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U.S. Citizenship
and Immigration
Services

C1

FILE:

Office: CALIFORNIA SERVICE CENTER

Date: FEB 23 2005

IN RE:

Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

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, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a ministry of the Church of God. 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 is ordained as a minister. It necessarily follows that the petitioner had also failed to establish that the beneficiary had the requisite two years of continuous work experience as an ordained minister immediately preceding the filing date of the petition.

On appeal, counsel indicates that a brief will be forthcoming within 30 days. To date, 15 months after the filing of the appeal, the record contains no further substantive submission from the petitioner. We therefore consider the record to be complete as it now stands.

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)(2) defines "minister" as an 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.

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 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 June 7, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a pastor throughout the two years immediately prior to that date. Here, the beneficiary entered the United States on September 24, 2001. Therefore, the evidence of such past work must come, in part, from sources outside the United States, unless the United States petitioner can conclusively demonstrate its authority to attest to the beneficiary's overseas work.

██████████ the petitioner's senior pastor for Southern California, states that the petitioner "has a permanent need for a qualified and experienced full time Pentecostal minister to head up and direct our San Fernando Valley congregation for a period of three years." ██████████ does not explain how the position is "permanent . . . for a period of three years."

The director requested evidence to show that the beneficiary has been ordained, and to establish the requirements for ordination. In response, the petitioner submits a copy of a Certificate of Identification and Appointment. This document refers to the beneficiary as a "pastor," but it does not state that the beneficiary has been ordained.

The above certificate is undated, but it states the beneficiary's address as being in Van Nuys, California, meaning that it must have been issued after the beneficiary arrived in the United States in September 2001. The certificate therefore could not establish that the beneficiary was ordained before June 2000, even if the certificate mentioned ordination.

The petitioner also submits a copy of the denomination's Minister's Directory, dated November 27, 2002. The beneficiary's name is listed. The directory does not mention ordination; the use of the term "minister" does not inevitably imply ordination, as different denominations may use the term differently (for example, referring to a choir leader as a "minister of music" or referring to various church functions as "ministries"). Also, this directory is dated after the qualifying period, so once again it could not serve as contemporaneous evidence that the beneficiary was ordained more than two years before the filing date.

The director denied the petition, stating "no supporting documentary evidence was submitted that shows that the beneficiary was ordained. Therefore, the petitioner has not established that the beneficiary has been performing the duties [of] an ordained pastor for the two-year period immediately preceding the filing of the petition."

On appeal, counsel states "petitioner has in fact shown that beneficiary is an ordained minister. A Directory of Church of God (Cleveland, TN) ordained pastors in California was submitted. The beneficiary . . . is . . . listed in this alphabetical list. Also submitted [was] a Certificate of Identification and Appointment . . . listing position as 'Pastor.'" Neither the directory nor the certificate mentions ordination.

██████████, on appeal, states that the beneficiary "is a fully credentialed Pastor" who "has been serving as a Pastor since 1983." ██████████ asserts that the beneficiary "was ordained as an Exhorter under Church of God in June 2000." Counsel asserts "Exhorter is the initial level of ordination for Pastors in [the] Church of God."

On its face, ██████████ statement that the beneficiary served as a pastor for 17 years before he was ordained shows that the title "pastor" (and thus listing in a directory of pastors) does not in any way imply ordination under the Church of God denomination.

The petitioner submits no background documentation to clarify the role of an exhorter. A web page relating to the Church of God, http://www.churchofgod.cc/the_church_of_god_is.cfm, contains the following information:

Ministers and laity are full partners in ministry throughout every area of the church. Ministers in the Church of God are ranked as ordained, licensed, exhorter, minister of music and minister of Christian education. They achieve these levels of ministry through a profession of faith, commitment to the church, training, internship and fulfillment of credential requirements. The Church of God emphasizes the doctrinal position of the priest-hood of all believers and encourages laity to assume a Biblical role in local church ministry.

The "levels of ministry" appear to be ranked in descending order. The beneficiary, as an exhorter, has not yet reached the level of ordained minister, or even the intermediate level of licensed minister. The record does not contain any documentary evidence to establish that an exhorter can conduct the full range of duties of authorized clergy in the denomination. If the beneficiary is so authorized, then it is not clear what meaningful distinction exists between an exhorter, a licensed minister, and an ordained minister. The burden is on the petitioner to explain these differences, and to establish that an exhorter qualifies as a minister for immigration purposes.

The petitioner claims that the beneficiary has been "ordained as an Exhorter." However, as noted above, the Church of God uses the term "ordained minister" to describe its highest class of minister, which casts some doubt on the claim that lower classifications are also "ordained." We note that, in June 2000 (the date of the beneficiary's claimed ordination), the beneficiary was still in the Philippines. [REDACTED] does not explain how he has personal knowledge of the beneficiary's activities in the Philippines in June 2000, and the record contains no documentary evidence that [REDACTED] might have consulted to obtain such information. Therefore, this particular claim is an unsubstantiated assertion. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

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 question arises as to why the petitioner did not, at any stage prior to the appeal, state that the beneficiary is an exhorter. Despite the director's repeated observation that the record contains no evidence of ordination (as opposed to after-the-fact claims), the record continues to lack such evidence.¹

¹ We note that, because the director expressly requested specific documentary evidence before denying the petition, the future submission of such evidence would not warrant the reopening of the present proceeding. In *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988), the Board of Immigration Appeals ruled that such submissions, even on appeal, need not be considered. Here, the petitioner did not submit the required evidence in response to the initial notice or on appeal. An untimely submission at this late date clearly would fail to constitute acceptable grounds for a motion to reopen. Motions for the reopening of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110.

The assertion that the beneficiary has been a pastor for decades now has been modified into the admission that the beneficiary was a lay preacher for most of that time, and by regulation, lay preachers are not ministers for the purpose of immigration benefits. The evidence regarding the beneficiary's work overseas, prior to his 2001 entry into the United States, remains sparse. There is no indication that this work was full-time or compensated. Given that the Church of God appears, from the available materials, to rely heavily on lay preachers, the absence of such information is particularly significant.

We note that at no time has the petitioner claimed that the beneficiary qualifies for immigration benefits as a worker in a religious occupation (defined at 8 C.F.R. § 204.5(m)(2) as distinct from a minister). With no claim to consider, we have not explored that issue here.

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.