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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [redacted] Office: TEXAS SERVICE CENTER Date: **JAN 28 2005**
SRC 01 129 52804

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:

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 Director, Texas Service Center, denied the employment-based immigrant visa petition, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted, the AAO's previous decision will be affirmed and the petition will be denied.

The petitioner identifies itself as 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, 8 U.S.C. § 1153(b)(4), to perform services as a program manager for the sale of medical testing kits. The director found that the petitioner failed to establish: (1) that the beneficiary had the required two years of experience in the job offered immediately prior to the filing of the petition; (2) that the position offered constitutes full-time, permanent employment in a religious occupation; (3) its ability to pay the beneficiary's proffered wage; (4) its exemption from federal income tax; or (5) that the beneficiary entered the United States in order to work for the petitioner. In its dismissal notice, the AAO affirmed the first four stated grounds for denial, and withdrew the director's finding regarding the purpose of the beneficiary's entry into the United States.

On motion, the petitioner addresses "each of the five (5) objections presented on page two (2) of the denial." As noted above, the AAO withdrew one of those five findings. The five stated grounds for denial, listed on page 2 of the dismissal notice, were followed by ten pages of detailed argument. On motion, the petitioner must not only address the basic grounds for denial and dismissal; the petitioner must also rebut the arguments by which the AAO arrived at its conclusions.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. 8 C.F.R. § 103.5(a)(3). The filing of a motion, following the dismissal of the appeal, does not compel *de novo* readjudication of the petition. A motion is not simply a forum for the petitioner to present arguments or evidence that should have been submitted earlier (for instance, in response to a request for evidence).

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--

* * *

(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).

For ease of reference, we repeat here a description of the petitioner and of the beneficiary's work as stated by [REDACTED] executive director of the petitioning organization:

Our Ministry has been involved in the development of Social Benevolence and Welfare programs for an extended period of time. Given our international presence, we were granted "Master Distributor" status by Protech Worldwide, Inc. for their proprietary instant lab test ECONORAPID™. . . .

Given [the beneficiary's] vast work experience in international marketing (Brand Manager for 5 of Shiseido's cosmetics lines), translation (Official Supreme Court Translator English/Spanish – Spanish/English) and her wholehearted commitment to the Ministry (as an Instructor for the Theological Bible Institute of the East Church of God, and her local church) we are assured that her collaboration [with] this ministry will prove to be of the highest value.

The first issue under consideration is the beneficiary's past experience. 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 experience in the religious vocation, professional religious work, or other religious work. The petition was filed on March 19, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing duties comparable to those of the proffered position throughout the two years immediately prior to that date.

In dismissing the appeal, the AAO observed that the beneficiary had worked in several secular occupations, and that there was a gap of several months during the qualifying period during which it does not appear that the beneficiary was performing any religious work at all. Furthermore, whatever religious work the beneficiary had performed in her native Paraguay, such work was significantly different from the proposed employment with the petitioning entity, and therefore the beneficiary had not been performing "such work" as required by law throughout the qualifying period.

In its appellate decision, the AAO stated:

The petitioner submits a "condensed translation" of a letter, dated February 15, 2001, from Rev. Daniel H. Bobadilla Calderón, pastor of the New Jerusalem Temple in Alta Paraná, Paraguay. The translation indicates that the beneficiary served "as Advisor of the Church (elderly) for more than 2 years. She has also carried out Leader's functions of Young in the Juvenile Pastoral jointly with her husband." [REDACTED] adds that the beneficiary "has been Teacher of our Theology School." [REDACTED] concludes by stating that "in the secular field [the beneficiary and her spouse] are very good professionals." The letter does not indicate whether this work was paid or unpaid, or whether it was full-time or part-time.

. . .

The petitioner . . . contends that this letter establishes that the beneficiary has worked as a liturgical worker, religious instructor, and religious counselor. As noted above, Rev. Bobadilla did not state that the church employed the beneficiary; he merely indicated that the beneficiary performed those functions. If the beneficiary was simply an unpaid volunteer from the congregation, or performed these tasks for only a few hours each week, then she was

not continuously engaged in a religious occupation or vocation during the two-year qualifying period. . . .

The petitioner submits a new letter jointly signed by Rev. Bobadilla and Carlos Abundio Pereira, treasurer and general secretary of the beneficiary's former church in Paraguay. These individuals indicate that the beneficiary worked 38 hours per week teaching biblical theology courses, coordinating Sunday worship, counseling, and performing various other tasks. The schedule includes 15 hours of "preparation" each week, as well several hours of attendance at worship services. [REDACTED] and [REDACTED] to assert that the beneficiary "had every right to receive remuneration" for this work, but declined to receive compensation.

The above discussion, however, was only one facet of the discussion of the beneficiary's prior experience. At no time did the AAO imply that the above discussion formed the sole or principal basis for its finding. Indeed, immediately after discussing Rev. Bobadilla's and [REDACTED] joint letter, the AAO observed that the letter does not resolve the gap of several months during which the beneficiary apparently performed no religious work.

On motion, the petitioner submits a new letter from Rev. Bobadilla, asserting that the beneficiary worked "full-time" (Minimum forty hours weekly) with this institution" and "refused to collect her 'assigned salary.'" This letter makes essentially the same arguments as the joint letter submitted previously, and therefore adds little of substance to the record (apart from the new contradiction between the old claim of 38 hours per week, and the new claim of a "minimum [of] forty"). The AAO's finding regarding continuous employment during the qualifying period also rested on the observation of a significant gap in the beneficiary's work, and on significant differences between the beneficiary's work overseas and the duties of the position the petitioner has offered to the beneficiary. The petitioner has not even acknowledged these findings, let alone overcome them, and therefore the AAO's finding stands.

The next issue is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following definition:

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

Citizenship and Immigration Services 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.

In dismissing the appeal, the AAO noted that the petitioner has offered to employ the beneficiary as the program director for the "Econorapid" program, pertaining to "Rapid In-Vitro Immunodiagnostic And Clinical Reagent Tests." The AAO summarized a job description submitted by the petitioner:

The "Summary of Responsibilities" section of the job description states:

The Program Coordinator will be the executive that provides direction to the National Directors of each country with the necessary information for all aspects of function ability. This includes but is not limited to: All aspects of Accounting requirements, Social Benevolence, Ecclesiastical Education, and whenever necessary Regulatory Compliance.

The job description concludes with a "Detailed List of Responsibility," which includes such factors as "Prepares all internal communications," "Coordinates promotional activities," and "Supervises (and Approves) all Program Fundraising activities." The list does not identify any responsibilities of an unambiguously religious nature. Instead, the duties are all of an administrative or supervisory nature.

The AAO found that the petitioner had made no credible showing that this work is religious in nature; untranslated Econorapid promotional materials featured medical, rather than religious, imagery. While the petitioner attempted to assign religious significance to the beneficiary's duties, the AAO found these explanations to be tenuous and lacking in credibility. The AAO concluded:

The beneficiary's position, as described, is clearly dedicated first and foremost to the marketing and sale of medical test kits. The petitioner has provided no credible evidence or argument to establish that this work is primarily religious in nature. We further note that, pursuant to 8 C.F.R. § 204.5(m)(2), fund raising is specifically excluded from the definition of what constitutes a religious occupation. Thus, even if the sales of Econorapid products are intended for the purpose of raising funds for the petitioner's religious purposes, the beneficiary would still fall outside the classification of special immigrant religious workers.

On motion, the petitioner asserts that the organization "only engages in those activities that are specifically intended to extend the Gospel of Christ," and that the petitioner's distribution of medical products is directed by a religious impulse to care for the needy. The petitioner further asserts that "ALL of the Medical services (including the Econorapid® test kits) are a form of 'Advertisement.'" We do not find this explanation to be persuasive. Even if there is a religious motivation at the root of the petitioner's involvement in the distribution of Econorapid test kits, the beneficiary's duties, as described, relate far more closely to a business context than to a religious context. The petitioner appears to indicate that the Econorapid kits are distributed free of charge; the petitioner's statement on motion refers to "free medical services." There is nothing from Protech Worldwide, however, to indicate that its Econorapid products are manufactured for free distribution rather than for sale. The "Master Distribution Certification" submitted previously indicates that the petitioner is "The Globally Exclusive Master Distributor for ECONORAPID™ Diagnostic Products," and has the "Sole Right To Distribute And Sell All ECONORAPID™ Rapid In-Vitro Immunodiagnostic and Clinical Reagent Tests."

The next issue pertains to the petitioner's ability to pay the beneficiary's proffered salary of \$38,500 per year. 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 AAO stated:

[T]he petitioner submits “a notarized letter from one (1) of our corporate sponsors, clearly pledging a substantial amount of funds (Five million four hundred twenty thousand six hundred twenty five dollars).”

The director, in denying the petition, observed that the beneficiary’s salary is entirely contingent on a corporate sponsor, which in turn has provided nothing to show its own ability to pay the salary offered. The director found that the record contains no documentation to establish the petitioner’s ability to pay the salary offered. On appeal, the petitioner offers no response to this finding. Because the petitioner has already gone on record as stating that the beneficiary’s salary will derive from future payment of pledges, the petitioner has effectively stipulated that those funds are not yet available and were not available as of the filing date.

On motion, the petitioner states that it “is in the process of finalizing the necessary financial documentation to prove that we are now and have ALWAYS been able to pay the beneficiary the proffered wages. The financial documentation shall include a Grant that was awarded this year to one of our D/B/A known as Christian Medical Concepts.”

Evidence of ability to pay is initial documentation, required at the time of filing. Although the petitioner claims that it has “ALWAYS been able to pay the beneficiary the proffered wages,” the petitioner claims that it still requires more time to prepare “the necessary financial documentation” even now, several years after the filing of the petition. The record contains no subsequent submission of this documentation, and even if the petitioner had submitted it, the regulations contain no provision for a petitioner to supplement an already-filed motion. Because this documentation has never been submitted, the director and the AAO did not err when they correctly noted its absence from the record. The purpose of a motion to reopen is not simply to keep a proceeding open indefinitely, to allow the petitioner an open-ended period of time to gather or create documentation that should have been submitted long before.

We further note that the petitioner offers no description of this “financial documentation” except to state that the petitioner received a federal grant “this year,” i.e., 2003. This does not, and cannot, establish that the petitioner was able to pay the proffered wage beginning in March 2001 and continuing until the present.

The final issue for which the AAO affirmed the director’s decision concerned the petitioner’s tax-exempt status. The regulation at 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 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 section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

The AAO stated:

[T]he petitioner has submitted a copy of its certificate of exemption from the Florida Department of Revenue, but this document establishes only that a “phys[ical] place for worship” owned by the petitioner is exempt from state property tax and sales and use tax. The petitioner also submits a portion of the instructions to Internal Revenue Service Form 1023 [Application for Recognition of Exemption], indicating that churches “are not required to file Form 1023” because “[t]hese organizations are exempt automatically if they meet the requirements of section 501(c)(3).”

The above-cited regulations at 8 C.F.R. § 204.5(m)(3)(i)(A) and (B) plainly require the petitioner to submit either documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations, or such documentation as is required by the Internal Revenue Service to establish eligibility for that exemption. The documentation described at 8 C.F.R. § 204.5(m)(3)(i)(B) includes a *completed* Form 1023, whether or not the organization then *submits* that form. The assertion that the petitioner considers itself to be a church cannot suffice in this regard, particularly in a situation such as the matter at hand in which the petitioner is exclusively responsible for the marketing of medical products. As with other cited grounds of denial, the petitioner’s appeal submission, as contained in the record, offers no response or rebuttal to the director’s finding.

On motion, the petitioner asserts that it “is in the process of finalizing the necessary documentation for the IRS Form 1023.” The AAO’s dismissal notice was not simply a request for the petitioner to submit this documentation. It was an acknowledgement that the petitioner should have *already* submitted that documentation. To submit the documents at this late date would not, in any way, show that the director or the AAO had erred in their prior decisions.

Also, as noted above, a motion must be complete at the time of submission; there is no provision for an extension of time. Here, the petitioner has effectively admitted that the necessary financial and tax documentation did not exist at the time of filing the petition, the appeal, or the motion, and that it is actively creating those documents in response to the dismissal notice. The AAO will not hold the matter in abeyance so that the petitioner can meet, in an untimely manner, its evidentiary burden. The petitioner has had numerous opportunities to submit the required materials, and has failed to do so. If such materials are submitted at this late date, we are not obliged even to consider them. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988), which indicates that such materials need not be considered even at the appellate stage, let alone at the level of a post-appellate motion.

As explained above, we find that the petitioner has not overcome the grounds cited in the AAO’s 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 previous decision of the AAO will be affirmed, and the petition will be denied.

ORDER: The AAO’s decision of September 10, 2003 is affirmed. The petition is denied.