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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
EAC 06 091 51649

Office: VERMONT SERVICE CENTER

Date: JUN 20, 2007

IN RE:

Petitioner:
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:

[REDACTED]

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.

Maura Deadrach
fr 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 is a non-denominational Christian 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 elder. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as an elder immediately preceding the filing date of the petition.

On appeal, the petitioner submits a statement from its Senior Pastor, Rev. Bonnie J. Thomas.

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 February 7, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an elder throughout the two years immediately prior to that date.

In a letter submitted with the petition, [REDACTED] stated: "Since 1996 [the beneficiary] has been a member of the Church Board." In a separate letter, she indicated that the beneficiary "was made an Elder in the [petitioning] Church in September 2004."

In a "Personal Statement" accompanying the initial filing of the petition, the beneficiary describes his church work and his employment history:

In 1996, I was hired as the deputy general manager of Shine Tours in Los Angeles. In the year 2000, I was the service contract negotiator of [REDACTED] and helped the company establish [an] office in Los Angeles. During this period in America, I was also a staff member for the [petitioning church]. . . .

On September 18, 2004, I was ordained as the elder of [the petitioning] Church. . . .

In January 2005, I established my own company, [REDACTED] This company is now accomplishing more and more in just one year of operation.

On March 9, 2006, the director requested "evidence that establishes that the beneficiary has the continuous two years full-time experience in the religious . . . work for the period immediately prior to February 7, 2006." In response, [REDACTED] stated:

[The beneficiary] has been on the Church Board since summer of 1996. As of that time [the beneficiary] has worked for three other companies during his service in the Church. In September of 2004 it became clear that [the beneficiary's] calling was more than [that of] just a board member. At that time a vote was taken and the staff in agreement offered [the beneficiary] the Elder position at [the petitioning] Church.

Before June of 2004, [the beneficiary] was employed by the following Companies: [REDACTED] [REDACTED] in Los Angeles, and [REDACTED] In January 2005 [the beneficiary] established a company "[REDACTED]"

During this time because of the Government regulation we were unable to pay [the beneficiary] for his Church work however there were gifts made in a monetary form, and benefits in the form of life insurance and school care for their minor children. Also included [were] travel [reimbursement] and any provisions need[ed] for the performance of his duties.

[The beneficiary] worked on a volunteer basi[s] with the Church since 1996. . . .

Because of the ability of [the beneficiary] to [dedicate] full time service to the Church, we are able to expand our outreach, and begin our building program for a new Church, also programs of outreach to the community, a school, [and] an after school program. The location of the new school and Church will be in the State of Georgia. . . .

Up to this point we were unable to hire [the beneficiary] full time for two reasons, **(1)** because of laws requiring [the beneficiary] to work full time (40 hours or more) The elder position was limited to part-time **(2)** The position only open[ed] up over 2 years ago. . . .

[The beneficiary] and his family [are] willing to relocate to the state of Georgia, to begin the building program. . . .

[The beneficiary's] duties will be expanded as soon as he is allowed to work with the government's approval. A 40 hour work week will be broken down into three groups[:]

1. Construction of the new building
2. Church Meeting
3. Community Outreach

. . . The Church will provide for [the beneficiary] and his family needs. They will be living on the property the Church bought as f[u]ll time caretakers. All bills will be taken care of by the Church.

The translated minutes of a December 30, 2005 church meeting read, in part:

[The beneficiary and his family] are willing to move to Atlanta to build the new church. But because of [the beneficiary's] immigration status (does not have green card) due to the fact that his work (where the green card was being applied) laid him off before the application was complete. The church can't send him legally.

Church will support [the beneficiary] by applying [for] the green card for [the beneficiary] and his family. Thus sending [the beneficiary] legally.

A copy of the beneficiary's résumé lists numerous jobs in the travel industry, ending with his current position as chief executive officer of [REDACTED] a travel agency that the beneficiary operated from his residence. The petitioner submitted no evidence that it owns or controls the property where the beneficiary resided and operated his travel agency. The beneficiary claimed substantial deductions for home mortgage interest on his 1997-2005 income tax returns, indicating that he, not the church, was responsible for paying that mortgage. On those same tax returns, the beneficiary identified his occupation as "Tour Operator" and, in later years, "Travel Agent." He indicated no income from the church; on the contrary, he claimed additional deductions based on his contributions to that church. While the petitioner claims that it will provide lodging for the beneficiary in the future, the petitioner does not claim to have done so in the past.

The director denied the petition on June 9, 2006, citing the beneficiary's secular work as a tour operator and travel agent, as well as the absence of documentary evidence of full-time religious work. The director found that the petitioner had not established that the beneficiary continuously engaged in qualifying religious work throughout the 2004-2006 qualifying period.

On appeal, [REDACTED] states that the beneficiary has worked for the petitioning church "since 1995," but acknowledges that the beneficiary "has always worked at another job, [as] each board member does." [REDACTED] adds: "[I]n September of 2004 the staff wanted to allow [the beneficiary] to be put on staff . . . full time. Up to that time [the beneficiary] was on 24 hours call, and work[ed] no less than 25 hours of service to the church, service, travel and member training." The "25 hours of service" appears to refer to the beneficiary's church work per week.

The record does not show that the petitioner has ever met the beneficiary's basic material needs. Instead, the beneficiary supported himself and his family through his work as a tour operator and travel agent. In addition to the lack of compensation, for the first seven and a half months of the two-year qualifying period the beneficiary worked for the church only part time. The Board of Immigration Appeals determined that uncompensated, part-time work is not continuous for immigration purposes. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980). Sixteen and a half months of unremunerated work as an elder is not two years of continuous experience in the religious occupation in which the petitioner seeks to employ the beneficiary.

The record reveals a somewhat related issue, beyond the decision of the director. 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).

8 C.F.R. § 204.5(m)(4), subtitled "Job offer," requires the prospective employer to specify how the alien will be paid or remunerated, and to provide documentation that clearly indicates that the alien will not be solely dependent on supplemental employment or solicitation of funds for support. To date, the beneficiary appears to have been solely dependent on his work as a travel agent. Following the director's request for evidence to explain how the beneficiary would obtain "room and board, clothing, food and everyday living expenses," [REDACTED] claimed that the beneficiary will receive free housing and that the petitioner would pay the beneficiary's bills once the beneficiary moves to Georgia, but the petitioner describes that compensation in only the vaguest of terms. Even then, [REDACTED] seems to have contradicted her previous assertion that the beneficiary "will not receive compensation for his services."

The petitioner has therefore failed to set forth a coherent description of the terms of employment. The petitioner has also failed to submit financial documentation to establish its ability to meet those terms as required by 8 C.F.R. § 204.5(g)(2). The petitioner has done little more than voice its intent to acquire land in the Atlanta area, establish a church there, and allow the beneficiary to reside on-site.

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.