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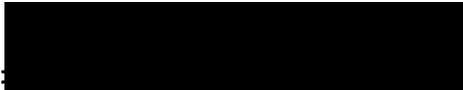
Office: CALIFORNIA SERVICE CENTER

Date: **NOV 15 2005**

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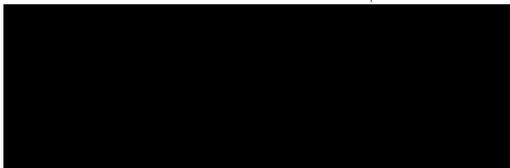
Petitioner:



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.

*Mari Johnson*

*g* 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 self-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 staff member of International Students, Inc. The director determined that the petitioner had not established that he had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

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 issue presented on appeal is whether the petitioner 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 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 April 12, 2004. Therefore, the petitioner must establish that the beneficiary was continuously working in the religious occupation throughout the two-year period immediately preceding that date.

With the petition, the petitioner submitted a March 31, 2004 letter from [REDACTED] the senior pastor of the International Church of San Diego (ICCSA). According to Reverend Ong, from 2001 to "the present," the petitioner served as pastor of International Christian Fellowship of San Diego, a "ministry partner" of ICCSA.

- He [ ] trains, teaches and preaches to this international community. He develops outreaches to teach English, bridge the cultural gap for internationals in all aspects of culture, and partnering with First Presbyterian Church to feed the homeless.
- He administers weekly meetings . . . [at College Avenue Baptist Church] that promote the welfare and spiritual well-being of internationals.
- In addition, he participates in developing and helping the Indonesia Christian Fellowship of San Diego.

A March 15, 2003 letter from [REDACTED] and [REDACTED] of the [REDACTED], indicated that the petitioner "shepherds" between 50-70+ collegians each week since fall 2001. About 140 came to the [REDACTED] he planned for Valentine's Day."

The petitioner submitted no documentary evidence to corroborate any work that he performed during the qualifying two-year period. 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 January 28, 2005, the petitioner submitted an April 18, 2005 letter from [REDACTED], who identifies himself as a member of the Missions Committee at College Avenue Baptist Church (CABC). According to Mr. [REDACTED] CABC "began an International Christian Fellowship (ICF) at CABC," and that the petitioner has been the director of this ICF.

He has been primarily responsible for the planning and administration of our weekly Friday night meetings as well as many other related Bible studies, activities, social functions and organizational meetings He also meets regularly during the week with individual students

for mentoring, counseling, accountability and Bible study. {He} spends at least forty hours per week performing these duties.

CABC does not pay [the beneficiary] a salary for his work, but does provide housing in a nearby home which the church owns . . . [The beneficiary] is supported by periodic financial contributions from several individuals, CABC and other organizations.

A job description indicated that the petitioner "is a minister of ICCSD who ministers to international students in a ministry supported by" CABC, and that he has "oversight responsibility for the overall ministry to international students at ICF South." The petitioner's duties were described as including "evangelism, discipleship and the overall needs of international students" ("friendship, housing, hospitality and service").

The petitioner submitted copies of monthly reports in 2002 and 2003 that he made to supporters on his activities for the month and his plans for the future. In several of these reports, the petitioner indicated that he was working 34 hours per week at Mega Computer.

The petitioner submitted copies of computer-generated reports showing that he was paid as a vendor on various dates during 2003, 2004 and 2005. These payments indicate they were for different reasons including reimbursement for supplies, food, teaching and speaking, but do not reflect who paid the funds. The petitioner submitted no evidence of monetary payments received in 2002. The petitioner also submitted copies of Forms 1099-MISC, Miscellaneous Income, reflecting nonemployee income from College Avenue Baptist Church in the amount of \$3,200 in 2003. We note that this income is reported on a 2004 Form-MISC that has been altered by hand to reflect 2003, and therefore does not provide contemporaneous evidence that the petitioner was paid by the church in 2003. The record contains flyers indicating that the petitioner was associated with the International Christian Fellowship; however, he submitted no documentary evidence to corroborate his work or hours devoted to that work with the organization. *Matter of Soffici*, 22 I&N Dec. at 165.

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, the petitioner submitted an undated letter from [REDACTED] the president of Mega Computers & Communications. Mr. [REDACTED] stated that Mega Computers & Communications hired the petitioner in 1992, and that the company allowed the petitioner to devote half of his work time to the International Christian Fellowship as the company's contribution to the organization. The petitioner was also to train his replacement "over a period of a few months beginning in 2002 before leaving us." Mr. [REDACTED] did not indicate the ending date of the petitioner's employment with the organization; however, in a May 31, 2005 letter, Mr. [REDACTED] stated that the petitioner worked for Mega Computers & Communications for "the first thirty days" of the qualifying period, while working 40 hours with the International Christian Fellowship.

The petitioner submitted no additional evidence on appeal of any payments that he received for his work during 2002, and submitted no other documentary evidence to substantiate his work with the International Christian Fellowship during the qualifying period. *Matter of Soffici*, 22 I&N Dec. at 165.

The evidence submitted does not sufficiently establish that the beneficiary was continuously employed in a qualifying religious occupation for two full years immediately preceding the filing of the visa petition.

Beyond the decision of the director, the petitioner has not established that his prospective 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.

According to the March 8, 2005 offer of employment, the petitioner's prospective employer is [REDACTED]. The petitioner submitted no evidence of the International Students, Inc. financial status. Therefore, the petitioner has not established the ability of that organization to pay him the proffered wage. This deficiency constitutes an additional ground for which the petition may not be approved.

Further beyond the director's decision, the petitioner has not established that his prospective U.S. employer is a bona fide nonprofit 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.

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

The petitioner submitted a copy of the articles of incorporation for the College Avenue Baptist Church of San Diego containing the dissolution clause required by the IRS in making its determination of tax-exempt status under section 501(c)(3) of the IRC. The petitioner also submitted a copy of an October 2, 2000 letter from the State of California Franchise Board to the International Christian Church of San Diego, advising that organization that it was exempt from state franchise or income tax.

The petitioner must either provide verification of individual exemption from the IRS, proof of coverage under a group exemption granted by the IRS to the denomination, or evidence to comply with the provisions of 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 petitioner can establish eligibility under 8 C.F.R. § 204.5(m)(3)(i)(B) 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 William R. Yates, 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 petitioner submitted only the articles of incorporation for his prospective U.S. employer, and therefore has not established that the organization qualifies as a bona fide nonprofit religious organization.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.