



U.S. Citizenship
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FILE:

EAC 99 065 53652

Office: VERMONT SERVICE CENTER

Date: FEB 27 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:

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, 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 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 pastor at East African United Church, a member of the Episcopal Diocese of Nevada. The director determined that the petitioner does not work solely as a pastor.

On appeal, counsel argues that the petitioner's secular employment resulted from financial exigencies rather than any deliberate intent on the petitioner's part.

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 8 C.F.R. § 204.5(m)(4), a religious organization seeking to employ an alien as a minister must 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 statute, already cited and quoted above, requires that the alien seeks to enter the United States solely to carry on the vocation of a minister.

The petitioner filed the petition on December 21, 1998. At that time, [REDACTED], Bishop of the Episcopal Church in Nevada, stated: "I have appointed [the petitioner] to be a Diocesan Missioner for the establishment of an East African Parish here in the Las Vegas area. He is in the process of forming such a

congregation, which will provide him with financial support and housing, overseen by the Diocese of Nevada.”

The director approved the petition on February 23, 1999 and the petitioner applied for adjustment to permanent resident status. During the adjudication of the adjustment application, the District Director, Las Vegas, instructed the petitioner to submit letters establishing his employment and financial support. In response, the petitioner submitted two letters. In a letter dated December 14, 2001, [REDACTED] Schori stated:

[The petitioner] is a priest serving in the Diocese of Nevada as pastor to the African Christian Ministry. . . . That congregation currently numbers about 30 persons.

[The petitioner] also serves in the Diocese of Nevada as associate pastor at St. Timothy’s Episcopal church in Henderson. . . . Neither the Diocese nor St. Timothy’s provides financial or housing support, but a number of individuals do provide financial support to his ministry with the African Christian Fellowship. . . .

I should note that the Diocese of Nevada has a long history of placing priests (and deacons) in pastoral roles without providing financial remuneration. It is the only way that the Episcopal church has been able to maintain a presence in many parts of the state.

[REDACTED], Human Resources Manager for Camden Development, Inc., indicates that the petitioner has worked “Full Time” as a “Security Officer” since July 30, 2001.

On October 16, 2002, the director informed the petitioner of the director’s intent to revoke the approval of the petition, based on the above information. In response, [REDACTED] states:

[The petitioner] originally came to this country in 1997 to work at St. Jude’s Ranch for Children in Boulder City, Nevada. He did work there, full-time, as a minister of the gospel, until the director there fired him in 2000. His employment was terminated for reasons that had to do with personality conflicts with the administrative director. . . . When his employment at St. Jude’s ended through no fault of his own, [the petitioner] was forced to seek other employment to support himself, which he has done. [The petitioner], however, has continued to serve as a minister of the gospel in two congregations of this Diocese.

The above statement implies that the beneficiary’s secular employment was a temporary exigency, a short-term interruption in an otherwise remunerative career in the church. [REDACTED] then, however, repeats and amplifies a previous assertion:

The Episcopal Diocese of Nevada has a long (nearly 30 year) history of providing sacramental ministry in congregations through the use of non-stipendiary clergy. That is the norm here in Nevada. We have a large number of small and rural congregations which are unable to pay for the services of full-time clergy. [The petitioner’s] ministry is clearly within

the mainstream of our deployment practices here. When a congregation grows to the point that it is in need of, and able to afford, the services of a full-time priest, a salary is paid by the congregation. . . . We fully expect that the African Christian Fellowship will continue to grow and eventually provide for the support of a priest.

stated that the diocese has, on occasion, provided various sums to the petitioner, but she did not claim that these amounts have been sufficient to support the petitioner.

, Canon to the Ordinary of the Diocese of Nevada, stated that “within a few years [the petitioner’s church] will be a financially independent entity.” Other witnesses attested to the petitioner’s dedication to his work, and the church’s dependence on his continued efforts. Witnesses also confirmed that the petitioner, like most Episcopalian clergy in Nevada, draws no salary.

The director revoked the approval of the petition on January 22, 2003, stating “it is evident from the beneficiary’s employment as a security guard that he did not enter the United States solely for the purpose of continuing his employment as a bona fide religious worker.” The director also stated: “it is apparent that the beneficiary cannot realistically meet the full-time employment requirements of this employment-based visa category.”

On appeal, counsel quotes section 101(a)(27)(C)(i) of the Act, which refers to the period of “at least 2 years immediately preceding the time of application for admission.” Counsel argues that, because the petitioner was admitted into the United States as an R-1 nonimmigrant on February 23, 1997, the only period subject to scrutiny is “the period of February 23, 1995 until February 23, 1997.” The “application for admission” is, however, a reference to the alien’s attempt to enter the United States as an immigrant (rather than as a nonimmigrant); in this respect, an alien in the United States who applies for adjustment of status is effectively applying for admission as an immigrant, notwithstanding that the alien is already present in the United States. It is for this reason that grounds of inadmissibility can bear on an adjustment application. Therefore, the regulations at 8 C.F.R. §§ 204.5(m)(1) and (3)(ii)(A) specifically tie the two-year period to the petition’s filing date, rather than to any prior nonimmigrant entry by the alien. Counsel’s interpretation of the statutory language cannot, and does not, supersede the plain wording of the binding regulations.

More significantly for our purposes here, the two-year prior experience requirement is separate from the requirement at section 101(a)(27)(C)(ii)(I) of the Act that the alien “seeks to enter the United States . . . solely for the purpose of carrying on the vocation of a minister.” An alien who works part-time as a minister, while also pursuing outside secular employment, does not meet the continuous employment requirement. *See Matter of Faith Assembly Church*, 19 I&N Dec. 391, 393 (BIA 1986). Counsel asserts that the petitioner “has never *not* been a full-time minister since being in the U.S.” (counsel’s emphasis). The record shows that the petitioner has never ceased to be a minister, but it does not show that such duties have always been full-time. We noted F’s statement: “When a congregation grows to the point that it is in need of, and able to afford, the services of a full-time priest, a salary is paid by the congregation.” Thus, before a congregation has grown to such a point, it is not yet “in need of . . . the services of a full-time priest.” While the petitioner submitted several letters in response to the notice of intent to revoke, not one of those letters specifically

indicated that the petitioner has worked full-time in his current posting, and certainly no evidence has surfaced to support such a claim.

Counsel continues: "The fact that he was required to obtain employment . . . as a security guard does not mean that his sole purpose for coming and remaining here was anything other than to continue his work as a minister" Counsel, here, relies on the semantic argument that because the petitioner intended to be a minister, and not a security guard, therefore the beneficiary's sole purpose for entry was to work as a minister. Once again, counsel's argument relies on a tenuous reading of the statute that fails to take into account the regulations. 8 C.F.R. § 204.5(m)(4) requires a showing that "the alien will be solely carrying on the vocation of a minister." The statutory and regulatory use of the term "solely" is significant here, as it precludes outside secular employment. Inasmuch as the petitioner is employed in a secular job, he is not "solely carrying on the vocation of a minister."

Also, Congress could have required only that the alien "seeks to enter the United States . . . for the purpose of carrying on the vocation of a minister." Instead, Congress used the adverb "solely." If Congress intended only a showing of intent to work as a minister, there would be no need to add the word "solely" to the statutory language. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. See *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d. 1289, 1295 (5th Cir. 1987). See also *Walters v. Metro. Educ. Enters.*, 519 U.S. 202, 209 (1997); *Bailey v. U.S.*, 516 U.S. 137, 145 (1995), which deal with specificities of statutory wording.

The record indicates that the petitioner's principal means of support is a full-time secular job as a security guard. His only church income derives from donations from some members of a congregation of "about 30 persons." [REDACTED] has explained that many of the clergy within the Diocese of Nevada are uncompensated, but the diocese made no such claim at the time the petitioner filed the petition. Rather, the petition was approved based, in part, on the assurance of [REDACTED]'s predecessor that the church "will provide [the petitioner] with financial support and housing." If this is no longer the case, then the circumstances conducive to approval of the petition no longer apply.

The assertion that the African Christian Fellowship may eventually be able to afford to pay for the petitioner's full-time services does not overcome the basis for revocation. If a petition is not currently approvable, changed circumstances after the filing date cannot retroactively cause eligibility. See *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971); *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm. 1998). We note, furthermore, that 8 C.F.R. § 204.5(g)(2) requires the intending employer to establish its ability to compensate the alien beneficiary. Speculation that the congregation will eventually be able to do so cannot suffice. Counsel, on appeal, concedes that the petitioner's "congregation and diocese could not support him." Counsel further contends that this situation is merely "temporary," but a particular situation need not be permanent in order to justify the denial of a particular petition. If the congregation is eventually able to serve as the petitioner's sole and full-time source of support, experience that the petitioner earns under those conditions can count toward the two-year requirement relating to a future petition. We cannot, however, ignore disqualifying circumstances in the present proceeding, based simply on the expectation that those circumstances will eventually change.

[REDACTED] repeated assertion that unpaid clergy are “the norm here in Nevada” does not resolve the issue. Eligibility does not rest on common practice among Episcopalians in Nevada; it is determined by the statute enacted by Congress, and the regulations that interpret and implement that statute. The law requires the petitioner to be engaged “solely” as a minister, and the diocese has stipulated that the petitioner’s current situation does not comply with that requirement.

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.