



U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: SEP 08 2005

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

[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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based immigrant visa petition. On further review, the director determined that the petitioner was not eligible for the visa preference classification. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke (NOIR) the approval of the preference visa petition and his reasons therefore, and subsequently exercised his discretion to revoke the approval of the petition on September 15, 2004. The petition 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), to perform services as a domestic missionary. 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 or that the beneficiary was qualified for the position within the organization.

On appeal, counsel submits a brief.

Section 205 of the Act, 8 U.S.C. § 1155, states that the Secretary of the Department of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Id.*

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 has established that the beneficiary was continuously employed in a qualifying religious vocation or occupation for two full years 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.

The petition was filed on September 28, 1998.¹ Therefore, the petitioner must establish that the beneficiary was continuously working as a domestic missionary throughout the two-year period immediately preceding that date.

¹ In his decision, the director stated that the petition was filed on September 30, 1998. However, the date stamped on the petition indicates that it was received on September 28, 1998.

In a letter dated April 23, 1998, the petitioner's pastor, [REDACTED] stated that the beneficiary had worked as a deaconess with the petitioning organization from December 1994 to August 1997, and that she worked on a "full-time, voluntary basis. She attended American Theological Seminary where she was working towards completing her Deacon/Deaconess training." In a separate declaration, [REDACTED] stated that he was also president of the American Theological Seminary, and that the beneficiary's work with the petitioner "was done in order to fulfill her internship requirement to obtain her post-graduate degree from the seminary." [REDACTED] also stated:

Her concurrent study/work program greatly enhanced her ability as a deaconess, and in reward for her outstanding service she was given a position at the Evangelical Presbyterian Church of America, and now is being offered a full-time, salaried position at [the petitioning organization].

The petitioner also submitted an April 24, 1998 letter from [REDACTED] the administrator of the Evangelical Presbyterian Church of America, who stated that the beneficiary "has worked at our church from September 1997 to the present as a Deaconess of our church." The administrator also stated that the beneficiary worked seven days a week for approximately 54 hours, but did not indicate the terms of the beneficiary's employment with the church. The petitioner submitted a copy of a May 17, 1997 "deaconess certificate" issued to the beneficiary by the American Theological Seminary.

The petitioner stated that the duties of the proffered position include leading prayer meetings, Bible study, witness training, and the "caring ministry" for the poor and sick; and directing the ministries of "financial support to missionary candidates," "support to the missionaries of third world countries," "evangelizing South Korean and North Korea," and the ministry of the petitioner. The petitioner also stated that the domestic missionary "works without compensation until legally authorized to work in the United States."

The petitioner submitted no documentary evidence to corroborate the beneficiary's employment 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)).

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.

In her letter accompanying the response to the NOIR, counsel stated that the beneficiary worked "at the Evangelical Presbyterian Church to do mission work (requirement for ordination) and . . . received a \$200.00 month honorarium." Counsel references an April 1, 2001 letter as support for her statement; however, the record does not contain such a document and no other evidence in the record supports counsel's statement. 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). Further, the petitioner submitted no documentary evidence to corroborate any compensation received by the beneficiary from the Evangelical Presbyterian Church.

The record also contains an affidavit dated September 27, 2000 from the beneficiary's brother and sister-in-law who stated that they supported the beneficiary and her family while she was studying at the seminary. The record contains copies of what appear to be bank passbooks, which the affiants state corroborate their support for their sister. However, these documents are in Korean and are not accompanied by an English translation as required by the regulation. See 8 C.F.R. § 103.2(b)(3). Further, the bankbooks do not, by themselves, establish that the beneficiary received any money for her support from her family.

Furthermore, the record clearly indicates that, during a portion of the two-year qualifying period, the beneficiary was attending school for the purpose of obtaining a certificate as a deaconess. Her work with the petitioner and with the Evangelical Presbyterian Church was part of that training. A person in training for a profession or occupation is not working in that profession or occupation. The record reflects that the beneficiary received her certificate as a deaconess in May 1997, and began her association with the Evangelical Presbyterian Church as a deaconess in September of that year.

The petitioner submitted no evidence of the duties performed by the beneficiary as a deaconess with Evangelical Presbyterian Church. The record, therefore, does not establish that the duties of the domestic missionary are the same or similar to the duties that the beneficiary performed with the Evangelical Presbyterian Church.

In her letter accompanying the NOIR and again on appeal, counsel asserts that the statute does not require the beneficiary to have been working in the same occupation, vocation or profession for which he or she seeks entry into the United States. Counsel argues that the CIS requirement that the alien's qualifying work experience must be in the same position for which classification is sought constitutes "impermissible rulemaking on the part of the Service." According to counsel:

In fact, the statute is silent as to requiring that the continuous experience be in [the] same position. The statute makes reference to performing the vocation, professional work, *or other work* [Emphasis added by counsel]. Adding a requirement of the occupation being the same position would be plainly inconsistent with this regulation.

Counsel's argument is without merit. The statute clearly states that the alien must be seeking entry into the United States in order to work for the organization in a religious vocation or occupation and "has been carrying on *such* vocation, professional work, or other work continuously for at least the 2-year period" [Emphasis added] immediately preceding the filing of the visa petition. The regulation at 8 C.F.R. § 204.5(m)(1) states that the religious worker "must have been performing *the* vocation, professional work, or other work continuously . . . for at least the two-year period immediately preceding the filing of the petition." [Emphasis added].

Counsel further states:

The only reading of the statute that would allow for the enforcement of the rule the Service is intending to enforce would be if the statute had read "performing the vocation, professional or other work." Read this way, the statute [sic] would suggest that the experience would be required to come from a singular position. However, the language of the statute specifically carves out an exception for other work relating to the religious position. A plain reading of the statute suggests that the work performed prior to the date the petition was submitted, must only be related to the religious position.

Counsel misreads the requirements of the statute and regulation. Counsel asserts that the "only reading of the statute that would allow for the enforcement of the rule the Service is intending to enforce would be if the

statute had read 'performing the vocation, professional or other work.' Read this way the [statute] would suggest that experience would be required to come from a singular position." As this is, in fact, the specific language used in the statute, counsel's argument is clearly unfounded.

Counsel argues in the alternative that the beneficiary's prior work experience was clearly in a similar position to that of the proffered position. Counsel states, "A deaconess, by the strictest definition, is one of the laypersons elected by a church with congregational polity to serve in worship, in pastoral care, and on administrative committees." Counsel references a provision from *The Form of Government of the Associate Reformed Presbyterian Church*, which describes the role and qualifications of the deacon within the church structure. Counsel further states:

A Domestic Missionary is an individual relating to mission work of, relating to, or originating within one's own country. A mission is a ministry commissioned by a religious organization to propagate its faith or carry on humanitarian work. It is the duty of the Domestic Missionary to tend to the spiritual growth and ministry of the local church and the local areas near to [sic] the church. This position is a specific duty of one of the officials or deacons of the church. This position is not available to laypersons or other workers within the church, but exclusively to members of the deaconate.

Counsel submitted no documentary evidence to support her statements. See *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. We note particularly that *The Form of Government of the Associate Reformed Presbyterian Church* does not describe the role or qualifications for a "domestic missionary" within the church structure. Counsel asserts that the title of "domestic missionary" is a "simplification of titles. The title is still that of a Deaconess, only that the title reflects the specific duty that has been selected for her to uphold."

Nonetheless, the record reflects that the beneficiary was in training to be a deaconess during the majority of the qualifying two-year period, and did not work in the religious occupation. Further, the petitioner submitted no documentary evidence, such as canceled paychecks, pay vouchers, verified work schedules or other documentary evidence to corroborate any work by the beneficiary during the two years prior to the filing of the visa petition. *Matter of Soffici*, 22 I&N Dec. at 165.

Counsel asserts that seminary studies and pastoral counseling are permitted to establish the two-year qualifying experience. As support for this position, counsel cites to section 42.32 of the Foreign Affairs Manual (FAM). The FAM, which the United States Department of State uses to administer consular visa processing, is not binding on Citizenship and Immigration Services in the administration of the Act. The statute and regulation clearly require two years experience in the religious occupation for the two years immediately preceding the filing of the petition. Section 203(b)(4)(iii) of the Act, 8 U.S.C. § 1153(b)(4)(iii); 8 C.F.R. § 204.5(m)(3)(ii)(A).

The evidence does not establish that the beneficiary was continuously employed as a domestic missionary or deaconess for two full years prior to the filing of the visa petition.

The second issue on appeal is whether the petitioner established that the beneficiary was qualified for the position within the organization.

In her letter of September 15, 1998 accompanying the petition, counsel stated that the position required a degree from a theological seminary. The director determined that the evidence did not establish that the beneficiary met this qualification. We withdraw this determination by the director.

Although counsel stated that the position required a specific educational achievement, the evidence does not support the requirement stated by counsel. Further, the evidence reflects that in May 1997, the beneficiary received a certificate as a deaconess from the American Theological Seminary after completing two years of course work.

The evidence is sufficient to establish that the beneficiary was qualified for the position within the organization at the time the petition was filed.

Beyond the decision of the director, the petitioner has not established that it has the ability to pay the beneficiary the proffered wage. This deficiency constitutes an additional ground for which the petition may not be approved.

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.

The petitioner indicates that it will pay the beneficiary \$2,000 per month. As evidence of its ability to pay this wage, the petitioner submitted a copy of its budget for 1997, and a copy of its "statement of accounts" for 1995-1996. The record also contains a copy of the petitioner's "Balance Sheet of 1998 & 1999, and the Budget of 2000," and copies of its monthly checking accounts for April through August, and October through December 2000.

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.

The evidence does not establish that the petitioner had the continuing ability to pay the beneficiary the proffered wage.

Additionally, beyond the decision of the director, the petitioner failed to establish that it had extended a qualifying job offer to the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

The record reflects that the petitioner offered the beneficiary a contract to run from October 1, 1998 to October 1, 2001. The petitioner therefore did not extend an offer of a permanent position to the beneficiary. The petitioner's offer of employment to the beneficiary does not meet the requirements for this preference based immigrant visa petition. This constitutes an additional ground for which the petition may not be approved.

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.