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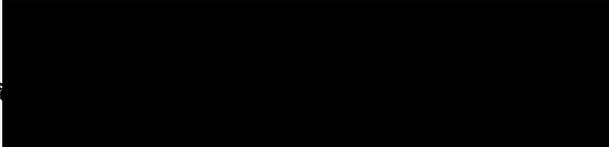
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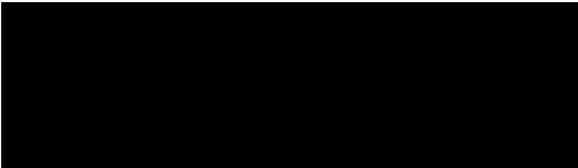
IN RE:

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:



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

The petitioner 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 associate." The director 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. The director further determined that the petitioner had not established that the position qualified as that of a religious worker, that it had the ability to pay the beneficiary a wage, or that it had extended a qualifying job offer to the beneficiary.

On appeal, counsel submits a brief and copies of previously submitted documentation. With the Form I-290B, Notice of Appeal to the Administrative Appeals Unit, counsel indicated that an additional 30 days would be required in which to submit a brief and or additional evidence. Counsel's brief was timely submitted. With the brief, counsel requested an additional 30 days in which to submit additional evidence. As of the date of this decision, however, more than nine months after the AAO received the brief, no new documentation has been received by the AAO. Therefore, the record will be considered complete as presently constituted.

The first issue on appeal is whether the petitioner has established that the beneficiary worked continuously as an associate pastor for two full years preceding the filing of the visa petition.

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 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 March 28, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister throughout the two-year period immediately preceding that date.

We note that this is the third Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, filed on behalf of the beneficiary. A previous petition was approved on August 20, 1998 for the beneficiary to work as a religious instructor. The approval was revoked on May 19, 2004, following the petitioner’s withdrawal of the petition on March 21, 2001, because the beneficiary no longer worked in the position and was no longer a member of that petitioning organization. A petition submitted by a different petitioner on November 15, 2001, seeking approval of the beneficiary to work as a minister, was rejected for failure to pay the appropriate fee.

With the instant petition, the petitioner submitted a January 23, 2003 letter stating that the beneficiary was ordained as a minister on December 30, 1997, and had been a member of the petitioning church since January 2002 as a volunteer “developing in activities of Preaching the Word of God in the church, visiting homes of new members, Biblical studies to the youth every Sunday, and participating in all campaigns outside town and cities.” The petitioner stated that the beneficiary did not receive a “fixed salary” and did not indicate that she received any compensation for her services. The petitioner submitted no documentary evidence to corroborate any employment by the beneficiary from March 2001 to March 2003. 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)).

In response to the director’s request for evidence (RFE) dated May 8, 2003, the petitioner submitted a letter dated June 20, 2003, in which it stated that the beneficiary had been ordained on October 14, 1999, and had been a member of its congregation since 1999. The petitioner submitted copies of canceled checks reflecting that it paid the beneficiary \$350 for the last two weeks in February 2003, for two weeks in March 2003, for

one week in May 2003 and for two weeks in June 2003. The petitioner also submitted a copy of the beneficiary's Form W-2, Wage and Tax Statement, for 2001 reflecting that one [REDACTED] paid the beneficiary \$6,739.25. [REDACTED] identified by counsel as an elderly woman needing care, which was provided by the beneficiary. The record also contains a copy of a year 2001 Form 1040X, Amended U.S. Individual Income Tax Return, for the beneficiary indicating that she increased her reported earnings for the year by the amount reflected on the Form W-2. However, the petitioner submitted no evidence to indicate the source of the income of \$7,200 apparently reported by the beneficiary on her original return. Copies of the beneficiary's year 2002 Form 1040EZ reports earnings of \$6,737, but also indicates that the beneficiary was unemployed.

The petitioner also submitted a copy of an identification card issued to the beneficiary with an expiration date of January 3, 2000. However, there is no evidence to establish when the card was issued. The petitioner also submitted a copy of an ordination certificate indicating that the Latin American Christian Missionary Society, Inc. ordained the beneficiary on October 14, 1999.

The petitioner submitted no evidence to explain why it initially stated that the beneficiary became associated with the petitioning organization in January 2002, yet in response to the RFE stated that the beneficiary had begun working with the church in 1999. The petitioner failed to explain the discrepancies in ordination dates. 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's statements regarding the beneficiary's association with the petitioning organization are further cast in doubt based on a previous Form I-360 petition filed on her behalf. In a letter dated November 5, 2001, the pastor of the Iglesia Pentecostes [REDACTED] stated that the beneficiary "is our Minister Ordained since the year 1999, she's working voluntarily for this Ministry, therefore she's living by faith and we are helping in her expenses, therefore there is no salary for her from this Ministry." The petitioner of that Form I-360 also submitted an ordination certificate from the Union Amistosa Ministries, Inc. dated December 5, 1998.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

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 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, counsel states that the beneficiary was a full-time paid employee for two full years preceding the filing of the visa petition. However, this statement contradicts the statements by the petitioner who states that the beneficiary served in a voluntary capacity with the petitioner. Additionally, the evidence establishes that the beneficiary received compensation from [REDACTED] during the year 2001, which accounted for almost half of the income she reported for the year.

The petitioner submitted no documentary evidence of any religious work performed by the beneficiary during the qualifying two-year period. *See Matter of Soffici*, 22 I&N Dec. at 165.

The evidence does not establish that the beneficiary was not dependent upon secular employment for her financial support or that she was continuously employed as a minister for two full years preceding the filing of the visa petition.

The second issue on appeal is whether the petitioner has established that the proffered position qualifies as that of a religious worker.

According to the regulation at 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 as a religious worker. 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.

In a letter dated June 30, 2003, the petitioner stated:

[The beneficiary's] responsibilities will be among other things [to] coordinate all the activities of our church. She will preach the word of God on Tuesday, Wednesday, Thursday, Friday and Saturday . . . Also on Wednesday before the service she will be in touch with the community to develop social work programs such as drug prevention, avoid early pregnancy in [teenagers], and some charity programs. On [Thursday] she will do some administrative work and answer the mail . . . , then on Friday she will prepare messages for the weekend . . . On Saturday . . . she will coordinate a prevention problem seminary and . . . have a meeting between her board directors and leaders. Then on Saturday she will visit hospitals to see and [comfort] sick people, visit jails to preach the God of Word [sic] to prisoners.

The petitioner stated that the beneficiary would be expected to work at least 40 hours per week, and, according to its June 30, 2003 letter, that it will compensate her at the rate of \$350 per week.

The evidence sufficiently establishes that the proffered position is that of a religious worker within the meaning of these proceedings.

The third issue presented on appeal is whether the petitioner has established that it has the ability to pay the beneficiary 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 January 23, 2003, the petitioner stated that it would pay the beneficiary \$1,500 per month, payable on the 15th and 30th of each month. In its letter of June 20, 2003, the petitioner stated that it would pay the beneficiary \$350 per week.

The petitioner submitted copies of canceled checks made payable to the beneficiary reflecting that it paid her \$350 on these dates in 2003: February 21, February 28, March 14, March 21, May 21, June 1 and June 10. The petitioner also submitted a copy of its year 2002 Form 199, California Exempt Organization Annual Information Return, reflecting that it had a net income of \$28,057. However, the record does not reflect the date the return was prepared or that it was ever filed with the state of California.

In a second RFE dated October 31, 2003, the director instructed the petitioner to:

Provide evidence of the petitioner's ability to pay the beneficiary's wage . . . Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns . . . or audited financial statements. The petitioner is requested to provide this evidence for the fiscal year 2003 to the present.

In response, the petitioner submitted copies of canceled checks made payable to the beneficiary in the amount of \$350 for several dates in 2003, including May 21, June 1, June 10, June 25, July 7 and July 21. The evidence submitted by the petitioner did not establish a consistent payment history to the beneficiary from the date the petition was filed. The canceled checks did not reflect any payments in April of 2003 and only one payment in May.

The petitioner also submitted a copy of a letter from its bank, indicating that as of January 13, 2004, the petitioner had a balance of approximately \$4,438 in its account. The petitioner also submitted a copy of an unaudited 2003 financial statement, and a letter stating that its annual offerings total more than \$70,000.

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 primary evidence.

On appeal, counsel states that the petitioner will submit its federal tax returns for the years 2001 and 2003 "at a later date." However, in the cover letter accompanying the second RFE, counsel stated that the petitioner had not filed federal tax returns, as it was not required to do so. Counsel also states on appeal that the petitioner had previously provided copies of its 2002 federal tax returns; however, as noted above, the tax return submitted by the petitioner was a copy of its 2002 informational tax return for the state of California, and held no indication that it was filed with the state.

The evidence does not establish that the petitioner had the continuing ability to pay the beneficiary the proffered wage as of the date the petition was filed.

The last issued is whether the petitioner has established that it has extended a qualifying job offer to the beneficiary.

The petitioner stated that the beneficiary worked in the position in a voluntary capacity prior to the filing of the visa petition, but provided no documentary evidence to substantiate the beneficiary's work with the church. The director determined that the petitioner did not establish that the position would offer full-time employment to the beneficiary, and noted that part-time work is not qualifying employment for the purpose of this visa preference petition.

The petitioner stated that the beneficiary will be expected to work at least 40 hours per week in the position, and indicated that the position would pay \$350 per week. The evidence reflects that the petitioner paid the beneficiary \$350 on an irregular basis during 2003. However, although the petitioner has not established that it has the continuing ability to pay the wage it promises, the evidence sufficiently reflects that it has extended a qualifying job offer to the beneficiary.

Nonetheless, the record does not establish that the beneficiary has been continuously employed in a religious vocation or profession for two full years preceding the filing of the visa petition or that the petitioner has the ability to pay the proffered wage. Therefore, 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.