

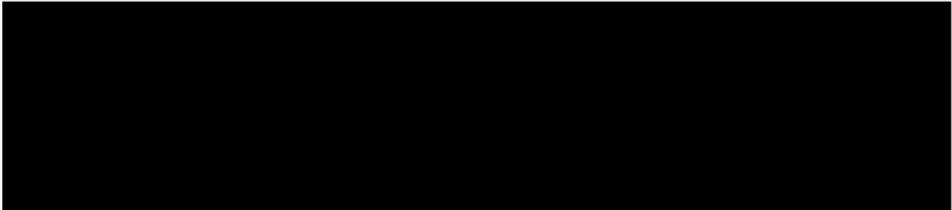
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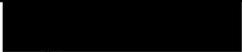
U.S. Citizenship
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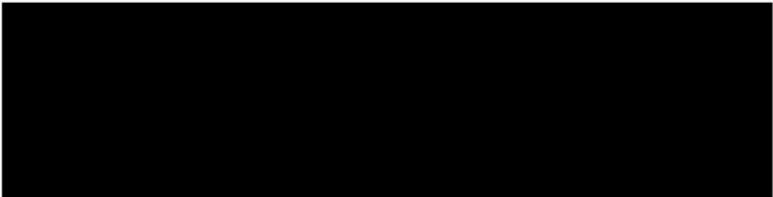
Petitioner:
Beneficiary



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska 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 Presbyterian 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 pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a pastor immediately preceding the filing date of the petition.

On appeal, counsel argues that the director should have considered the beneficiary's pre-ordination experience.

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 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. The petition was filed on November 16, 2004. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a pastor throughout the two years immediately prior to that date.

In a letter accompanying the initial filing of the petition, counsel states:

[The beneficiary] has been performing as a religious worker for more than two years. She has been an active member of the First Presbyterian Church of Miami since January 1998 and has been employed as Director of Pastoral Care since August 2002. On October 10, 2004 she was ordained under the provisions of the Constitution of the Presbyterian Church (USA) having been approved by the Presbytery. . . .

[The petitioner] has offered [the beneficiary] the position of Pastor on a permanent basis. In this position she will perform activities which related [sic] to the traditional religious functions of a Pastor.

[REDACTED] the petitioner's clerk of session, provides further details:

[The beneficiary] has been employed by the First Presbyterian Church of Miami, Florida, as its Director of Pastoral Care. As such she provides spiritual/emotional support to the members of the congregation . . . and develops a comprehensive program involving worship and religious assistance for its members. She provides counseling in bereavement . . . as well as provide[s] premarital counseling. She also conducts Bible study workshops for children and adults and guidance to families to become better Christian members of the community. She also carries out pastoral calls/visitation of the sick and/or shut-ins. As time permits, she assists the minister in conducting worship services.

This fall, [the beneficiary] has been called to serve [the petitioning church]. . . .

As Pastor, [the beneficiary] will conduct religious worship and perform other spiritual functions as authorized by the Presbyterian Church USA. . . .

[The beneficiary] was ordained as the Minister of Word and Sacrament . . . on October 10, 2004.

A Certificate of Ordination in the record confirms the date of the beneficiary's ordination as October 10, 2004. Other documents indicate that the beneficiary was a full time student at South Florida Center for Theological Studies from August 2001 to June 2004. Earlier, the beneficiary (described as a lifelong Presbyterian) had attended Baptist and Lutheran seminaries.

On April 26, 2005, the director instructed the petitioner to submit copies of the beneficiary's Form W-2 Wage and Tax Forms and other evidence of the beneficiary's continuous employment during the two-year qualifying period. In response, the petitioner has submitted a supporting letter from [REDACTED] administrator of the church in Miami, repeating the essential details of [REDACTED] earlier letter and indicating that the beneficiary worked for the church in Miami "until she departed to take the position of Pastor of" the petitioning church. The petitioner has also submitted copies of Forms W-2 showing that the Miami church paid the beneficiary \$17,047.00 in 2002, \$23,658.00 in 2003 and \$14,640.50 in 2004. A copy

of a "Pastoral Call" form indicates that the beneficiary was called "to undertake the office of Pastor of [the petitioning] congregation, beginning November 18, 2004."

The director denied the petition on September 29, 2005, stating: "Although the supporting documentation asserts the beneficiary departed the First Presbyterian Church of Miami to take the position of Pastor of [the petitioning church], the record establishes the beneficiary continued to be paid by the First Presbyterian Church of Miami through 2004."

We find no contradiction in the accounts of the beneficiary's past and present employment. The earliest letters described the beneficiary's work in Miami in the present tense, and her work with the petitioner in the future tense. [REDACTED] correspondence, dated May 2005, indicated that the beneficiary had changed congregations. This is consistent with the November 2004 date provided in the "Pastoral Call" document. Also, the record contains nothing to indicate that the beneficiary worked in Miami through the end of December 2004. The Forms W-2 show that the Miami church paid the beneficiary less in 2004 than in 2003, which would be expected if the beneficiary left that church before the end of the year. Indeed, the 38% drop in annual totals suggests an absence of considerably more than six weeks during 2004. Therefore, we do not concur with the director's finding that the evidence places the beneficiary in Florida after she supposedly began working in Illinois, but at the same time this evidence appears to indicate an interruption in the beneficiary's compensation and, by implication, her work.

The record offers additional support regarding such an interruption. In her first letter, [REDACTED] states that the Forms W-2 from the Miami church cover "the time period of August 2002-August 2004 as requested." The director did not request Forms W-2 for "August 2002-August 2004"; rather, the director had requested evidence regarding "the two year period (November 16, 2002 through November 16, 2004)." Ms. [REDACTED] letter, therefore, suggests that the beneficiary's employment in Miami ended in August 2004, three months before the effective date of the beneficiary's call to serve as the petitioner's pastor. This would account for the low amount on the beneficiary's Form W-2 for 2004, and there is no other apparent reason for [REDACTED] to specify "August 2004" in this manner.

The director also stated:

The proposed employment position is that of Pastor with the petitioning entity. The record establishes that the beneficiary was ordained . . . on October 10, 2004. At the time the petition was filed with the Service, the beneficiary has only been ordained as a Minister for approximately one month. The petitioner indicates the beneficiary has been employed with their organization since fall 2004 although the record does not provide [evidence that] the beneficiary received authorization for employment with the petitioning entity. . . . The documentation of record reflects the duties of the proffered position differ from her employment as Director of Pastoral Care and therefore, the Service finds that the beneficiary has not been authorized or been performing the full duties of Pastor for the two years preceding the filing of the petition.

On appeal, counsel argues that the regulations do not require the beneficiary's past experience to be in the same capacity as the intended future employment. The regulations at 8 C.F.R. § 204.5(m)(1) and (3)(ii)(A) require that the beneficiary must have carried on *the* vocation or occupation, rather than *a* vocation or occupation, indicating that the work performed during the qualifying period should be substantially similar to the intended future religious work. The underlying statute, at section 101(a)(27)(C)(iii), requires that the alien "has been carrying on such . . . work" throughout the qualifying period. An alien who seeks to work in occupation A has not been carrying on "such work" if employed in occupation B for the past two years.

Counsel asserts that "the beneficiary's duties [in Miami] were ministerial in nature." This argument is not persuasive. While some of the duties the beneficiary performed in Miami may overlap with the duties of a minister, there are other key ministerial functions that the beneficiary was not authorized to perform until after her October 2004 ordination. This overlap is not sufficient to show that the beneficiary was, in effect, a pastor in Miami, as shown by 8 C.F.R. § 204.5(m)(2), which specifies that the definition of "minister" does not include a lay preacher not authorized to perform certain duties reserved for the clergy.

We note, here, that this decision is not a finding that the beneficiary is permanently ineligible for immigration benefits as a special immigrant religious worker. In July 2005, the petitioner filed a nonimmigrant visa petition seeking to classify the beneficiary as an R-1 nonimmigrant religious worker. This petition was approved. Once the beneficiary has accumulated two years of qualifying experience as a pastor, this ground for denial will no longer apply.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.