

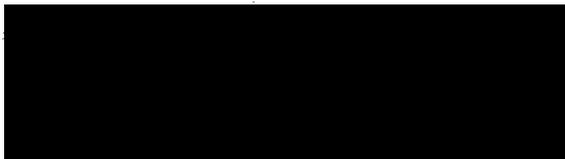
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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE:



Office: CALIFORNIA SERVICE CENTER

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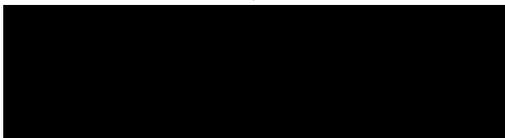
Petitioner:



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.

Maiphuson

sn Robert P. Wiemann, Director
Administrative Appeals Office

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 pastor. 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 it had the ability to pay the beneficiary the proffered wage.

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 December 27, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister throughout the two-year period immediately preceding that date.

The record establishes that the beneficiary was ordained as a pastor with the [REDACTED] in October 1991, and served as a minister of Christian education with the Sa-Rang (Love) Presbyterian Church in Seoul, Korea until August 1996, where he was compensated at the rate of approximately \$1,000 per month. The record reflects that the beneficiary entered the United States in August 1996 to attend school full time at the Biola University Talbot School of Theology. The record also reflects that the beneficiary received a Master of Arts in Christian Education from Biola University in May 1999 and began a Master of Theology degree program in December 2000. According to the Form I-20 A-B, Certificate of Eligibility for Nonimmigrant (F-1) Student, the beneficiary applied for an F-1 visa for the purpose of pursuing a doctoral degree in theological and ministerial studies.

The evidence of record reflects that the beneficiary's expenses while he was attending school were met through scholarships and grants, donations from Chae Hak Lee of the Timothy Bible Ministries and the beneficiary's personal funds. According to counsel, the beneficiary worked on a voluntary basis for the petitioning organization. However, counsel submitted no documentary evidence to corroborate his statements. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The director determined that, as the beneficiary's continuing education was not paid by the petitioning organization or another religious organization within the petitioner's denomination, the petitioner failed to establish that the beneficiary was pursuing education in furtherance of his vocation. This determination clearly cannot be sustained. It would be unreasonable to assume or require that an attempt to further one's career by pursuing additional studies does not count as the pursuit of education in furtherance of a vocation unless the costs are borne by the employer or potential employer.

In prior decisions, the AAO has held that the continuity of experience is not broken when an ordained minister engages in full-time study if the purpose of that study is to further his or her vocation as a minister. The decisions have not restricted the source of the beneficiary's support during these studies.

The evidence sufficiently establishes that the beneficiary was an ordained, practicing minister prior to his matriculation at Biola University Talbot School of Theology, and that the purpose of his studies was to further

his vocation as a minister. Therefore, the petitioner has sufficiently established that the beneficiary has been continuously engaged 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 it 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 states that it will compensate the beneficiary at the rate of \$2,950 per month. As evidence of its ability to pay the beneficiary the proffered wage, the petitioner submitted a copy of its financial statements for the period ending December 31, 2001 accompanied by an unaudited accountants' compilation report.

As the compilation report is based primarily on representations of management, the accountant expressed no opinion as to whether they present fairly the financial position of the petitioning organization. In light of this, limited reliance can be placed on the validity of the facts presented in the financial statements that have been submitted. No further supporting documentation is included in the record to reflect the assertions made by the accountant in the financial documentation, or contained within the unaudited financial statements.

In a request for evidence (RFE) dated July 9, 2003, the director instructed the petitioner to submit evidence of its ability to pay that was consistent with the requirements of the regulation. In response, the petitioner resubmitted the same documentation and also submitted a copy of its financial statements for the period ending December 31, 2002. A statement from the petitioner's treasurer indicates that the petitioner has a payroll of 14 people.

On appeal, counsel argues that audited financial statements are not the only acceptable evidence of ability of the prospective employer to pay the proffered wage, and asserts that the cost of obtaining an audited statement is "unrealistically high." Counsel argues that "well-established" churches use their own accountants and auditors, and that the approval/ratification process by the organizations' boards of directors together with the vote of the general assembly, make the financial statements carry as much evidentiary weight as audited statements. On appeal, counsel also submits copies of the petitioner's monthly bank statements for the year 2002, asserting that they provide additional weight to the previously submitted financial statements and establish the petitioner's ability to pay the proffered wage.

Nonetheless, 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. The regulation does not make exceptions for "well-established" churches, and does not indicate

that unaudited financial statements are acceptable from any potential employer. Although the petitioner states that it has 14 people on its payroll, the beneficiary is not listed as one of those to whom it has paid a salary in the past.

As the petitioner has not submitted any of the required types of evidence, it has not established by competent evidence that it has the ability to pay the beneficiary the proffered wage.

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.