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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

PUBLIC COPY

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FILE: [Redacted]
EAC 04 055 51123

Office: VERMONT SERVICE CENTER

Date: **MAY 25 2006**

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.

Robert P. Wiemann, Chief
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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.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 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 an associate pastor.¹ The director determined that the petitioner had not established that the position qualifies as that of a religious worker.

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).

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 associate pastor. The regulation at 8 C.F.R. § 204.5(m)(2) defines minister as:

¹ The petitioner's letter of November 11, 2003 identifies the proffered position as that of both an associate pastor and a pastoral assistant. However, other documentation in the record indicates that the proffered position is that of an associate pastor.

[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 its letter of November 11, 2003, the petitioner listed the duties of the proffered position to include:

- Assist the senior pastor in planning, preparing and leading worship services, and performing religious rites and sacraments such as baptism, confirmation, and communion (10 hours/week);
- Visit the sick and homebound to offer spiritual guidance and assistance (10 hours/week);
- Plan, prepare and teach bible study classes and discipleship training groups (5 hours/week);
- Provide spiritual counseling to church members (5 hours/week);
- Assist clergy in planning, preparing and officiating religious ceremonies such as wedding, funeral, ordination/installation services (5 hours/week); and
- Coordinate programs such as community outreach programs, evangelism conferences; arrange religious educational and social programs for congregation (5 hours/week).

A further detailed schedule indicated that the position would require the beneficiary to lead the Sunday worship service for the children and youth and assist the senior pastor in other clerical responsibilities. The contract indicated that compensation for the proffered position is \$24,000 per year.

The petitioner further stated:

As an Associate Pastor, the holder of the proffered position must be a minister ordained by the Evangelical Church, displaying specific training and knowledge of doctrines and religious tradition of the Evangelical Church of Christian faith. Thus, we require at least three years of theological education and two years of membership in the Evangelical Church, in addition to a clear demonstration of Christian spirituality.

In response to the director's request for evidence (RFE) dated January 4, 2005, the petitioner stated that the duties of the position included planning, preparing and conducting worship services, and performing religious rites and services such as baptism, communion, weddings and funerals. On appeal, the petitioner submits a copy of its bylaws, which identifies seven ministerial "titles." The bylaws define an associate pastor as "A minister who is assisting the Senior Pastor on a temporary basis."

We find that the evidence submitted sufficiently establishes that the position of associate pastor is that of a religious worker within the meaning of the statute and regulation.

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.

On remand, the director should address whether the petitioner has established that the beneficiary has worked continuously as an associate pastor 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 December 18, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as an associate pastor throughout the two-year period immediately preceding that date.

In its November 11, 2003 letter accompanying the petition, the petitioner stated that the beneficiary had served as a “missionary performing pastoral duties on a full-time basis.” The petitioner submitted a September 30, 2002 “certificate of missionary” from the Overseas Missions Committee of the Korea Evangelical Holiness Church, “certifying” that the beneficiary “served as missionary” with that organization from January 15, 1995 “to present.”

The petitioner also submitted a November 10, 2003 letter from the secretary of the New York Conference of the Korea Evangelical Church of America, Reverend [REDACTED] who stated:

From 1995 to the present time, [the beneficiary] has been continuously performing pastoral duties of Christian minister and missionary on a full-time basis. He has planted churches, educated local church leaders, delivered sermons and religious talks, organized and taught Bible studies to the laity, provided counseling, visited the sick and assisted the impoverished, organized mission conferences and retreats, shared the Christian gospel with the local tribes, provided educational and medical care, etc.

Although Reverend [REDACTED] stated that the beneficiary performed “pastoral duties” on a full-time basis, he did not state whether the beneficiary was employed during this time frame or the terms and conditions of that employment. The petitioner also submitted copies of four photographs, two of which are dated, that it stated

were of the beneficiary conducting church services. However, these photographs alone do not establish that the terms and conditions of the beneficiary's work during the two year qualifying period. The petitioner submitted no other evidence with the petition to corroborate the beneficiary's employment during the qualifying 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)).

In response to the director's RFE, the petitioner resubmitted copies of the photographs and a March 18, 2005 letter from the [REDACTED] that purported to provide an hourly breakdown of the beneficiary's weekly activities from 1995 to the date of the letter. The petitioner submitted no other evidence such as canceled paychecks, pay vouchers or verified work schedules, to corroborate the beneficiary's employment during the qualifying two-year period. *See id.*

On remand, the director should address whether the petitioner has established that the beneficiary was continuously employed in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa petition.

Additionally, on remand, the director should address whether the petitioner has 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 indicates that it will pay the beneficiary an annual salary of \$24,000. As evidence of its ability to pay this wage, the petitioner submitted a copy of its year 2001 Form 990, Return of Organization Exempt from Income Tax, a copy of an unaudited financial report for 2000, and copies of its checking account statements for September and October 2002. These documents precede the filing date of the petition, December 18, 2003, and therefore are not probative of the petitioner's ability to pay the proffered wage as of that date.

On remand, the director should address whether the petitioner has established that it has the continuing ability to pay the proffered wage as of the filing date of the 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.