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U.S. Citizenship
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FILE:



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Office: NEBRASKA SERVICE CENTER

Date:

IN RE:

Petitioner:

Beneficiary:



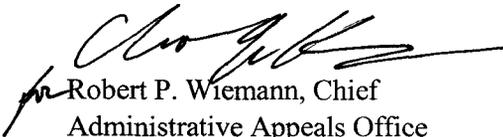
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 Baptist 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 missions pastor. The director determined that the petitioner had not established: (1) that the beneficiary had the requisite two years of continuous work experience as a missions pastor immediately preceding the filing date of the petition; (2) that it had made a qualifying job offer to the beneficiary; or (3) its ability to pay the beneficiary's full salary.

On appeal, the petitioner submits a letter from [REDACTED] Senior Pastor of the petitioning church.

We note that the record contains a Form G-28 Notice of Entry of Appearance as Attorney or Representative, naming attorney [REDACTED] as the beneficiary's attorney of record. There is no Form G-28, however, to indicate that [REDACTED] is the petitioner's attorney. Because the beneficiary of a visa petition is not an affected party, pursuant to 8 C.F.R. § 103.3(a)(1)(iii)(B), we consider the petitioner to be unrepresented.

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 . . . ; 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 cited grounds for denial all concern, to some extent, the beneficiary's compensation. We shall, therefore, consider these issues together rather than individually.

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 March 22, 2006.

8 C.F.R. § 204.5(m)(4) requires the intending employer to state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration). 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.

In a letter dated January 30, 2006, [REDACTED] stated that the beneficiary "has been an ordained Baptist Minister for several years, and, as mentioned, has been working as our full time pastor in R-1 status the last two+ years." He added: "We will pay [the beneficiary] \$21,386 a year for this full time position." The record contains a copy of a previous letter, dated July 16, 2003, that [REDACTED] had written in support of the R-1 nonimmigrant petition on the beneficiary's behalf. In the 2003 letter, [REDACTED] stated that the beneficiary "will receive \$24,000 per year. His health insurance is presently being addressed." Thus, the 2003 compensation rate is higher than the 2006 rate.

The petitioner's initial submission included copies of bank statements showing that the petitioner's monthly checking account balance fluctuated between \$14,000 and \$27,000 in late 2005. A church treasurer's report for January 1 through July 6, 2004, lists "Total Church Income" of \$215,725 and year-to-date spending of \$69,489 on "Church Staff: Salary & Benefits (Pastor, Assist. Pastor, Officer Manager, Assist. Office, Bookkeeper)." We note that the list of "Church Staff" does not specify a "missions pastor." We also note, however, that letters describing the beneficiary's earlier employment in the Philippines state the beneficiary's title as "Assistant Pastor."

Although the beneficiary has held an R-1 nonimmigrant visa permitting him to work for the petitioner since 2003, the petitioner initially provided no evidence of the beneficiary's remuneration before 2005. A Form 1099-MISC Miscellaneous Income statement indicates that the petitioner paid [REDACTED] \$13,753 in 2005, an amount substantially below the proffered wage. Copies of checks in varying amounts show that the petitioner paid [REDACTED] \$3,068.00 in November 2005, \$2,261.00 in December 2005, \$2,016.00 in January 2006 and \$2,140.72 in February 2006. The petitioner neither acknowledged nor explained the general downward trend in the listed amounts. The "Recipient's identification number" on the Form 1099-MISC matches the beneficiary's Social Security number.

On December 14, 2006, the director issued a request for evidence, instructing the petitioner to submit "evidence of the beneficiary's work history beginning January 18, 2004 and ending January 18, 2006," including evidence of compensation. It is not clear why the director used the date January 18 instead of March 22. The director also instructed the petitioner to provide financial documentation in compliance with 8 C.F.R. § 204.5(g)(2).

In response to the notice, the petitioner submitted a copy of a "Custom Summary Report" indicating payments totaling \$13,116.20 to [REDACTED] during 2006. Copies of three canceled checks payable to "[REDACTED]" in December 2005 and January 2006 total \$783.00. Older canceled checks from 2004 show the beneficiary's full name. The checks from 2004, issued by the petitioning church, do not show any fixed rate of compensation, but rather they reflect payments in seemingly arbitrary amounts and intervals.

The checks from 2005 and January 2006 were issued not by the petitioning church, but by Gospel Light Baptist Church, at the same address as the petitioning church but with a different telephone number. Some of the 2005 checks show monthly \$300 "love gifts" along with lower amounts for gasoline and other expenses. The checks from Gospel Light Baptist Church add up to less than \$4,000. The beneficiary himself signed the faces of most, but not all, of these checks, indicating that he had authority to write checks from the account of Gospel Light Baptist Church.

The checks show that Gospel Light Baptist Church issued checks under the beneficiary's full name as late as January 2006, but the petitioning church, at the same address, had begun issuing checks to "[REDACTED]" at least as early as November 2005. Thus, for a period of some months, two different churches in the same building were simultaneously paying the beneficiary under two variant names. The record contains no checks from the petitioner to the beneficiary (or [REDACTED]) for most of 2005.

A June 26, 2006 letter to the beneficiary from the Internal Revenue Service advised the beneficiary of "an error on [his] 2005 Federal Income Tax Return," because nonresident aliens cannot claim relatives as dependents. According to this letter, the beneficiary claimed adjusted gross income of \$8,888 in that year. This letter shows that the beneficiary filed a tax return for 2005, but the return itself is not in the record.

Documents from Cascade Vista Baptist School reflect tuition payments for the three children of [REDACTED] in 2005 and 2006. The documents do not identify the party that made the payments.

The director denied the petition on March 8, 2007, stating: "The beneficiary's proffered wages far exceed the amount actually paid, raising the question of whether the petitioner actually intends to pay the wage promised in the job offer." The director also found that the disparity between the proffered pay and what the beneficiary apparently received raised questions about the extent and continuity of the beneficiary's past work. The director concluded, furthermore, that the available evidence failed to show that the petitioner has consistently been able to pay the proffered wage.

On appeal, [REDACTED] claims that the checks issued to the beneficiary do not add up to the proffered salary because the beneficiary received some support in the form of tuition for his children rather than salary, and that "other churches contributed towards the support of" the beneficiary and his family. The only such church identified by name is Gospel Light Baptist Church.

In the original letter describing the job offer, [REDACTED] stated: "We will pay [the beneficiary] \$21,386 a year." Throughout this letter, [REDACTED] used the pronoun "we" to describe the petitioning church (e.g., "we are a bona fide nonprofit religious organization"), rather than an indeterminate number of local churches. He did not indicate, at the time, that other churches would share responsibility for the beneficiary's

compensation. The record contains no evidence from other churches to confirm the existence of such agreements, and no evidence that the beneficiary has ever reported income from other churches on his tax returns. As we have already noted, the beneficiary reported only \$8,888 in adjusted gross income in 2005.

The best evidence of employment at other churches consists of paychecks that, for the most part, the beneficiary issued to himself, from the account of Gospel Light Baptist Church at the same address as the petitioning church. The record does not clarify the relationship between the two churches or establish any standing agreement that the churches would share in the beneficiary's support. The available evidence does not show that the petitioner has lived up to the terms of employment, or has been or will be able to do so. We therefore affirm the director's findings regarding the job offer.

The evidence and letters the petitioner has submitted do not rule out the beneficiary's having worked full time as a minister throughout the two-year qualifying period; there is nothing that is disqualifying on its face. Nevertheless, the petitioner's burden is not simply to present a plausible claim of continuous employment, and the director was under no obligation to refute the petitioner's claims. The record does not establish that the beneficiary worked continuously as a minister throughout March 2004 to March 2006; his compensation was irregular and, usually, well below the proffered rate. The petitioner claims, on appeal, that contributions from other sources made up the difference, but this claim is unsubstantiated. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner apologizes, on appeal, "for not giving more thorough information." 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 above-cited regulation at 8 C.F.R. § 204.5(g)(2) states that evidence of ability to pay "shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements." 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). We therefore affirm the director's finding that the petitioner has not established its ability to compensate the beneficiary.

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.