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U.S. Citizenship  
and Immigration  
Services

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01

FILE:

[REDACTED]  
SRC 01 183 53059

Office: TEXAS SERVICE CENTER

Date: MAR 16 2005

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:

[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.

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 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 director and producer of religious television broadcasts for [REDACTED] (called, in some documents, [REDACTED]).

The director determined that the petitioner had not established: (1) that he had the requisite two years of continuous work experience in the occupation immediately preceding the filing date of the petition; (2) that the prospective employer qualifies as a tax-exempt religious organization; or (3) that a qualifying job offer exists. The AAO affirmed the director's decision and dismissed the appeal.

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) 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 May 4, 2001. Therefore, the petitioner must establish that he was continuously performing the duties of the proffered position throughout the two years immediately prior to that date.

The petitioner had claimed to have worked for [REDACTED] in Santa Domingo from 1995 to January 2001, and as a volunteer for [REDACTED] (called, in some documents [REDACTED]), his prospective employer, since February 2001. To support these claims, the petitioner had submitted letters from officials of both entities. The original letter from [REDACTED] is in Spanish; the petitioner submitted an

uncertified English translation of this letter. The translation indicates that the petitioner received "card payments from Popular Bank." The record contains no confirmation of these payments from the named bank.

The director determined that the letters were not sufficient evidence of past employment, and the director noted the absence of payroll records to show that the beneficiary received compensation at any point during the two-year qualifying period. Subsequently, the AAO asserted that the translations of the letters mentioned above are uncertified and, therefore, unacceptable under 8 C.F.R. § 103.2(b)(3). The AAO added that counsel has made seemingly contradictory claims by asserting that, in Latin America, religious workers are unpaid, yet the beneficiary was paid for his religious work in Latin America. Absent any further evidence of experience, the AAO affirmed the director's finding that the petitioner had failed to present sufficient evidence to establish past employment. The AAO stated: "The petitioner provides no competent evidence that he was compensated for his services to [REDACTED] or that he held a full time position with the television station. Therefore he has not established that he has the requisite two years qualifying work experience necessary for this visa preference classification."

On motion, counsel argues that "continuous" employment is not synonymous with "exclusive" employment, and that the AAO erred in concluding otherwise. The AAO's decision, however, did not rest on a finding that the beneficiary's employment was not "exclusive" (although the AAO did cite case law that indicates that secular employment can interrupt the continuity of religious work. *See Matter of B*, 3 I&N Dec. 162 (CO 1948)).

Counsel asserts that "more than enough evidence has been submitted to the Director proving that the Petitioner does, in fact, have the requisite minimum of two (2) years experience." Counsel does not elaborate, and neither addresses nor rebuts the AAO's specific findings. Simply declaring the AAO's conclusions to be "unfounded" is not sufficient basis for reversal of the AAO's prior findings.

The next issue concerns the tax-exempt status of the petitioner's prospective employer, [REDACTED]. 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.

According to documentation from the Internal Revenue Service (IRS), the petitioner's tax-exempt status derives from classification not under section 170(b)(1)(A)(i) of the Internal Revenue Code of 1986 (the Code), which pertains to churches, but rather under section 170(b)(1)(A)(vi) of the Code, which pertains to publicly-supported organizations as described in section 170(c)(2) of the Code, "organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes," or for other specified purposes. This section refers in part to religious organizations, but to many types of secular organization as well.

The director denied the petition in part because the prospective employer is classified under section 170(b)(1)(A)(vi) of the Code, rather than section 170(b)(1)(A)(i). This finding, by itself, is deficient, because to equate "religious organizations" with "churches" relies on an overly strict reading of the statute and regulations.

That being said, an organization that qualifies for tax exemption as a publicly-supported organization under section 170(b)(1)(A)(vi) of the Code can be either religious or non-religious. The burden of proof is on the petitioner to establish that its classification under section 170(b)(1)(A)(vi) of the Code derives primarily from its religious character, rather than from its status as a publicly-supported charitable and/or educational institution.

Because an IRS determination letter that classifies an entity under section 170(b)(1)(A)(vi) of the Code cannot, by itself, establish that the entity is a religious organization, that determination letter cannot satisfy 8 C.F.R. § 204.5(m)(3)(i)(A). The other option, at that point, is to comply with 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 which 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 William R. Yates, Associate Director of Operations, *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;
- (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 AAO, in dismissing the appeal, listed the above types of documentation, stating: "the petitioner must submit additional evidence to include a completed Form 1023, a completed Schedule A attachment, and a copy of the articles of incorporation showing, *inter alia*, the disposition of assets in the event of dissolution." The AAO thereby put the petitioner on notice as to the documentation required.

On motion, counsel asserts: "The petitioner has in fact provided more than sufficient evidence that the prospective employer qualifies [as], and is, a bona-fide non-profit religious organization." The petitioner submits a copy of the AAO's dismissal notice, with the phrase "the petitioner must submit additional evidence" underlined by hand. The motion does not, however, include any of the types evidence listed immediately after the underlined passage. Thus, even after being told exactly what evidence would be necessary to establish a *qualifying* tax-exempt status, and demonstrating that the petitioner (or counsel) had read the very passage in question, the petitioner still failed or refused to provide that documentation. Counsel does not explain the petitioner's failure to submit this documentation. We note that Forms 1023 filed after July 15, 1987 must be made available for public inspection, pursuant to 26 C.F.R. § 301.6104(d)-1(a).

IRS recognition letter dates from 1990, consistent with a 1023 filed well after July

1987. Therefore, the petitioner cannot credibly argue (and does not argue) that the Form 1023 is not available.

The petitioner has had the opportunity to rectify the above deficiency in the record, but has failed to do so. There is, therefore, no reason to disturb the AAO's prior finding on this ground of ineligibility.

We note another finding that counsel, on motion, fails even to address, let alone rebut. The petitioner had previously submitted a copy of the group exemption letter, covering "agencies and instrumentalities . . . appearing in the Official Catholic Directory." The AAO had noted that the petitioner has not shown that his prospective employer is listed in that directory. Without such evidence, the church's group exemption is irrelevant.

Subsequent to the filing of the motion, the petitioner submitted additional materials through counsel, accompanied by a "motion to submit additional supporting evidence." The regulations do not provide for such a motion, nor do they otherwise permit a petitioner to supplement a previously submitted motion. Therefore, the supplemental submission cannot properly be considered as part of the motion now before the AAO. (We note, briefly, that the new evidence consists of a letter from the IRS. Counsel states that the letter "confirms" that the prospective employer is a tax-exempt religious organization, but the IRS letter never refers to the entity as a religious organization.)

The final ground for denial and dismissal concerns the terms of the job offer as described in the record. 8 C.F.R. § 204.5(m)(4) requires the petitioner to set forth the proposed terms of employment. The director determined that the petitioner had failed to document an offer of full-time, permanent employment.

The AAO, in its appellate decision, overturned the director's finding that there was no evidence that the beneficiary had been offered a full-time, permanent position. The AAO also, however, noted that one letter from the petitioner's prospective employer, dated April 2001, states that the beneficiary will earn \$475 per week, equivalent to \$24,700 per year. A second letter, from a year later, states that the beneficiary will earn \$26,000 per year. The AAO determined that these letters "create a discrepancy in the amount of compensation the petitioner will receive for his services." On motion, the petitioner submits yet another job offer letter, this one offering the petitioner "a yearly salary of \$32,400."

Upon consideration, the claimed discrepancies appear to amount to "cost-of-living" increases in the salary offered; the "discrepancy" between the first two job offer letters is only five percent. The increase between the second and third letters is greater, but this does not lead us to believe that the underlying job offer is, *for that reason*, inherently suspect. Counsel's assertion that the job offer has simply been "updated" is credible. While any revision of the beneficiary's *past* salary would obviously raise serious questions, we cannot expect the beneficiary's *future* salary to remain indefinitely frozen at 2001 levels. We therefore withdraw the AAO's decision relevant to the above.

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 May 24, 2004 is affirmed. The petition is denied.