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

C₁



FILE:

WAC 06 213 52025

Office: CALIFORNIA SERVICE CENTER

Date: **AUG 20 2008**

IN RE:

Petitioner:

Beneficiary:

PETITION: 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 employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a 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 missionary. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

On appeal, the petitioner states that the beneficiary has been employed as a religious worker under an R-1 nonimmigrant visa since July 2004. The petitioner submits additional documentation in support of the appeal.

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 issue presented on appeal is whether the petitioner established that the beneficiary had been continuously employed in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. The regulation 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.”

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on July 3, 2006. Therefore, the petitioner must establish that the beneficiary was continuously working in qualifying religious work throughout the two-year period immediately preceding that date.

In a July 3, 2006 "certificate of employment," the petitioner stated that the beneficiary had been working for the petitioning organization since July 2004 and was paid \$1,200 per month. The petitioner stated that the beneficiary's duties consisted of "conducting worship for students, preaching & sermon, teaching & educate Bible for Old-New Testaments, Leading special programs, outreach programs, counseling to member's spiritual or family problems, proper guiding to youth members and many other Mission services." The petitioner also submitted copies of the beneficiary's Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, and Form 1040EZ, Income Tax Return for Single and Joint Filers With No Dependents, for the years 2004 and 2005. The petitioner also provided copies of its IRS Form 941, Employer Quarterly Federal Tax Return, for the quarters ending March, June, September and December 2005, reporting wages for the beneficiary of \$3,600 each quarter. None of the tax documents contain any indication that they were filed with the IRS. Further, the petitioner submitted checks that it issued dated from July 2004 through April 2006, apparently as evidence that it had paid the beneficiary during the qualifying period. However, none of them indicate that they have been processed by the bank, and most do not contain the beneficiary's name (or any other name) as the payee.

In a request for evidence (RFE) dated April 3, 2007, the director instructed the beneficiary to:

Provide evidence of the beneficiary's work history beginning July 3, 2004 and ending July 3, 2006 only. Provide experience letters written by the previous and current employers that include a breakdown of duties performed in the religious occupation for an average week. Include the employer's name, specific dates of employment, specific job duties, number of hours worked per week, form and amount of compensation, and level of responsibility/supervision. In addition, submit evidence that shows monetary payment, such as pay stubs or other items showing the beneficiary received payment. 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.

In its June 8, 2007 response, the petitioner stated that the beneficiary's duties as a missionary included "leading Worship for students including children, teaching & educating for BIBLE studies for student & children, proper guide to student & children, teaching Hymn & gospel songs, visiting member's home, leading special missions, and many other Christian Mission services." The petitioner outlined the beneficiary's weekly schedule as follows:

Sunday-8 hours for Sunday disciple's worship, main worship and Sunday student's worship & Bible class from 9:00AM to 5:00PM, Monday off, Tuesday for 8 hours for listing & new members mail/phone calls/visit for these members from 10:00AM to 6:00PM, Wednesday for 8 hours for Bible class and visiting members from 10:00AM to 6:00PM, Thursday for 8 hours for cell meeting & visiting members from 10:00AM to 6:00PM, Friday, 5 hours for gospel worship, praise Lords, from 6:00PM to 11:00PM, Saturday 3 hours for arrange brochures/news letter & prepare Sunday main worship from 5:00PM to 8:00PM

The petitioner submitted an April 18, 2007 letter from [REDACTED], who identified herself as the administrator/treasurer of the Mount Olive Lutheran Church. Ms. [REDACTED] certified that the petitioner "has been meeting regularly at Mount Olive Lutheran Church located at [REDACTED] La Mirada, California since January 1994. They have conducted Sunday morning worship and also weekday meetings." The petitioner uses the [REDACTED] address as its own, and a photograph of the church sign outside the building identifies the location as both that of the Mount Olive church and the petitioning organization.

The director noted that the beneficiary's hours of work did not correspond with the times that the petitioner allegedly used the church building. The director also noted that the petitioner failed to submit a copy of a lease agreement as the director had requested in the RFE.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore, that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the

regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

According to the petitioner, the beneficiary worked 40 hours per week, including 8 hours on Sunday from 9:00 am to 5:00 pm, and three hours on Saturday, from 5:00 pm to 8:00 pm. However, the administrator/treasurer of the Mount Olive Lutheran Church stated that the petitioning organization used the building for Sunday morning services and weekday meetings.

On appeal, the petitioner states that it meets three times a week at the church, for Sunday service, Wednesday bible study and Friday praise and prayer. It states that other activities are run "by various factions of the family of the church." The petitioner on appeal states that the beneficiary worked as a children's minister/director and associate minister, and provides another schedule of her weekly duties:

- 1) For Sunday Worship – Makes service brochures, Music for service, organizes and directs the fellowship after service. She teaches Sunday school teaching after service. She cleans, checks and arranges all the church facility.
- 2) Tuesday – Contacts and sends church news to the family absent on Sunday Service. She visits their home or business from Tuesday to Friday at an available time with pastor and other church member.
- 3) Wednesday-We have separate Men and Women's Bible study groups. The Pastor teaches Men's group. [The beneficiary] charges and teaches women's Bible study group (10:30, location – church. 7 members)
- 4) Thursday-Our church has three cell groups (meeting at 7 o'clock). Pastor Charges [the beneficiary] for one and another volunteer for one (No. 2 is for cell group report from [the beneficiary]). And [the beneficiary] visit[s] and officiate[s] family worship at several church member's Houses.
- 5) Friday-Direct music band (she plays piano and lead). We have a Friday Night. We have Friday Night Prayer and Place Meeting at church, from 9 o'clock p.m.
- 6) Saturday-Preparing for coming Sunday Worship for church service and sermon for Sunday School collecting church news and arranging brochure, and printing.

The petitioner submits a July 27, 2007 letter from [REDACTED] in which she states that she does not know whether or not the Mount Olive Lutheran Church had a formal written lease agreement with the petitioner. She also states that the Mount Olive Lutheran Church does not "monitor or direct in anyway when they can or can't use the church building." In an undated letter, the pastor of the Mount Olive church states that he and the petitioner's pastor "meet often to discuss sharing of our building, times of worship, etc."

The information provided by [REDACTED] in her letter is not logical. It is obvious that the churches share the same church building. It is equally obvious that some restriction must be placed on the petitioner's use of the building or the Mount Olive church would not be able to use its own facilities when it wanted or needed. The petitioner has not established that it has all-day use of the church building on Sunday, such

that the beneficiary is able to provide a full 8 hours of work for the petitioner on that day. In its June 2007 letter, the petitioner stated that the beneficiary worked from 6:00 pm to 11:00 pm on Friday, when the church engaged in gospel worship and praise. However, on appeal, the petitioner stated that church services on Friday began at 9:00 pm.

We note that the petitioner stated in its June 3, 2006 letter accompanying the petition that it had a membership of 230. However, on appeal the petitioner states that it has a congregation of 40 adult and 10 Sunday school children. This inconsistency in the statement of its membership brings into issue the petitioner's credibility. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Additionally, in a July 3, 2006 "Letter of Invitation," the petitioner described the duties of the proffered position as:

[a] young female Missionary in charge of student's Worship, educate & teaching Bible studies, promotion for student members through special events, such as prayer meetings, gospel song competition, reading Bible classes, weekend seminar, outreach programs at street, hospital and other missions.

The petitioner has not demonstrated that the duties of the proffered job are the same as those performed by the beneficiary during the qualifying period. None of the beneficiary's purported duties appear directed to the students and youth of the petitioner's congregation. Pursuant to section 203(b)(4) of the Act and 8 C.F.R. § 204.5(m)(1), the beneficiary must have two years continuous experience in the occupation for which he or she is seeking entry into the United States. Further, the petitioner stated on appeal that the beneficiary worked as a children's minister/director and associate minister, none of the duties that the petitioner stated that she performed during this time appear to involve any work with a children's ministry.

The petitioner submitted conflicting information regarding the beneficiary's weekly work schedule, specifically her work on Sunday and Friday. The petitioner also states that the beneficiary visits church members who were absent during Sunday services at their homes and places of business. However, the record does not establish that the beneficiary's visits to these absent church members comprise a significant amount of the beneficiary's working hours, particularly in light of the petitioner's membership of 40 as opposed to the 230 members that it initially claimed.

The evidence does not establish that the beneficiary worked on a full time basis for the petitioner and therefore fails to establish that the beneficiary was continuously engaged in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition. Further, the petitioner has not established that the beneficiary worked in the same religious occupation as that for which she seeks entry into the United States.

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.