



U.S. Citizenship
and Immigration
Services

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FILE:

WAC 04 236 50394

Office: CALIFORNIA SERVICE CENTER

Date:

SEP 23 2005

IN RE:

Petitioner:

Beneficiary:

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:

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.

Maui Johnson

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 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 at ██████████ Assembly of God Church, Oxnard, California. The director determined that the petitioner had not established the church's ability to pay the beneficiary's wage, or that the beneficiary had the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition.

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 petition was filed on August 26, 2004, and signed by Rev. Leka K. Vaotua, identified as senior pastor of "the church in Oxnard."

The first issue concerns the petitioner's ability to pay the beneficiary's wage. The regulation at 8 C.F.R. § 204.5(g)(2) states:

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 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.

The petitioner's initial submission did not include any financial documents, and the petitioner did not specify the salary offered to the beneficiary. Obviously, we cannot determine the petitioner's ability to pay the beneficiary's salary until we know the amount of that salary.

On March 16, 2005, the director instructed the petitioner to submit the evidence listed at 8 C.F.R. § 204.5(g)(2). In response to the director's request for evidence, the petitioner submits copies of new letters from [REDACTED] identified as pastor of [REDACTED] Assembly of God Church, Oxnard, California. This individual appears to be the same person as senior pastor [REDACTED] of the petitioning church, but the petitioner does not explain the variant spelling of the surname [REDACTED].

One of the new letters reads as follows:

This letter is to verify that [REDACTED] Assembly of God Church in Oxnard, CA., is a non-profit organization and there is no payroll. All groups and positions are operated on volunteer basis only. Which includes [the beneficiary].

We are supported by the gifts and donations.

The assertion that the beneficiary is, and evidently will continue to be, a "volunteer" at a church with "no payroll" does not lend itself to the conclusion that the petitioner is able to support the beneficiary.

The petitioner did not submit the documents requested by the director. Instead, the petitioner has submitted a copy of a bank statement, showing that the Oxnard church had a bank balance of \$2,200.36 as of November 30, 2004 and \$1,685.30 as of December 31, 2004, with two deposits totaling \$1,431.00 and four debits totaling \$1,946.06.

The director concluded that the petitioner had failed to establish its ability to pay the beneficiary's wage. On appeal, the petitioner submits an "Income Summary" for the Oxnard church, signed by treasurer [REDACTED] and [REDACTED]. This statement indicates that the church took in \$7,289.66 in April 2005, \$8,571.60 in May 2005, and \$6,685.24 in June 2005.

The above-cited regulation at 8 C.F.R. § 204.5(g)(2) 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 evidence. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Apart from having no documentary corroboration, the "Income Summary" fails to show how much of that claimed income remains after the church's expenses. The fact that the Oxnard church collects donations does not compel the presumption that the beneficiary receives any of those donations, let alone enough money to support him completely.

The alien must seek to enter the United States *solely* for the purpose of working as a minister. See 8 C.F.R. §§ 204.5(m)(1) and (4), and section 101(a)(27)(C)(ii)(I) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(I). Counsel

does not contest that the beneficiary has "an additional job somewhere else." The beneficiary has clearly relied on outside employment thus far, and nothing in the record suggests that this reliance on outside employment would cease if the petition were approved. There is no indication that the church in Oxnard will cease to be an entirely "volunteer" operation with "no payroll." We shall discuss the beneficiary's "additional job" in further detail below.

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 experience in the religious vocation, professional religious work, or other religious work. As noted above, the petition was filed on August 26, 2004. Therefore, the petitioner must establish that the beneficiary was continuously carrying on the vocation of a minister throughout the two years immediately prior to that date.

██████████ president and founder of the petitioning church in Hacienda Heights, California, states "the church has employed [the beneficiary] for the last two years as an assistant minister of the church." Rev. ██████████ who uses the letterhead of the Hacienda Heights church but is identified as "Senior Pastor of The Church in Oxnard, CA," states that the beneficiary "has been carrying [on] this vocation . . . continually for the past two years and seeks to enter the USA to work solely as a minister of that denomination."

The petitioner submits a copy of the beneficiary's Certificate of Ordination, issued by Rev. Muasau in 1988, but no documentary evidence of the beneficiary's employment during the 2002-2004 qualifying period. The beneficiary's passport, issued in 1987, identifies the beneficiary as a "motor mechanic."

The director requested "evidence of the beneficiary's work history beginning **26 AUGUST 2002** and ending **26 AUGUST 2004** only." The director also requested evidence of the beneficiary's compensation during that time. In response, the petitioner submitted ██████████ letter (discussed above) indicating that the church has "no payroll" and is staffed entirely by volunteers. The petitioner also submitted copies of Form W-2 Wage and Tax Statements issued to the beneficiary in past years. These Forms W-2 show the following wages paid to the beneficiary during the years listed:

██████████ News	\$24,932.20	2001
Donahue Transportation Service	23,270.86	2001
	60,453.30	2002
	48,325.55	2003
	50,750.67	2004
Alphs Grocery Company	837.00	2003

The director, in denying the petition, stated the beneficiary's substantial secular employment does not appear to be consistent with a finding that the beneficiary has continuously worked in the vocation of a minister during the 2002-2004 qualifying period.

On appeal, as noted above, counsel maintains that the beneficiary "has been carrying out the vocation of minister full time on voluntary basis despite having an additional job somewhere else." The senior pastor of the Oxnard church, whose name this time is spelled ██████████ states that the beneficiary "has been

carrying [on] the vocation of religious ministry for more than two years as a volunteer in our Church,” but the petitioner offers no new documentation or other evidence to overcome the director’s findings.

We concur with the director that the beneficiary’s documented past employment does not suggest continuous employment as a minister. The beneficiary’s income from Donahue Transportation Service, in particular, suggests full-time employment with that company. The exact nature of that work is not specified in the record, but we recall, here, the “motor mechanic” designation on the beneficiary’s passport. It is clear that the beneficiary has engaged in substantial secular employment throughout the qualifying period, and we have only unsupported after-the-fact claims that he worked as a minister at the same time. Also, given the admittedly “volunteer” nature of the church, we cannot reasonably conclude from the available evidence that the beneficiary seeks to work *solely* as a minister as the statute and regulations require.

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.