the United Methodist Church* submitted with the appeal confirms Dr. [REDACTED] statement; however, the provision clearly indicates that the committees are to "develop specific titles for associate pastors that reflect the job descriptions and expectations." Counsel admits that the petitioner was not qualified to perform all of the duties of members of the clergy prior to September 2003.

The evidence indicates that the petitioner was still in her ministerial training when she served as associate pastor with the Belmont United Methodist Church. A person in training for an occupation is not working in that occupation. Further, the evidence reflects that the petitioner worked approximately 20 hours per week with the Belmont United Methodist Church. Part-time employment is not qualifying experience for the purpose of this employment-based visa petition. Additionally, the petitioner submitted no corroborative evidence of her employment subsequent to her work with the Belmont United Methodist Church. *Matter of Soffici*, 22 I&N Dec. at 165.

Accordingly, the petitioner's evidence does not establish that she was working continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of her visa petition.

Beyond the decision of the director, the petitioner has not established that her prospective U.S. employer has the ability to pay her 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.

According to the office manager of the Centenary United Methodist Church, the petitioner earned \$2,766.88 monthly as an associate pastor. As evidence of the church's ability to pay this wage, the petitioner submitted a copy of an unaudited report of the organization's 2002 financial statement.

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 of the required types of primary evidence. Further, the petitioner submitted no evidence of the ability of her prospective employer to pay her wage as of 2004, the year the petition was filed.

Accordingly, the evidence does not establish that the petitioner had the continuing ability to pay the beneficiary the proffered wage as of the date the petition was filed. This deficiency is another ground for denial of the petition.

Further beyond the director's decision, the petitioner has not established that her prospective U.S. employer is a bona fide nonprofit tax-exempt religious organization.

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 meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility

for exemption under section 501(c)(3) of the Internal Revenue Code (IRC) of 1986 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 submitted a copy of an October 16, 1974 letter from the IRS to the United Methodist Church and its Affiliated Organizations, granting tax-exempt status under section 501(c)(3) of the IRC as an organization described under sections 509(a)(1) and 170(b)(1)(A)(i) of the IRC. The petitioner submitted no evidence that her prospective U.S. employer is included under this group tax-exemption.

For the employing organization, the petitioner must either provide verification of an individual exemption from the IRS, proof of coverage under a group exemption granted by the IRS to the denomination, 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.

Absent a letter from the IRS granting the employing organization tax-exempt status as a religious organization, the petitioner can establish the organization's eligibility under 8 C.F.R. § 204.5(m)(3)(i)(B) by submitting documentation that establishes the religious nature and purpose of the organization, such as brochures or other literature describing the religious purpose and nature of the activities of the organization. The necessary documentation is described in a memorandum from ██████████ Associate Director of Operation for CIS, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003):

- (1) A properly completed IRS Form 1023,
- (2) A properly completed Schedule A supplement, if applicable,
- (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization, and
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The above list is consistent with the regulatory requirement at 8 C.F.R. § 204.5(m)(3)(i)(B), cited above. The memorandum specifically states that the above materials are, collectively, the "minimum" documentation that can establish "the religious nature and purpose of the organization." Thus, for example, a petitioner cannot meet this burden by submitting only its articles of incorporation. Also, obviously, it is not enough merely for the petitioner to *submit* the documents listed above. The *content* of those documents must establish the religious purpose of the organization.

The petitioner submitted no evidence that her prospective U.S. employer, the Centenary United Methodist Church, is covered under the group tax-exemption granted to the United Methodist Church and its affiliated subordinates in 1974, and submitted none of the evidence to establish eligibility under 8 C.F.R. §

204.5(m)(3)(i)(B). Thus the petitioner failed to establish that the her prospective U.S. employer is a bona fide nonprofit religious organization. This deficiency forms another ground for denial of the petition.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.