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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

01

[Redacted]

FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: JUN 21 2005  
LN [Redacted]

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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:

[Redacted]

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.

for  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Acting Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The Form I-360, Petition for [REDACTED] Widow or Special Immigrant, filed with Citizenship and Immigration Services (CIS), indicates that the [REDACTED] is the petitioner. The petition, however, is signed by [REDACTED]. Therefore, the [REDACTED] cannot be considered as having filed the petition on behalf of Mr. [REDACTED] and Mr. [REDACTED] shall be considered as the self-petitioner.

The 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 an associate pastor. The director determined that the petitioner had not established that he possessed the required two years membership in the denomination or that the organization with which he is associated qualified as a bona fide nonprofit religious organization.

On appeal, counsel 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 first issue on appeal is whether the petitioner established that he possessed the required two years membership in the denomination.

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 November 21, 2003. Therefore, the petitioner must establish that he was a member of the prospective U.S. employer's denomination throughout the two-year period immediately preceding that date.

The record is unclear as to the religious denomination of [REDACTED] the petitioner's prospective U.S. employer. Documents in the record indicate that the legal name for the organization is the Iglesia Pentecosta Roca de Vida, implying that the organization is a member of a Pentecostal denomination. The evidence reflects that the petitioner is an ordained minister with the Ministerios [REDACTED] in Guatemala. No evidence of record establishes the religious denomination of which the Ministerios [REDACTED] is affiliated.

In a letter dated October 23, 2003, [REDACTED] of the Ministerios [REDACTED] stated:

[W]e would like to inform you that we are a Church called to the nations. Our only motive is to spread the Gospel to every person that needs it . . .

Therefore we prepare faithful men and women of God, capable of preaching the Gospel through out the World. Our brother in Christ, [the petitioner] has been congregating and serving in our Ministry for over 5 years. His membership in our church began in the year 1999. His leadership and details of his Ministries [include] . . .

- September 2001: [REDACTED] . . . anoints [the petitioner] as a Pastor under [REDACTED] World Wide Ministries.
- October 2001: Leaves to Parana, Argentina to establish Rey de Reyes Church in South America.
- May 2003: Gets sent to Chicago IL, to join Pastor [REDACTED] spiritual help in Roca de Vida Church.

Rey de Reyes Ministries counts [sic] with more than 300 churches World Wide. We characterized [sic] in being a house of restauration [sic] for the needy and for helping the community were [sic] our Churches are stablised [sic]. At the same time, we characterize [sic]

for extending our hand to other Churches just as we are at this time with Roca de Vida Church. We are sending [the petitioner] as helping hand in the Doctrine area.

In an affidavit dated November 8, 2003, the petitioner referred to the Ministerios [redacted] and the [redacted] as sister churches, as does the work agreement signed by the pastor of [redacted] and the petitioner.

In his cover letter responding to the director's request for evidence (RFE) dated May 11, 2004, counsel stated that two churches "have been having a formal relationship for the past 3 years but have not put it in writing due to cultural reasons." The petitioner submitted a "formal" contract between the parties "to comply with U.S. cultural norms." The contract states, "[We] write this formal contract of affiliation before God and the Holy Ghost to define our relationship as sister churches . . . The two sister churches are the same religious entity, non political, and not for profit."

The "contract" also indicated that the association between the two organizations began as an informal relationship in July 2001, when the organizations began "a close relationship and started working on joint activities to better the lives of their constituents."

Nonetheless, the petitioner submitted no evidence to establish that the two churches share more than a similar religious faith. The evidence does not establish that the two organizations share the same form of ecclesiastical government, creed or statement of faith, form of worship, or code of doctrine and discipline. See 8 C.F.R. § 204.5(m)(2).

On appeal, the petitioner submits an "Individual Employment Contract," which states that the petitioner "will be considered the Adjunct Pastor of [redacted]. The petitioner submitted no other evidence that the Ministerios [redacted] has a bona fide nonprofit religious organization within the United States, or that [redacted] is affiliated with the religious denomination of Ministerios [redacted]."

The evidence does not establish that the petitioner has the required two years membership in the denomination of his prospective U.S. employer.

The second issue on appeal is whether the petitioner established that his prospective United States employer is a bona fide 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.

With the petition, the petitioner submitted a September 1998 letter from the Illinois Department of Revenue, stating that the [REDACTED] "is considered and operated exclusively for religious purposes." The petitioner also submitted a 1993 letter from the IRS, notifying the [REDACTED] of its new employer identification number.

In response to the RFE, the petitioner resubmitted the 1998 letter from the Illinois Department of Revenue.

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, which contains a proper dissolution clause and which specifies the purposes of the organization.

An organization that does not have a letter from the IRS specifically granting it tax exemption as a religious organizations may establish eligibility under 8 C.F.R. § 204.5(m)(3)(i)(B) by submitting the documentation that the IRS would require to determine that the entity is a religious organization.

The organization can establish this by submitting documentation that establishes the religious nature and purpose of the organization, such as brochures or other literature describing the religious purpose and nature of the activities of the organization. The necessary documentation is described in a memorandum from [REDACTED] Associate Director of Operation for CIS, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003):

- (1) A properly completed IRS Form 1023,
- (2) A properly completed Schedule A supplement, if applicable,
- (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization, and
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The above list is consistent with the regulatory requirement at 8 C.F.R. § 204.5(m)(3)(i)(B), cited above. The memorandum specifically states that the above materials are, collectively, the "minimum" documentation that can establish "the religious nature and purpose of the organization." Thus, for example, a petitioner cannot meet this burden by submitting only its articles of incorporation. Also, obviously, it is not enough merely for the petitioner to *submit* the documents listed above. The *content* of those documents must establish the religious purpose of the organization.

The director, prior to denying the petition, did not provide the petitioner with an opportunity to submit the materials outlined in the Yates memorandum, and thereby establish that the employing organization's tax-exempt status as a religious organization pursuant to 8 C.F.R. § 204.5(m)(3)(i)(B). This deficiency is not fatal to the director's decision, however, because (as discussed above) we have affirmed the other stated ground for denial, which clearer evidence of qualifying tax-exempt status would not overcome.

Beyond the decision of the director, the petitioner has not established that he had been continuously employed in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition. The petition was filed on November 21, 2003. Therefore, the petitioner must establish that he was continuously working as a minister throughout the two-year period immediately preceding that date.

The October 23, 2003 letter from the Ministerios [REDACTED] indicated that the petitioner had served as a pastor with that organization since September 2001. The letter did not indicate the terms of the petitioner's employment with the organization. The letter also stated that the petitioner began working for the [REDACTED] in May 2003. The petitioner submitted no evidence to corroborate his employment during the two-year period preceding the filing of the visa petition. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

On appeal, the petitioner submitted a written contract that allegedly memorializes the agreement between the Ministerios [REDACTED] and the petitioner. This contract states that the petitioner's services "will begin on August 7, 2001." This date predates the petitioner's ordination as a minister and his entry into the United States in May 2003. The petitioner submitted no evidence to explain this discrepancy. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The petitioner again failed to submit evidence such as paychecks, pay vouchers, verified work schedules or other documentary evidence that would corroborate the petitioner's work during the qualifying two-year period. *Matter of Soffici*, 22 I&N Dec. at 165.

The evidence does not establish that the petitioner worked continuously as a minister for two full years prior to the filing of the visa petition. This deficiency constitutes an additional ground for denial of the petition.

Additionally beyond the decision of the director, the petitioner has not established that his prospective U.S. employer has the ability to pay him 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.

In its letter of October 23, 2003, the Ministerios [REDACTED] stated that [REDACTED] would be "completely responsible for financial [sic] supporting" the petitioner, including paying his salary, lodging and transportation. In the November 8, 2003 agreement between the petitioner and the pastor of [REDACTED] however, the parties agree that the Ministerios [REDACTED] would provide \$9,600 towards the petitioner's salary, and that [REDACTED] would pay \$10,400 plus fringe benefits. According to the "written contract"

between all of the parties submitted in response to the RFE, the Ministerios [REDACTED] agreed to pay \$9,600 towards the petitioner's support. This agreement was allegedly reached during the "second planning meeting" to establish the affiliation of the two organizations. It is unclear as to why the Ministerios [REDACTED] stated in its initial correspondence that it would bear no responsibility for the petitioner's support while he worked with [REDACTED].

Regardless, the regulations require that the petitioner establish that his prospective U.S. employer has the ability to pay the proffered wage. To meet this criterion, the petitioner submitted copies of the organization's financial documents for the year 2000. The petitioner submitted no evidence of [REDACTED] ability to pay the proffered wage in 2003, the year the petition was filed.

The record does not establish that the [REDACTED] the petitioner's prospective U.S. employer had the continuing ability to pay the petitioner the proffered wage as of the filing date of the petition. This deficiency constitutes an additional ground for which the petition may not be approved.

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.