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U.S. Citizenship  
and Immigration  
Services

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FILE:

[Redacted]  
SRC 02 191 53337

Office: TEXAS SERVICE CENTER

Date: FEB 28 2005

IN RE:

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:

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 (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 it qualified as a bona fide nonprofit religious organization. The director also 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 the beneficiary was qualified for the position within the organization. The director further determined that the petitioner had not established that it had extended a qualifying job offer to the beneficiary or that it had the ability to pay the beneficiary the proffered wage.

On appeal, the petitioner submits 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)(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.

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code (IRC) of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement, if applicable, and a copy of the organizing instrument of the organization that contains a proper dissolution clause and which specifies the purposes of the organization.

The petitioner submitted a copy of an August 25, 1999 letter from the general secretary of the General Council of the Assemblies of God, who certified that the petitioner was listed in the Official Directory of Assemblies of God churches and was covered under the organization's group tax-exemption granted by the IRS. However, the petitioner failed to include a copy of the IRS letter granting the exemption.

Additionally, the petitioner stated that the beneficiary would work with the Changing Yoke Center, a "ministry" of the petitioning organization for "Middle Eastern" people. The petitioner submitted no evidence that reflects its organizational structure or the exact nature of the relationship of the Changing Yoke Center to the petitioner. However, the record indicates that the Changing Yoke Center is located in Houston, Texas, and is apparently a subordinate unit of the petitioner.

On appeal, the petitioner submitted a copy of an August 31, 1964 letter from the IRS to the General Council of the Assemblies of God, which granted the organization group exemption from federal income taxes for its subordinate units.

The evidence is sufficient to establish that the petitioner is a bona fide nonprofit religious organization that is exempt from taxes as required by the statute and regulation. As discussed above, however, the petitioner submitted no documentary evidence to establish its relationship to the Changing Yoke Center, the beneficiary's prospective employer. Further, the petitioner submitted no evidence that the Changing Yoke Center is covered under the group tax exemption granted to the General Council of the Assemblies of God.

The record does not reflect that the beneficiary's prospective employer is a bona fide nonprofit religious organization, exempt from taxation as required by the statute and regulation.

The regulation at 8 C.F.R. § 204.5(m)(1) 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 June 4, 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 been an ordained minister with a church in Cairo, Egypt since 1998. The petitioner stated that, following the beneficiary's entry into the United States in July 2001, the petitioner transferred the beneficiary's credentials to allow her to perform services with the petitioner. The petitioner stated that the beneficiary would "teach, train and lead" in Arabic Sunday school classes, Arabic drama teams, outreach and Bible studies to Arabic women and children, and Bible correspondence school in Arabic. The petitioner did not state that the beneficiary was currently employed with the petitioner or with any other organization. The petitioner submitted a copy of a letter from Reverend Sameh Naguib of the Shoubra Evangelical Church who "confirmed" that the beneficiary was an active member of the church and that she was ordained as a minister for "Drama Team and in Sunday school teaching" in 1998.

In response to the director's request for evidence (RFE) dated May 20, 2003, the petitioner resubmitted the letter from Reverend Naguib and stated that it was evidence that the beneficiary worked with the Egyptian church for 40 hours a week for more than two years. The petitioner also stated that since coming to the United States, the beneficiary had not worked, but "serves the Lord as Sunday school teacher (Arabic), Editor for Christian Arabic newspaper 'Al-Manar,' Drama team leader, and secretary for Arabic ministry," and that, without a salary, she lives in the Christian Yoke Center pastor's home.

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 submitted a statement from Reverend [REDACTED] director of the [REDACTED] [REDACTED] who states that the beneficiary is an ordained minister with the center and that she is "licensed to perform other duties usually performed by Christian clergy in the USA." [REDACTED] also stated that the beneficiary "served the Lord as our representative in Cairo, Egypt from Oct., 1998 to July 2001." The petitioner submitted no evidence from the Cairo church to substantiate that the beneficiary worked full time with the Shoubra Evangelical Church, or that she was compensated for her services there. Further, the petitioner submitted no evidence of the beneficiary's job duties with the Shoubra Evangelical Church. Reverend [REDACTED] letter simply states that the beneficiary is ordained as a minister for drama team and Sunday school teaching.

The petitioner included a copy of a 1998 "Certificate of License" certifying that the beneficiary "was licensed to preach the Gospel" by the Christian Arab Fellowship in Houston, Texas. The petitioner also submitted a copy of a March 6, 2002 "certificate of ordination" issued to the beneficiary by the Changing Yoke Center.

The record does not reflect the date that the beneficiary first became associated with the petitioning organization. Although the petitioner stated that the beneficiary lived with the pastor of the [REDACTED] Center, it provided no evidence to substantiate this and submitted no evidence of how the beneficiary has

supported herself financially since her entry into the United States. The evidence does not establish that the beneficiary was not dependent upon secular employment for her support.

The evidence does not establish that the beneficiary was continuously engaged in a religious occupation for two full years prior to the filing of the visa petition.

The director also determined that the petitioner had not established that the beneficiary was qualified for the position within the organization.

The regulation at 8 C.F.R. § 204.5(m)(2) defines minister as:

[A]n 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.

As discussed above, the petitioner indicated that the beneficiary's duties at the Changing Yoke Center is to teach, train and lead in Arabic Sunday school classes, Arabic drama teams, outreach and Bible studies to Arabic women and children, and Bible correspondence school in Arabic. We note that although the certificate of ordination issued by the Changing Oak Center authorizes the beneficiary to "preach the Word" and "administer [t]he sacraments," the record does not reflect that the beneficiary has ever served as a minister within the definition of the regulation, or that the proffered position is that of a minister.

The petitioner set no specific requirements for the job duties that the beneficiary is to perform, but indicates that her volunteer service has generally encompassed these duties.

The record contains sufficient evidence to establish that the beneficiary is qualified for the job duties of the proffered position.

The director determined that 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.

The petitioner states that the beneficiary will be paid \$1,500 per month for her services as enumerated above. However, the petitioner has not adequately established that the needs of the employing organization will provide permanent, full-time religious work for the beneficiary in the future. The petitioner did not state the hours the beneficiary was expected to work and did not provide a proposed or typical work schedule. Without more, the duties of the proffered position do not indicate that they will require the beneficiary to work full time for the petitioner for at least 35 hours per week. Part-time participation in church activities is not a qualifying job offer for the purposes of this employment-based visa petition.

The petitioner has not established that it has extended a qualifying job offer to the beneficiary.

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 above-cited regulation states that evidence of ability to pay “shall be” in the form of tax returns, audited financial statements, or annual reports. In this instance, the petitioner has submitted no evidence of the prospective employer’s ability to pay the proffered wage.

The record indicates that the beneficiary entered the United States pursuant to a B-1/B2, visitor’s, visa. The director stated that it could not be determined that the beneficiary’s sole purpose in entering the United States was to work for the petitioner. The regulation does not require that the alien’s initial entry into the United States to be solely for the purpose of performing work as a religious worker. “Entry,” for purposes of this classification, would include any entry under the immigrant visa granted under this category or would include the alien’s adjustment of status to the immigrant visa. We withdraw this statement by the director.

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.