

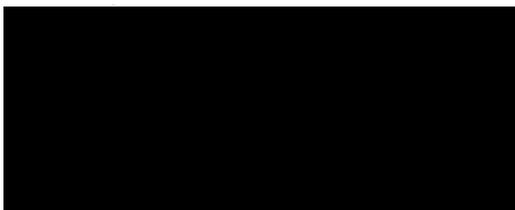
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: EAC 03 027 52209 Office: VERMONT SERVICE CENTER Date: FEB 10 2005

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:

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont 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 minister. 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. The director further determined that the petitioner had failed to establish that it had extended a qualifying job offer to the beneficiary.

On appeal, the petitioner submits a letter 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 31, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister throughout the two-year period immediately preceding that date.

In its letter accompanying the petition, the petitioner stated that the beneficiary had pastored the [REDACTED] Church [REDACTED] in Caracas [REDACTED] from 1994 through 1998. The petitioner also submitted a letter from [REDACTED] director of the Venezuelan Mission of the Church of the [REDACTED] which indicated that the beneficiary had "served the Church of the [REDACTED] as pastor from 1994 through 1998.

In response to the director's request for evidence (RFE) dated April 25, 2003, the petitioner stated that the beneficiary "has served as volunteer pastor of the Valley Stream Spanish Church" since his arrival in the United States "at the beginning of 1999." The petitioner stated that the beneficiary received housing and that the church provided the beneficiary with "what [he and his family] needed to live on." The petitioner provided no documentary evidence to corroborate the beneficiary's employment with the Valley Stream Spanish Church. 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).

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 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.

On appeal, the petitioner stated, "We realize that because of his status as visitor, at this moment the church cannot formally extend a work contract, but the pastor has dedicated himself entirely to the service of his ministry as pastor during all of his stay in the United States, and the church has supported him economically." Additionally, the petitioner submitted a letter from the assistant pastor of the [REDACTED] Church of the [REDACTED] who "certified" that the beneficiary was pastor of the church for the past four years and that the church "has been supporting [the beneficiary] and his family with their expenses for the past four years." However, the petitioner again failed to provide corroborative evidence, such as monetary receipts or a housing allowance, of the church's financial support of the beneficiary. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190

The petitioner submitted copies of its annual assembly journals for 1999 through 2002. The journals list the beneficiary as the pastor of the [REDACTED] Church for all four years. However, the evidence does not establish that the position was a full-time, compensated position.

The evidence does not establish that the beneficiary has worked full-time as a minister for two full years prior to the filing of the visa petition.

The director determined that as the petitioner had not established that the proffered position offered full-time employment for the beneficiary, the petitioner had not established that it had 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.

In response to the RFE, the petitioner stated that the beneficiary would be "responsible for all pastoral responsibilities, such as preaching, teaching, counseling, leadership, training, visiting the sick, etc., for which he spends more than eight hours per day." The petitioner provided the following work schedule for the beneficiary:

Monday to Saturday 6:00 to 7:30 a.m., conducts the early morning prayer meeting.

Monday: 10:00 a.m.-12.30 p.m., visits the sick and members who did not attend Sunday church service.

2:00 p.m. to 6:00 p.m., church office work.

Tuesday: preparation of Bible studies.

Wednesday: Day off.

Thursday: 9:00 a.m. to 12:30 p.m., meets with church staff and small groups leaders.
7:00 to 10:00 p.m. teaches in church discipleship school.

Friday: attends members at church office.

Saturday: preparation of all biblical matters for his sermons

Sunday: 10:00 a.m. to 1:00 p.m., conducts church service.

6:00 to 10:00 p.m., conducts evangelistic service.

Although the petitioner did not list specific hours that the beneficiary is expected to work on Tuesday, Friday or Saturday, the evidence is sufficient to establish that the proffered position will offer full time employment to the beneficiary. The petitioner has overcome this portion of the director's decision.

Beyond the decision of the director, the petitioner has not established that the beneficiary's prospective U.S. employer 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.

The record establishes that the proffered position is that of pastor of the Valley Stream Spanish Church. The petitioner has not established its relationship to the Valley Stream Spanish Church. With its initial filing, the petitioner failed to submit any evidence that it or the Valley Stream Spanish Church was a nonprofit tax-exempt religious organization as required by the statute and regulation. The petitioner provided its federal tax identification number and asserted that it was a bona fide religious organization exempt from taxation.

In response to the RFE, the petitioner submitted a letter from the Internal Revenue Service (IRS) to the General Board of the Church of the Nazarene indicating that the church of the Nazarene was granted a group exemption in July 1963. The letter, whose date is illegible, states that "the new subordinate units whose names you recently submitted are exempt from Federal income tax as organizations described in section 501(c)(3) of the Internal Revenue Code" as religious organizations. The petitioner submitted no evidence that it or the Valley Stream Spanish Church was one of the subordinate units recognized by the IRS with this letter.

For the prospective U.S. employer, 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 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 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 has not established that the prospective U.S. employer is a bona fide nonprofit religious organization, exempt from taxation as required by the statute and regulation.

Additionally, beyond the decision of the director, the petitioner has not established that the prospective U.S. 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 \$20,000 per year plus housing and utilities, to be paid by the petitioner and the Valley Stream Spanish Church. The petitioner submitted copies of its financial documents labeled "District Administration Expenses" for 1 April 2002 to 31 March 2003, "Home Missions Administration Expenses" for April 2002 to March 2003, and "District Treasurer's Report Financial and Statistical Summary" for the periods April 1, 2002 to March 31, 2003 and April 1, 2001 to March 31, 2002. The petitioner submitted no evidence of the financial status of the Valley Stream Spanish Church.

The 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 evidence. Furthermore, the regulations state that the

petitioner demonstrate the ability of the prospective U.S. employer to pay the proffered wage. Evidence of the petitioner's financial status does not satisfy the regulatory requirement. 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.