



U.S. Citizenship
and Immigration
Services



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FILE: LIN 04 111 50597 Office: NEBRASKA SERVICE CENTER Date: SEP 12 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:

SELF-REPRESENTED

INSTRUCTIONS:

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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 employment-based immigrant visa petition was denied by the Acting Director, Nebraska Service Center, and 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 minister. The director determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization. The director also 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, that the beneficiary was qualified for the position within the organization, that the petitioner had extended a qualifying job offer to the beneficiary, or that it had the ability to pay the beneficiary the proffered wage.

On appeal, the petitioner 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 first issue on appeal is whether the petitioner established that it was 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.

The petitioner must either provide verification of individual exemption from the Internal Revenue Service (IRS), proof of coverage under a group exemption granted by the IRS to the denomination, or such documentation as is required by the IRS to establish eligibility as a tax-exempt nonprofit religious organization. Such documentation to establish eligibility for exemption under section 501(c)(3) includes: a completed IRS Form 1023, a completed Schedule A attachment, if applicable, and a copy of the articles of organization showing, *inter alia*, the disposition of assets in the event of dissolution.

The organization 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 ██████████ 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 a letter from the director of ethnic ministries for Conservative Baptist Northwest, stating that Conservative Baptist Northwest and "the affiliated churches are covered under the provision of sections 501(c) according to a ruling, dated September 12, 1950." The petitioner did not submit a copy of the IRS ruling or evidence that it was covered under the ruling. The petitioner also failed to submit the required documentation in response to the director's request for evidence (RFE) dated November 24, 2004.

On appeal, the petitioner submits a copy of its articles of incorporation and a February 26, 1965 letter from the IRS to the Conservative Baptist Association of America, granting that organization and its affiliates tax-exemption under section 501(c)(3) of the IRC as organizations operated exclusively for religious purposes. The petitioner also submitted a copy of a February 22, 2005 letter from the Conservative Baptist Association of America, indicating that the petitioner is covered under the group exemption granted to the Conservative Baptist Association of America.

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

The record before the director did not establish that the petitioner was a bona fide nonprofit religious organization.

The second issue on appeal is whether the petitioner established that the beneficiary 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 March 8, 2004. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister throughout the two-year period immediately preceding that date.

The petitioner submitted no evidence of the beneficiary's prior work experience with the petition. In his RFE, the director instructed the petitioner to:

Submit evidence which establishes 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 in a paid position. Submit copies of W-2 forms or other documentation which establishes the job position and the remuneration for services.

In response, the petitioner submitted a letter stating that the beneficiary is authorized to carry out the duties of a minister, and set forth those duties. The petitioner submitted no documentary evidence of any work performed by the beneficiary 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)).

On appeal, the petitioner submitted copies of the years 2002 and 2003 Forms W-2, Wage and Tax Statements, issued to the beneficiary by the [REDACTED] and a copy of a 2004 Form W-2 issued to the beneficiary by the petitioner. The petitioner also submitted copies of the beneficiary's Forms 1040, U.S. Individual Income Tax Returns, for the years 2002 and 2003; a letter from the Director of Ethnic Ministries for Conservative Baptist Northwest, [REDACTED], stating that the beneficiary had been a member of the organization since November 2001, and had assumed pastoral duties with the First Baptist Church of Gladstone, Oregon on January 1, 2002; and a letter from the petitioner's board of deacons, who stated that the beneficiary has been a part of the church's "ministry team" for the past two years.

As noted above, the petitioner submitted none of this documentation with the petition or when requested to do so by the director in his RFE. Therefore, the AAO will not consider evidence submitted for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764; *Matter of Obaigbena*, 19 I&N Dec. 533.

The record before the director did not establish that the beneficiary had worked continuously in a qualifying religious occupation or vocation for two full years preceding the filing of the visa petition.

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

With the petition, the petitioner submitted no evidence of the requirements of the position or of the beneficiary's qualifications. The petitioner's letter of November 28, 2004, submitted in response to the RFE, stated that the beneficiary was "called and licensed by the church" to carry out the duties of minister. The petitioner submitted a copy of a certificate of license that it issued to the beneficiary on July 1, 2003. This certificate certifies that the beneficiary has been licensed to preach and to "exercise his gifts in the work of the Ministry."

On appeal, the petitioner submits a letter [REDACTED] stating that the beneficiary had completed the professional religious training at the [REDACTED] prior to working at the church in Gladstone. The petitioner also submits a copy of the beneficiary's 2001 certificate of graduation from the [REDACTED] along with a transcript of the coursework. It is noted that the certificate and transcript are not accompanied by an English translation as required by the regulation. 8 C.F.R. § 103.2(b)(3). Nevertheless, the evidence sufficiently establishes that the beneficiary is qualified for the position within the organization.

The fourth issue is whether the petitioner established 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 petitioner submitted no evidence of this regulatory criterion with the petition or in response to the RFE. On appeal, the petitioner submits a copy of a July 1, 2003, "ministry covenant," signed by the beneficiary and members of the petitioning organization. The agreement states that the beneficiary is expected to work full time in the position and that he would be compensated at the rate of \$30,000, including salary, health insurance, and lodging.

Again, however, as the petitioner failed to submit this documentation when given an opportunity, the AAO will not consider it on appeal. *Matter of Soriano*, 19 I&N Dec. 764; *Matter of Obaigbena*, 19 I&N Dec. 533.

The record before the director did not establish that the petitioner had extended a qualifying job offer to the beneficiary.

The final 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.

The petitioner submitted no evidence of this criterion with the petition or in response to the RFE. On appeal, the petitioner submitted a copy of a Form W-2 that it issued to the beneficiary in 2004, reflecting wages paid of approximately \$16,915. The petitioner also submitted a February 22, 2005 letter from its bank, stating that the petitioner maintains two accounts with the bank with a current balance totaling approximately \$64,126, copies of its March 31, 2004 and January 31, 2005 balance sheets, a copy of its 2004-2005 proposed budget, and copies of its "payroll history reports" for the years 2003 through 2005.

The regulation states 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. See 8 C.F.R. §§ 103.2(b)(8) and (12). 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).

As discussed previously, 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. *Matter of Soriano*, 19 I&N Dec. 764; *Matter of Obaigbena*, 19 I&N Dec. 533. 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.

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.