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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAR 14 2005
WAC 01 229 53327

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.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center denied the employment-based immigrant visa petition. The matter 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). The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience immediately preceding the filing date of the petition. In addition, the director determined the petitioner failed to establish its tax exempt status, that it had the ability to pay the beneficiary and that the beneficiary would not be solely dependent on supplemental income or solicitation of funds for his support.

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 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 July 18, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing essentially the same duties as the duties of the position being offered by the petitioner throughout the two years immediately prior to that date, the period from July 18, 1999 through July 18, 2001.

In support of the petition, the petitioner submits a copy of the beneficiary's ordination certificate. Further, Rev. Hasten V. Covey, pastor of the petitioning church, states that the beneficiary will be responsible for "preaching, home bible study, counseling and outreach." Rev. Covey further states that the beneficiary "will be fully supported by the church in cash and in kind in the amount between \$1000 and \$1500 /month to cover board and lodging and other pertinent expenses." The statement that the beneficiary "will" be responsible for his specific

duties and that he “will be fully supported” by the petitioner, implies that these terms cover future employment, rather than terms already in effect.

As the petitioner’s submission provided no evidence related to the beneficiary’s experience during the requisite two-year period, on February 16, 2002, director requested evidence of the beneficiary’s employment and work schedule beginning July 18, 1999 and ending July 18, 2001. The director further requested evidence that the petitioner had the appropriate tax-exempt status, evidence of how the beneficiary had supported himself and his family during the two-year qualifying period, and evidence of the petitioner’s ability to pay the beneficiary the proffered wage. Finally, the director requested evidence of the beneficiary’s immigration status.

Although the record contains a letter dated July 31, 2002 from Rev. Covey, there is no substantive submission from the petitioner in response to the director’s request. The letter from Rev. Covey states:

I’ve received notice from your office last February 16, 2002. I’m so sorry for not responding by a certain date given.

Since it was stated on that notice that in case of failure to respond a decision will be based on the evidence previously submitted may I, please, know the case status of my application with receipt number

Based on the lack of evidence contained in the record, the director denied the petition on September 22, 2004, noting that the petitioner had failed to provide evidence in response to the director’s request for further evidence.

On appeal, the petitioner submits a letter, a certification from a church in the Philippines, a copy of the petitioner’s bank balance, a copy of a group exemption letter from the Internal Revenue Service, a copy of the beneficiary’s Form I-94 Arrival and Departure Record, and copies of previously submitted documents.

The regulations at 8 C.F.R. §§ 103.2(b)(8) and (12) state that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director’s request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Consequently, the appeal will be dismissed. Based on the record before the director at the time of his decision, the petitioner failed to establish that the beneficiary had the requisite two years of continuous work experience immediately preceding the filing date of the petition and that the beneficiary would not be solely dependent on supplemental income or solicitation of funds for his support. The petitioner further failed to establish it had the requisite tax exemption and ability to pay the beneficiary.

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.