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U.S. Citizenship
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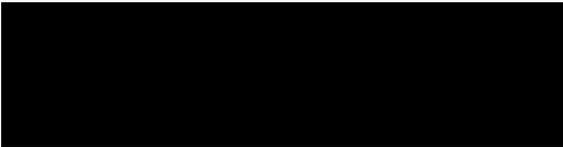
Petitioner:



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.

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 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 a minister. 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 or that the position qualifies as that of a religious worker. The petitioner's motion to reopen was forwarded to the AAO pursuant to 8 C.F.R. § 103.3(a)(2)(iv).

On appeal, the petitioner 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 an 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 January 7, 2002. Therefore, the petitioner must establish that she was continuously working as a minister throughout the two-year period immediately preceding that date.

In her letter accompanying the petition, counsel stated that the petitioner has served an active role with the St. Paul's Church of God in Christ ("St. Paul's") since December 1988. To establish that she has the immediate two-year experience requirement of the statute, the petitioner submitted a copy of a purported excerpt from the minutes of a December 10, 2000 meeting at St. Paul's, which discusses the lack of support that she, as minister, received in the outreach department. We note that the document submitted does not contain a signature or any other indicia that it is an accurate accounting of a meeting held by St. Paul's on December 10, 2000. Further, the document provides no information regarding the petitioner's work hours or duties.

The petitioner also submitted a copy of an "Evangelist Report" of a "New Convert List" for March 2000 through September 2000, thanking the petitioner for her efforts in increasing attendance in the soup kitchen and morning prayer attendance, and in "raising congregation [sic] awareness about the need for the ministry to reach lost souls outside of the US." The report further states that the petitioner's duties were reduced following the church's failed attempt to "legalize" her immigration status, but that she had since been restored to her "full duties," apparently at the members' request. The document does not indicate the duties that the petitioner performed, how often she performed them, exactly when they were reduced or what they were reduced to, or when they were "restored."

In response to the director's request for evidence (RFE) dated December 16, 2002, the petitioner submitted copies of canceled checks, reflecting that she had received some form of payment from St. Paul's in 1996, 1999, December 2002, and 2003. The checks, most of which are for \$300.00, fall outside of the qualifying time period and do not reflect payments of more than \$300.00 per month or for any full year's period. The petitioner also submitted other documentation that falls outside the qualifying two-year period and none reflect work on a full-time basis by the petitioner. These include a copy of a list entitled "St. Paul's list of salaried and stipend[ed] Employees," which purportedly reflects one time stipends to the petitioner, copies of "payroll records" reflecting payments for "voluntary" service by the petitioner, and copies of weekly time sheets.

The petitioner also submitted copies of Forms W-2, Wage and Tax Statements, for the years 2001 and 2002. The director gave no credible weight to these documents, as they do not appear to be properly completed and contain no indication that they were filed with the Internal Revenue Service (IRS).

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. Rpt. 101-723, at 75 (Sept. 19, 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.

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, a representative of St. Paul's states that the church exercises its option under the tax laws to treat its workers as independent contractors; thus the W-2s issued to the petitioner do not reflect withheld taxes as the worker is responsible for his or her own taxes.

The church's justification of its reasons for not withholding taxes on the petitioner are questionable and also does not explain its alleged issuance of a Form W-2 instead of a Form 1099-MISC. Additionally, the petitioner submitted no evidence that these forms were filed with the IRS or that she filed a tax return on the income she was reported to have received. Furthermore, the petitioner submitted no contemporaneous evidence of her employment during the year 2000. The record does not establish that the beneficiary was not dependent upon secular employment for her support during the qualifying two-year period.

On appeal, the representative of St. Paul's also states that work performed for the church is documented in a "work log book," which is signed by "both the workers and the pastor who having verified the work done, would sign off on time sheets . . . A work log book was not presented because of the volume." Nonetheless, on appeal, the petitioner submitted copies of the portions of the work log book and duty sheets. These documents, however, reflect a period in 1989 and do not indicate that they detail the petitioner's work.

The petitioner's evidence fails to establish that she was working full time in a religious occupation or vocation for two full years preceding the filing of the visa petition.

The director also determined that the petitioner had not established that the proffered position qualifies as that of a religious worker.

Pursuant to 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work in a religious occupation.

In its "official letter of employment" to the petitioner, St. Paul's states that the proffered position is that of minister to the outreach program. The church described the duties to include "the feeding program, the shut-in ministry, prison ministry, hospital ministry, street evangelism and the morning liturgy." The church also informed the petitioner that she was to continue "the coordination, the facilitating, the planning and ultimate organization of the Evangelism department," and offered a salary of \$25,000 per year.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions would reasonably be expected to perform services directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

Citizenship and Immigration Services (CIS) therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that

the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

The St. Paul's by-laws define the requirements of those who will work in the ministry, including the pastor and evangelist. The church indicates that it expects the petitioner, in the proffered position, to work at least 40 hours per week, and copies of the 2003 weekly time sheets submitted for the petitioner, indicate that she devotes at least that number of hours to the position.

The evidence is sufficient to establish that the proffered position is a religious vocation or occupation within the meaning of the statute and regulation. Nonetheless, as the petitioner has failed to establish that she was continuously employed as a minister for two full years prior to the visa petition, the petition cannot be approved.

Beyond the decision of the director, the petitioner has not established that St. Paul's, her prospective U.S. employer, qualifies as a bona fide nonprofit 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.

The petitioner must either provide verification of individual exemption from the Internal Revenue Service (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 submitted a copy of a letter to the Church of God in Christ in Memphis, Tennessee, granting a group tax exemption to the organization and its local churches.¹ The petitioner submitted no evidence that St. Paul's is included under the group tax-exemption granted to the Church of God in Christ, and failed to submit evidence of an individual exemption or the alternate evidence permitted by 8 C.F.R. § 204.5(m)(3)(i)(B).

¹ The date of the letter is illegible.

The petitioner's evidence fails to establish that her prospective U.S. employer is a bona fide nonprofit religious organization, exempt from taxation as required by the statute and regulation. This deficiency constitutes an additional ground for dismissal of the appeal.

Additionally, beyond the director's decision, the petitioner has not established that her prospective U.S. employer has the ability to pay 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.

St. Paul's indicates that it will pay the petitioner \$25,000 per year. As evidence of the church's ability to pay this salary, the petitioner submitted a copy of the church's income statement for the period ending December 31, 2002 accompanied by an unaudited attorney's 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.

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 evidence. This failure constitutes 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.