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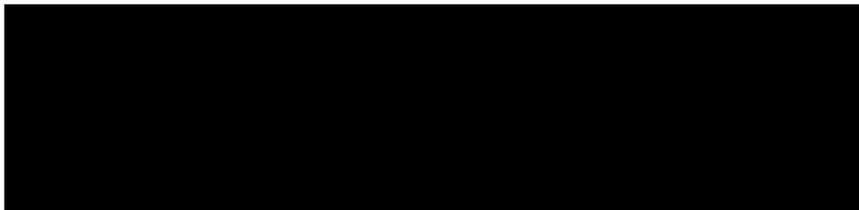
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U.S. Citizenship
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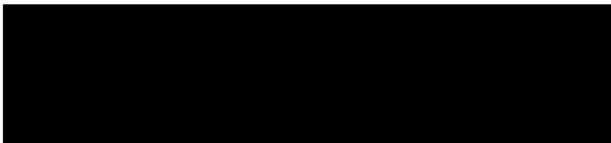
Office: VERMONT SERVICE CENTER

Date: JUN 07 2007

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.

Maury DeAdnick
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 (AAO) on appeal. The appeal will be dismissed.

The petitioner is a member congregation of Missionary 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 an assistant pastor. The director determined that the petitioner had not established that: (1) the beneficiary's position qualifies as a religious occupation; (2) the beneficiary had the requisite two years of continuous work experience as an assistant pastor immediately preceding the filing date of the petition; or (3) the petitioner had made a qualifying job offer to the beneficiary.

On appeal, the petitioner submits a brief from counsel and various exhibits including photographs and tax documents.

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 accompanying the initial filing, [REDACTED], Bishop and Senior Pastor of the petitioning church, stated:

With the growth of new families in our immediate community, we have a need for an assistant pastor who will assist in conducting our regular masses and services, conduct bible studies and prayer meeting[s] among our members, and officiate weddings, funerals and baptisms. The assistant pastor will minister in many different settings from the traditional

parish to prisons and hospitals. The assistant pastor will work seven days a week for a total of approximately 35 hours. . . .

The beneficiary has performed the function of a Deacon for the petitioner from September, 1996 until December, 2004.

In January, 2005, the beneficiary has been designated by the petitioner to perform the job of an assistant pastor. The beneficiary was recently awarded a certificate of ordination that qualifies him to perform the duties of a pastor. . . .

The Beneficiary is paid a weekly salary of \$250.00.

The first issue under consideration is whether the petitioner seeks to employ the beneficiary in a qualifying religious occupation or vocation. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

Religious occupation means 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.

The regulation reflects that positions whose duties are primarily administrative or secular in nature are not religious occupations that relate to traditional religious functions. 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.

The petitioner's initial submission included copies of certificates showing that the petitioner ordained the beneficiary as a deacon on September 22, 1996, and as an evangelist on June 3, 2004. The beneficiary joined UNIPAS International, the International Union of Pastors and Volunteer Chaplains, on June 19, 2004. All of these certificates were signed by [REDACTED], who was identified as the International President of UNIPAS International. The petitioner has submitted numerous other certificates, all signed or attested by [REDACTED].

On October 7, 2005, the director issued a request for evidence (RFE), instructing the petitioner to submit additional evidence regarding the training that led to the issuance of the beneficiary's certificates. In response, the petitioner resubmitted copies of the same certificates submitted previously. In addition, counsel described the beneficiary's duties in slightly more detail than [REDACTED] had in his previous letter.

The director denied the petition, stating that the petitioner had not established that the position offered to the beneficiary requires any special religious training. The director also asserted that a deacon is, by definition, a layperson who is not qualified to act as an assistant pastor, and that the record contains no evidence that the beneficiary has been properly ordained to perform ministerial functions.

On appeal, counsel states: "The beneficiary qualifies as an assistant pastor based on his ordination as an evangelist supported by an ordination certificate dated June 3, 2004. The beneficiary's ordination as an Evangelist is sufficient for the petitioner to install him as an assistant pastor. The beneficiary's extensive function as Deacon has qualified him for the ordination as an Evangelist."

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.

More to the point, it is not relevant whether or not the beneficiary's work as a deacon qualifies as a religious occupation, because the petitioner does not seek to employ the beneficiary as a deacon. The petitioner seeks to employ the beneficiary as an assistant pastor, with authority to perform functions typically reserved for the clergy, such as "officiat[ing] weddings, funerals and baptisms." The position, as described, fits the regulatory definition of the vocation of a minister. Nothing in the record contradicts or casts doubt on the description of the duties of the assistant pastor. Whether the beneficiary qualifies for the position is a crucial issue, but a separate one. We therefore withdraw the director's finding that the beneficiary's intended position does not qualify as the vocation of a minister.

Having made that finding, however, we turn now to the beneficiary's qualifications. 8 C.F.R. § 204.5(m)(3)(ii)(B) requires the petitioner to demonstrate that, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested.

As noted above, [REDACTED] has stated: "The beneficiary was recently awarded a certificate of ordination that qualifies him to perform the duties of a pastor." The petitioner did not provide a copy of a certificate of ordination as a minister or pastor. The petitioner did, however, provide a copy of the beneficiary's certificate of ordination as an evangelist. The beneficiary received that certificate about two weeks before he joined

UNIPAS, an organization of “Pastors and Volunteer Chaplains.” This could suggest that the beneficiary’s ordination as an evangelist qualified him as a “pastor,” but all of these credentials are from a single source, namely [REDACTED]. The petitioning church is subject, to some extent, to the authority of the Missionary Church and its governing documents. The petitioner has not established that the Missionary Church considers evangelists to be ordained ministers with authority to perform pastoral functions, or that the Missionary Church authorizes individual congregations to ordain their own clergy as [REDACTED] claims to have done. [REDACTED] has identified himself as a leading official of several purportedly international religious entities, but the record does not reflect the extent, if any, to which the Missionary Church has endorsed or recognized these roles undertaken by [REDACTED].

The record contains no evidence to show that the Missionary Church, as a denomination or through a designated local authority such as a district executive board, has authorized the beneficiary to perform the functions of clergy. The record also does not show that [REDACTED] has unilateral authority to issue such authorization on behalf of the Missionary Church. The petitioner has not shown that the beneficiary is qualified to hold the position offered.

The next issue concerns the beneficiary’s past 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 February 25, 2005.

As noted above, [REDACTED] stated that the beneficiary served as a deacon from September 1996 to December 2004, and as assistant pastor from January 2005 onward. The initial filing included no documentary evidence of the beneficiary’s past work. In a letter dated May 1, 2002, [REDACTED] described the beneficiary’s duties as a deacon:

The scope of [the beneficiary’s] duties as a deacon include spiritual guidance for new members of our congregation, teaching Sunday School classes, leading prayer meetings and vigils, spiritual counseling, preaching at youth group meetings, opening and closing of the building, policing premises during services, escorting handicapped individuals to and from [the] building and being an assistant to the pastor.

In the October 7, 2005 RFE, the director instructed the petitioner to submit additional documentation and information relating to the beneficiary’s claimed work during the two-year qualifying period, including evidence of the beneficiary’s compensation. In response, the petitioner submitted copies of canceled checks showing that the petitioner paid the beneficiary \$500 every two weeks from mid-July to mid-November 2005. The petitioner submitted no checks to show payments during the February 2003-February 2005 qualifying period. Unaudited financial statements indicate that the petitioner paid the beneficiary \$13,000 in 2003 and \$13,500 in 2004, but there is no contemporaneous evidence of those claimed payments.

On February 10, 2006, the director denied the petition, stating: "The record . . . does not establish that the beneficiary has the required two years of experience in the religious occupation." In context, it does not appear that the director questioned the beneficiary's church work during 2003-2005. Indeed, the director acknowledged that the petitioner's "financial statement for . . . 2004 indicates the beneficiary received \$13,500.00 for the year." Rather, in context, we interpret the director's finding to mean that the petitioner has not established that the beneficiary worked *as an assistant pastor* continuously during the two-year qualifying period. (This is consistent with the director's observation that a *deacon* is not a minister.) The petitioner had already stipulated as much, stating that the beneficiary did not become an assistant pastor until a matter of weeks before the filing date.

The petitioner's appeal contains no evidence to contradict the director's finding, and counsel's appellate brief never directly addresses the finding. We therefore affirm that finding.

The director's final finding is the most perplexing. The director quoted 8 C.F.R. § 204.5(m)(4), which 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). After quoting this regulation, the director stated:

[The petitioner's] Financial Statement for January 1, 2004 to December 31, 2004 indicates the beneficiary received \$13,500.00 for the year.

The record does not satisfactorily establish that the beneficiary has been given a valid job offer.

The decision contains no discussion of the reasoning underlying the director's conclusion. The director did not explain how this conclusion regarding the validity of the job offer follows logically from the observation that the petitioner claims to have paid the beneficiary \$13,500 in 2004. Because the director offered no logical foundation for this finding, it is hereby withdrawn.

At the time the petitioner filed the appeal, the petitioner did not indicate that further information or evidence would be forthcoming at a later time. Over a year later, the petitioner has submitted a new letter from [REDACTED] discussing the beneficiary's participation in a UNIPAS project that seeks "to lower the level of violence in the City of Newark, NJ." While we do not question the beneficiary's sincerity or motives, the new submission does not address, rebut, or overcome any of the stated grounds for denial, and therefore it does not change the outcome of the appellate decision.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely 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.