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U.S. Citizenship
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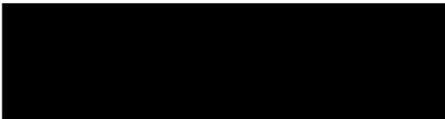


FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: APR 20 2007
EAC 05 170 50695

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

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.

Maura Deadrick
for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont 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 missionary. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a missionary immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary, or that the proffered position qualifies as a religious occupation.

On appeal, the petitioner submits a brief from counsel.

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).

In a letter dated June 2, 2004, [REDACTED], Pastor of the petitioning church, stated:

[The beneficiary] has been a member of this local church since February 24, 2001 until the present June 2, 2004.

During this time [the beneficiary] has ministered to the church and to the community very faithfully, volunteering 40 hours per week, his missionary duties include visiting families

with youth, providing programs, choir, Bible study and counseling for the youth and their families along with Bible study for the needy of the church. . . .

[The petitioning church] is prepared to employ [the beneficiary] upon approval of his work authorization documents.

The first issue we shall address concerns the nature of the position offered to the beneficiary. The regulation at 8 C.F.R. § 204.5(m)(2) defines "religious occupation" as an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

Citizenship and Immigration Services interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

A "Weekly Schedule" included in the petitioner's initial submission identifies the beneficiary's tasks as "Worship Service," "Sick and Shut-ins," "Homeless Ministry" and "Hospital Visitation."

On July 28, 2005, the director issued a request for evidence (RFE) instructing the petitioner to "submit evidence that establishes . . . that the beneficiary's primary duties in the proposed job require specific religious training beyond that of a dedicated and caring member of the religious organization." The director advised that the petitioner's initial submission "does not demonstrate that the beneficiary will be employed primarily as a religious worker."

The petitioner's response to the RFE includes a translated letter from [REDACTED], Minister at the Church of God Pentecostal M.I., indicating that the beneficiary worked at that church from 1996 to 1999, earning a salary for such duties as "family visit to teach the words of God, helping sick peoples, carried food to the children, teaching the Bible to members of our church" (*sic*). The same Colombian church issued a certificate in 1998, reflecting the beneficiary's completion of a "Biblical Education" course.

The petitioner's response includes a new letter from Bishop [REDACTED], reading in part: "Beneficiary's Duties entails witnessing, praying, and encouraging the both in the Bible and otherwise, helping with the Food Pantry and distribution of clothing . . . Talking to the Homeless and encouraging them to get help" (*sic*). In a separate letter, Bishop [REDACTED] stated: "there is no specific requirement training for Missionaries, however, after Work has begun, as Full Time Missionary, that Training will be required, for furtherance of Ministerial callings, if the Missionary so choose to excel further" (*sic*).

The director denied the petition, in part because the petitioner had not established that the beneficiary's intended tasks require specific religious training. On appeal, counsel argues that the beneficiary's position is traditionally a paid occupation within the petitioner's religious denomination. After careful and prolonged

consideration of this issue, the AAO finds that the “training” issue has received a disproportionate amount of weight in adjudications of special immigrant religious worker petitions. Obviously, when a given position clearly requires specific training, 8 C.F.R. § 204.5(m)(3)(ii)(D) requires the petitioner to show that the alien possesses that training; but the issue of training should not be a primary factor when considering the question of whether that position relates to a traditional religious function. Of greater importance is evidence showing that churches or other entities within a given denomination routinely employ paid, full-time workers in comparable positions, and that those positions do not embody fundamentally secular tasks, indistinguishable from positions with secular employers.

In the present proceeding, a church official in Colombia has indicated that the beneficiary formerly received payment for work similar to the duties of the proffered position. Those duties appear for the most part to be religious in nature, rather than custodial or administrative. The beneficiary’s performance of these tasks on a volunteer basis appears to derive from his lack of employment authorization, rather than from any denominational practice or tradition of delegating such tasks to unpaid volunteers from the congregation. Upon consideration, we find that the beneficiary’s duties, as described, appear to conform to the regulatory definition of a religious occupation. We withdraw the director’s finding to the contrary. There remains, however, the narrower issue of this particular job offer.

8 C.F.R. § 204.5(m)(4) requires the petitioner to set forth the terms of employment, and more generally to establish that a valid job offer exists. The same regulation indicates that the director may request additional evidence, including “the number of individuals currently receiving compensation,” in order to shed further light on “doubtful cases.”

In the denial notice, the director observed that the petitioner has not shown that it has ever employed any paid religious workers. Counsel, on appeal, states: “the fact that the Church in the past relied on volunteers is irrelevant.” We do not share this opinion. If the petitioning church has never had paid employees, and has heretofore relied on unpaid volunteers to perform the beneficiary’s intended functions, the question arises as to why this previously unpaid function is now to become a paid occupation. In *Matter of Rhee*, 16 I&N Dec. 607, 610 (BIA 1978), the Board of Immigration Appeals warned that “Congressional policy in the field of immigration could be readily circumvented by accommodating religious organizations.” We cannot ignore that the petitioner’s decision to begin compensating its missionary – and, apparently, only its missionary – coincides with that missionary’s desire to obtain immigration benefits. The relatively scant documentation submitted in support of the petition does not persuade us that a *bona fide* job offer exists. We affirm the director’s finding in this regard.

The final issue concerns the beneficiary’s prior experience. 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 May 21, 2005. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a missionary throughout the two years immediately prior to that date.

In the RFE issued July 28, 2005, the director instructed the petitioner to submit evidence to establish that the beneficiary worked continuously in the proffered position throughout the two-year qualifying period. The director also stated: "If the past experience was gained on a volunteer basis, submit evidence that explains how the beneficiary supported herself/himself." In response, Bishop [REDACTED] stated: "Prior to the filing of this petition [the beneficiary] has been a member from February 2001 through present 2003 [sic]. . . . Two years of experience in the religious vocation up to May 21, 2005." The petitioner submitted nothing to show how the beneficiary supported himself during the two-year qualifying period.

The director, in denying the petition, found that the petitioner had failed to establish that the beneficiary continuously worked for the petitioner during the two-year qualifying period. On appeal, counsel notes that the beneficiary worked for more than two years in Colombia in the late 1990s. The statute and regulations are clear: the two years of qualifying work must *immediately* precede the filing of the petition. Here, the period in question spans from May 2003 to May 2005. The beneficiary's work in 1996-1999 does not permanently entitle him to classification as a special immigrant religious worker. With respect to the 2003-2005 qualifying period, the petitioner has offered statements from a church official, who maintains that the beneficiary has been a member of the church since February 2001, and that the beneficiary has worked full-time for the petitioning church for several years. Bishop [REDACTED] statements are somewhat ambiguous in that he has never specified when the beneficiary began working for the church.

Counsel states: "The fact that his experience was gained on a volunteer basis does not prevent the [beneficiary] from qualifying as a special [immigrant] religious worker." This is not necessarily true; we must consider the circumstances. The Board of Immigration Appeals found that an alien did not qualify as a special immigrant religious worker in part because "[h]is religious duties, if any . . . have been of a voluntary nature delegated to him by the minister of the church. . . . He has been performing such services without compensation." *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

We must also consider that the beneficiary has, apparently, never been *employed* as a religious worker since 1999. He must, therefore, have had some other means of financial and material support during that extended period of time. The assumption is that the beneficiary has relied on other employment. *See Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963). In this context, it bears reiterating that the petitioner failed to comply with the director's instruction to "submit evidence that explains how the beneficiary supported herself/himself." 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). This returns us to the question of the validity of the job offer insofar as many questions remain about the beneficiary's past activities, as well as his intended future ones.

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.