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FILE:

WAC 06 133 52136

Office: CALIFORNIA SERVICE CENTER

Date:

AUG 28 2007

IN RE:

Petitioner:

Beneficiary:

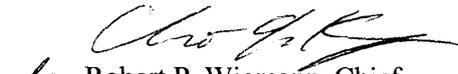
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California 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 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 sound engineer at Iglesia de Cristo, Escuela de Ministerios in National City, California. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience in the occupation immediately preceding the filing date of the petition.

On appeal, the pastor of the church provides a letter in support of the petition.

Part 1 of the Form I-360 petition identifies [REDACTED] 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 the church, but by the alien beneficiary himself. Thus, the alien, and not the church, has taken responsibility for the content of the petition. This will not affect the adjudication of the appeal, because the alien beneficiary's signature is on the Form I-290B Notice of Appeal. 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 March 30, 2006. Therefore, the petitioner must establish that he was continuously performing the duties of the position throughout the two years immediately prior to that date.

Notations on the Form I-360 petition indicates that the petitioner has been in the United States since January 1995; that he has no legal nonimmigrant status; and that he has never worked in the United States without permission. Because the petitioner had no employment authorization, these statements amount to an assertion that the beneficiary has never worked in the United States.

In a letter accompanying the initial filing, [REDACTED] of Iglesia de Cristo, Escuela de Ministerios stated that the petitioner “has a big responsibility in our P.A. s[y]stem department functioning as an engineer of sound.” [REDACTED] did not specify when this work began, or indicate that the church had heretofore paid the petitioner for his work. Rather, he stated that the church “will hire him to work full time,” once the petitioner attains lawful immigration status.

On June 15, 2006, the director requested “evidence of the beneficiary’s work history beginning March 30, 2004 and ending March 30, 2006,” including evidence of compensation. The director added: “If any work was on a volunteer basis, provide evidence to show how the beneficiary supported himself during the two-year period or what other activity the beneficiary was involved in that would show support.”

The response to the request included three letters from [REDACTED]. In one letter, the pastor repeated the assertion that, since some unspecified starting point, the petitioner has acted as a sound engineer/audio technician “in all our incorporated churches around the country.” In a second letter, [REDACTED] stated that his organization had “one hundred” volunteers, and “only our secretary is getting pay for a part time” position. In the third letter, he stated: “All this time [the petitioner] was getting the amount of \$800.00 monthly [from] the main church as a don[at]ion for his services. . . . Also he always [received] donations [from] the rest of our incorporated churches around the country.” The petitioner submitted no evidence to support these claims.

The director denied the petition on January 23, 2007, stating: “There was no evidence submitted to prove that the church had compensated the beneficiary in any form . . . volunteer work does not meet the requirements as full-time work.”

On appeal, [REDACTED] repeats the claim that the church paid the petitioner \$800 per month. He also asserts that, in October 2006 (after the qualifying period), the church officially employed the beneficiary at a salary of \$3,000 per month.

As with the response to the previous notice, the appeal contains no documentary evidence to show that the petitioner received any funds from the church – whether as “salary,” “donations,” or under some other name – during the March 2004-March 2006 qualifying period. The assertion that unnamed other churches in unidentified locations provided unspecified sums is, similarly, deficient.

We affirm the director’s decision that the petitioner has provided no evidence that he received any material support for his claimed work for the church during the qualifying period.

Beyond the director’s decision, other factors also prevent approval of the petition. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

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.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined at 8 C.F.R. § 204.5(m)(2). The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

Citizenship and Immigration Services therefore 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.

The petitioner’s position has been variously named as “sound engineer” and “audio technician.” Pastor Villatoro has indicated that the position’s duties include producing, recording, and editing various audio and video recordings, and “ordering . . . supplies for the Audio Dept.” The petitioner has not shown how this qualifies as a religious occupation, nor has the petitioner demonstrated that his duties are substantially different from those of an audio technician or sound engineer at a secular studio. The religious nature of the recorded content does not automatically qualify everyone working with the recordings as a religious worker.

Also, 8 C.F.R. § 204.5(g)(2) requires the petitioner to submit 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 has provided photocopied bank statements and other materials, but nothing that conforms to the regulatory requirements.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. §1361. For the reasons voiced by the director and the additional reasons enumerated in this decision, the petitioner has not met his burden of proof and the petition cannot be approved. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.