

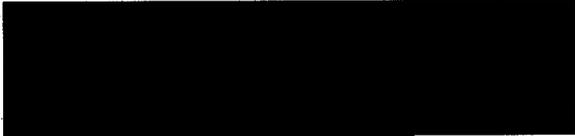
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U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. 3042
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U.S. Citizenship
and Immigration
Services

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FILE:

SRC 02 241 51774

Office: TEXAS SERVICE CENTER

Date: FEB 22 2005

IN RE:

Petitioner:

Beneficiary:

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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 self-petitioner seeks classification as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as a minister. The director determined that the self-petitioner had not established (1) that he had the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition; or (2) the self-petitioner received a valid job offer; or (3) the sponsoring church's ability to pay the self-petitioner.

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 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 self-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 August 5, 2002. Therefore, the self-petitioner must establish that he was continuously performing the duties of a minister throughout the two years immediately prior to that date, from August 5, 2000 through August 5, 2002.

The Form I-94, Arrival and Departure Record, indicates that the self-petitioner initially entered the United States on January 25, 2002 as a B-2 nonimmigrant with authorization to remain in the United States until July 24, 2002. As the self-petitioner was outside of the United States for the majority of the two-year period, his experience in the United States cannot suffice to meet the experience and denominational membership requirements. Further, as the self-petitioner was in the United States as a B-2 nonimmigrant, any work undertaken was performed without employment authorization.

The self-petitioner submits the following statement in support of the petition:

I [sic] have been the founder and, a regular and active member of International Ministers Back to the Word, Inc., for the past five months.

I have been a Minister for six years, having a number of continuing training in Christian Leadership and several seminars.

Both, my qualifications and commitment to this ministry have caused my desire to work as Senior Pastor of our new church in Kissimmee Florida.

The self-petitioner does not indicate that he has received any salary or other type of remuneration for his work as a minister with the sponsoring church. Instead, the self-petitioner indicates that, "subject to [CIS] favorable response, I will be supplied with housing, food, transportation, and all miscellaneous expenses, covered by the Ministry." We note the self-petitioner's statement that he "will be supplied" with remuneration in the form of housing and transportation after approval of the petition, implies that these terms cover future employment, rather than terms already in effect.

The self-petitioner also submits a copy of his Certificate of Ordination, issued December 11, 1996 by [REDACTED] in Caracas, Venezuela.

As evidence of his employment as a minister prior to his entry to the United States, the self-petitioner submits a letter from [REDACTED] of the Iglesia Evangelica. In a letter dated January 22, 2002, three days prior to the self-petitioner's entry into the United States, [REDACTED]

This serves as means to present and sustain all of the procedures concerning [the self-petitioner] who is actively a part of our team of ministers, like a Pastor Assistant and Director of Education, since March 23, 1997 to present time.

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We would like to add, that at the present time, [the self-petitioner] is receiving a salary of THREE HUNDRED BOLIVARA (Bs. 300.000,00) monthly

On April 10, 2003, the director requested additional details and documentation regarding the self-petitioner's work during the qualifying period.

In response, the sponsoring church submits a letter stating that the self-petitioner "has not ever worked in the United States" and "has not been employed outside the church." The sponsoring church further indicates that the self-petitioner's position as Senior Pastor is "non-salaried," but "has agreed to pay a monthly salary of \$1800 to the self-petitioner for a full time position (40 hours a week) as Senior Pastor."

In addition, the self-petitioner submits copies of untranslated documents dated January 2000 to December 2001.

On September 30, 2003, the director determined that the self-petitioner had not submitted documentary evidence of employment for the requisite two-year period. Accordingly, the director denied the petition finding the self-

petitioner failed to establish the self-petitioner had been continuously working for the two-year period immediately preceding the filing of the petition.

On appeal, the self-petitioner submits a written statement and copies of documents already contained in the record. The self-petitioner states:

About [the self-petitioner's] prior work experience, [the self-petitioner] for a long time ago has been authorized to conduct religious worship and perform other spiritual functions associated with beliefs and practices of the Christian faith. Providing spiritual and moral guidance and assistance to members. His duties consisted in preaching the message of the Gospel, based on the sound doctrine revealed in the Holy Bible; teaching the Biblical truths to the [believers]; supporting the foundation of new churches, and performing sacerdotal services [among] others.

The self-petitioner does not address the director's finding that the self-petitioner failed to evidence to establish his employment during the two-year period prior to the filing of the petition. The record remains absent any evidence to establish the self-petitioner received any salary or other form of remuneration from the sponsoring church during the requisite period.

Further, contrary to the determination made by the director, we do not find there is sufficient evidence in the record to establish the self-petitioner's employment prior to coming to the United States. In his decision, the director found the self-petitioner's untranslated documents to be sufficient evidence of the self-petitioner's compensation by the Iglesia Evangelica. However, as the copies are not accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English, we cannot accept the submission of proof of compensation. See 8 C.F.R. § 103.2(b)(3).

Accordingly, the self-petitioner has failed to establish that he has been continuously carrying on the work of a minister throughout the two-year qualifying period. Therefore, we uphold the director's finding that the self-petitioner has not satisfied the two-year experience requirement.

The next issue to be determined is whether the self-petitioner has received a valid offer of employment. The regulation at 8 C.F.R. § 204.5(m)(4) states:

Job offer. The letter from the authorized official of the religious organization in the United States must also state how the alien will be solely carrying on the vocation of minister (including any terms of payment for services or other remuneration), or how the alien will be paid or remunerated if the alien will work in a professional religious capacity or in other religious work. The documentation should clearly establish that the alien will not be solely dependent on supplemental employment or solicitation of funds for support.

In his decision, the director found the self-petitioner failed to establish he would not be dependent on supplemental income or solicitation of funds for support.

The statement provided by the self-petitioner on appeal does not overcome the director's finding. As previously discussed in this decision, the record contains no evidence of the self-petitioner's remuneration by the sponsoring church or his previous employer. Without such evidence, the self-petitioner is not able to establish that he was not solely dependent on supplemental employment or solicitation of funds for support, and thus, that he has a valid offer of employment.

The remaining issue is whether the sponsoring church has demonstrated its ability to pay. 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 [self-petitioner] 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.*

[Emphasis added].

As evidence to support its ability to pay, the sponsoring church submitted two financial statements. Neither financial statement has been audited. Though the self-petitioner is free to submit other kinds of documentation, such submissions must only be *in addition to*, rather than *in place of*, the type of documentation required by regulation. In this instance, the self-petitioner has not submitted any of the required types of evidence. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

While the determination of an individual's status or duties within a religious organization is not under the purview of Citizenship and Immigration Services (CIS), the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

The burden of proof in these proceedings rests solely with the self-petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The self-petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.