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U.S. Citizenship
and Immigration
Services



CI

FILE:



Office: VERMONT SERVICE CENTER

Date: 07/27/01

EAC 02 119 52825

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is a conference of churches. 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), to perform services as a minister/assistant pastor. The director determined that the petitioner had not established that the position qualifies as that of a religious worker or that it had the ability to pay the beneficiary the proffered wage.

On appeal, counsel submits a brief.

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 the position qualifies as that of a religious worker.

Pursuant 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 proffered position is that of minister/assistant pastor. According to the petitioner's letter of March 25, 2003:

As a Minister/Assistant Pastor, [the beneficiary] will conduct religious worship services and perform other spiritual functions associated with the beliefs and practices of our church and provide spiritual assistance and guidance to our members. In order to meet these requirements . . . he will be expected to carry out job duties that are quite varied and will include the following: pastoral counseling, Bible lectures, prayer meetings, preparation for Sabbath services, preparation and review of sermons, supervision of Sabbath school, conducting religious worship services, fellowship, home visitations, personal religious studies, and administrative liaison work.

The petitioner stated that the beneficiary is expected to work 44 hours per week, and will be compensated at the rate of \$20,000 per year.

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 response to the director's request for evidence (RFE) dated May 1, 2003, the petitioner submitted a copy of a document entitled "NAD Working Policy 2001-2002" that outlines the requirements for a commissioned minister within the Seventh-day Adventist Church, and another unlabeled document, which counsel identifies on appeal as a page from the Seventh Day Adventist Church's official policy manual, that addresses the ministry and ministerial training. We note that no document in the record supports counsel's assertion as to the source of this document. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Nonetheless, we find that the record sufficiently establishes that the proffered position qualifies as that of a religious worker within the meaning of the statute and regulation.

The second issue on appeal is whether the petitioner 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 a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by the Service.

In its letter of March 25, 2003, the petitioner stated that it owns and operates "over" 113 churches and companies. The petitioner further stated, "All assets, receipts, and salaries are owned, received, and/or paid directly by" the petitioning organization, and in a March 26, 2003 letter, stated that it has over 200 employees. The petitioner submitted a copy of a June 27, 2002 audit of its financial statements for the years 2000, 2001 and 2002. The General Conference Auditing Service of the Seventh-day Adventist Church performed the audit. The petitioner also submitted a March 25, 2003 letter from its treasurer, stating that the petitioner had assets exceeding \$18,500,000 in 2001 and \$22,500,000 in 2002 (the year in which the petition was filed). The audited financial statements reflect that the petitioner had total current assets of \$5,227,160 in 2002, with current liabilities of \$1,541,619.

The evidence sufficiently establishes that the petitioner has the continuing ability to pay the beneficiary the proffered wage of \$20,000 per year.

Nonetheless, the petition may not be approved as the record now stands, and it will be remanded to the director to enter a new decision.

In denying the petition, the director stated that the petitioner had not established that the beneficiary "has been and will be employed in a religious occupation." However, as discussed above, the petitioner has submitted sufficient evidence to establish that the proffered position qualifies as that of a religious worker. Notwithstanding that, however, the petitioner's evidence does not establish that the beneficiary was continuously employed in that position for two full years immediately preceding 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.

In his decision, the director indicated that the petition was filed on February 2, 2002. However, the receipt date stamped on the petition is February 19, 2002. The regulation at 8 C.F.R. § 103.2(a)(7)(i) states, in pertinent part:

An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and, unless otherwise specified in part 204 or part 245 of this chapter, shall be regarded as filed when so stamped, if it is properly signed and executed and the required fee is attached or a fee waiver is granted.

The petitioner must therefore establish that the beneficiary was continuously working as a minister throughout the two-year period immediately preceding February 19, 2002.

In its response to the director's RFE of May 1, 2003, the petitioner stated, in a letter dated July 10, 2003, that the beneficiary "was hired on a provisional basis from February 2000-June 2001 while going through a probationary period. He fulfilled his responsibilities admirably; as a result was pick[ed] up by the [petitioner's] payroll." In another letter of the same date, the petitioner, in outlining the beneficiary's workweek, stated that the beneficiary had "been responsible for many varied ministerial duties" since his employment with the church in July 2001. However, the petitioner submitted no documentary evidence to corroborate the beneficiary's employment during the qualifying two-year. 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 remand, the director should address whether the petitioner has established that the beneficiary was continuously employed as a minister for two full years preceding the filing of the visa petition.

This matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.