



U.S. Citizenship
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FILE:

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Office: TEXAS SERVICE CENTER

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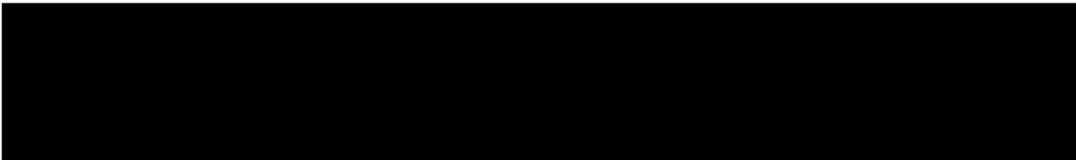
IN RE:

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas 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 alien beneficiary seeks classification 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 director of missions for Anchor of International Salvation, Inc. (AIS) in Miami, Florida. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a director of missions immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established AIS's ability to compensate the beneficiary at the rate offered.

On appeal, the petitioner submits a brief from counsel and additional documents.

Part 1 of the Form I-360 petition identifies AIS as the petitioner. Review of the petition form, however, indicates that the alien beneficiary is the petitioner. An applicant or petitioner must sign his or her application or petition. 8 C.F.R. § 103.2(a)(2). In this instance, Part 9 of the Form I-360, "Signature," has been signed not by any official of AIS, but by the alien beneficiary herself. Thus, the alien, and not AIS, has taken responsibility for the content of the petition. While another individual prepared the petition form, as shown on Part 10 of the Form I-360, the alien herself is the only party we can justifiably consider to be the petitioner. This will not affect the adjudication of the appeal, because the record shows that the attorney who filed the appeal represents both the alien beneficiary and AIS. Thus, the appeal has been properly filed.

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 October 24, 2005. Therefore, the petitioner must establish that she was continuously performing the duties of a director of missions throughout the two years immediately prior to that date.

██████████ President-Founder of AIS, stated that the petitioner “is a member of our staff since 2002 and has been contracted by this ministry performing the duties as Director of Missions for the Caribbean, Central and South America.” ██████████ added that the petitioner “receives a weekly salary of \$400.00.”

The petitioner’s initial submission contained no documentary evidence to support the above claims. Therefore, the director issued a request for evidence (RFE), requesting, among other things, pay stubs and other documentary evidence of the petitioner’s claimed past employment. In response, the petitioner submitted uncertified copies of her income tax returns for 2003 through 2005. These returns indicate that the petitioner earned \$6,400 in “Business income” in 2003, \$9,000 in “Business income” in 2004, and \$19,100 in “Wages, salaries, tips, etc.” in 2005. On each of these returns, the petitioner identified her occupation as “Minister.” The petitioner did not submit Forms W-2 or 1099 to identify the source of the income, nor did the petitioner submit Schedules C to provide more details about the “Business income.”

The petitioner also submitted a copy of an August 27, 2002 letter from ██████████ and AIS Secretary ██████████, indicating that the petitioner “has been receiving a weekly donation of \$200.00 from us.” This letter predates, by over a year, the October 2003-October 2005 qualifying period, and it cannot serve as evidence of payments during that period. This figure is outdated, as shown by ██████████ more recent reference to “a weekly salary of \$400.00,” reinforced by ██████████’s statement, in response to the RFE, that the petitioner “will be compensated with \$20,800 per year,” which is roughly equivalent to \$400 per week.

The director denied the petition, citing a lack of reliable evidence of continuous, full-time employment. The director noted that the amounts on the petitioner’s uncertified tax returns from 2003 and 2004 are too low to be consistent with full-time employment. On appeal, counsel states:

The problem with the officer denying the Immigrant Visa is that they want to define full time work only as a matter of salary according to secular professions. . . . The main issue here is that [the petitioner] is on a full time schedule (40 [hours] per week) . . . and she has decided to do it at her own cost. This is not a voluntary job meaning that there is no payment. She is receiving a payment of \$200 per week from the offering [AIS] collects from their services. This way of payment to religious workers is very common in religious circles. Catholics, Protestants and Pentecostals use this practice to pay their ministers and missionaries, who are willing to do a full time job for less than . . . full time pay.

Counsel's assertion on appeal that the petitioner "is receiving a payment of \$200 per week" is consistent with [REDACTED]'s August 2002 letter, but it contradicts [REDACTED] more recent assertion that the petitioner "receives a weekly salary of \$400.00." For obvious reasons, this confusion over the amount of the petitioner's alleged compensation does not inspire confidence that the petitioner receives such compensation at all. The complete absence of first-hand evidence of those payments, despite the director's request for such evidence, does nothing to remedy the situation. As we shall discuss later in this decision, [REDACTED] latest statements create further confusion with regard to the petitioner's compensation.

The petitioner, on appeal, submits Internal Revenue Service transcripts of the petitioner's 2003-2005 income tax returns, showing that the returns submitted in response to the RFE match the returns she filed in those years. The petitioner also submits copies of Schedules C, identifying AIS as the source of her business income in 2003 and 2004. If AIS had paid the petitioner \$400 per week, she should have reported \$20,800 in annual income. Even if AIS had paid her the smaller sum of \$200 per week, the tax returns should still have shown \$10,400 per year. The documents show, however, that the petitioner earned substantially less than \$10,400 in 2003 and in 2004, and less than \$20,800 in 2005. These figures, therefore, support the director's finding that AIS did not pay the petitioner at the full rate. It was not unreasonable for the director to deduce that the reduced pay was the result of a proportionally reduced work schedule, and nothing submitted on appeal refutes that conclusion.

The petitioner also submits copies of amended returns, executed in February 2007, "To add Anchor of Salvation to my income." The nature of the changes made is not clear, because the amounts on the amended returns match those on the original returns. Nevertheless, if the problem is a lack of *contemporaneous* documentation from 2003-2005, the petitioner cannot solve this problem by changing her tax returns several years after the fact.

The next issue concerns AIS's ability to pay the beneficiary's salary of \$400 per week. 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.

Because the petitioner's initial submission did not contain the required evidence, the director, in the RFE, quoted the documentary requirements spelled out in the above regulation. In response, [REDACTED] simply wrote, without further explanation, "N/A," meaning that the director's request for evidence of AIS's ability to pay was "not applicable." The ability to pay requirement is, in fact, applicable to all employment-based immigrant visa petitions that include a job offer requirement, which includes special immigrant religious worker petitions. See 8 C.F.R. § 204.5(g)(2), (m)(4). While AIS provided no documentation of its ability to pay the petitioner, [REDACTED] stated that the petitioner "will be compensated with \$20,800 per year."

The director found that the petitioner had submitted no evidence of AIS's ability to pay the petitioner. On appeal, counsel states: "we are submitting a letter from Anchor of International Salvation explaining that [AIS] is liable to and committed to pay the beneficiary's wages until she obtains permanent residence. . . . The fact that they have been consistent in their contribution to [the petitioner] until now is the best evidence of this factual reality."

In the new letter, [REDACTED] states that the petitioner "will be receiving a weekly donation/offering of \$200.00 from us. Our annual net income is \$3,527.44 and our annual gross income is \$120,762.25 for the year 2006." The petitioner submits no documentary evidence to substantiate these figures, and no explanation for AIS's explicit refusal to provide that information when the director first requested it. 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). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Furthermore, [REDACTED] does not explain the reversion to the 2002 pay rate of \$200 per week, when the same witness had previously indicated, repeatedly, that the petitioner was already receiving twice that amount. At the time of filing, the proffered rate was \$400 per week, and therefore the petitioner must establish AIS's ability to pay \$400 per week.

We quote, again, counsel's assertion on appeal: "The fact that they [AIS] have been consistent in their contribution to [the petitioner] until now is the best evidence of this factual reality." This argument would apply only if AIS had, in fact, "been consistent" in paying the petitioner the proffered amount, but this is demonstrably not the case. There is, in the record, no first-hand documentary evidence of any payment from AIS to the petitioner. The best available evidence seems to be the petitioner's tax returns, filed before she filed the present petition. Those tax returns indicate that the petitioner received, on average, about \$123 per week in 2003, about \$173 per week in 2004, and about \$367 per week in 2005. Either the petitioner was systematically underpaid, or there were significant interruptions in her paid work, or both. There is no evidence that AIS ever paid the petitioner the original proffered wage of \$400 per week. The evidence contradicts counsel's unsupported assertion that the petitioner has consistently received the proffered rate of compensation. On appeal, counsel and [REDACTED] refer to a lower rate of compensation, which would place the petitioner's 2005 remuneration above the proffered amount, but this revision is not an acceptable option. A petitioner may not make material changes to a petition that has already been filed in an effort to remedy apparent deficiencies. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm. 1998).

If the petitioner worked full-time throughout the qualifying period, then AIS was demonstrably unable (or unwilling) to pay her the full rate of compensation described in the initial filing and again in response to the RFE. If, on the other hand, the petitioner earned the full rate, but only intermittently, then her work was not continuous throughout the 2003-2005 qualifying period. The AAO cannot, from the available evidence, determine which of these scenarios comes closer to the truth, but it is not the AAO's burden to do so. It is sufficient for us to note that the petitioner has never earned the full amount that would have resulted from continuous employment at the stated rate, and the petitioner has responded to this fact by halving the claimed

rate of compensation and by arguing from the false premise that the petitioner *did* consistently receive full compensation.

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.