



U.S. Citizenship
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FILE: [REDACTED]
WAC 07 032 52275

Office: CALIFORNIA SERVICE CENTER

Date: JUN 04 2008

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

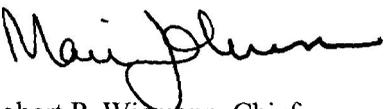
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[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.


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 an associate pastor of the Spanish Church of God of Nashville, Tennessee. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as an associate pastor immediately preceding the filing date of the petition.

On appeal, counsel argues that a circuit court decision compels the reversal of the director's decision.

Part 1 of the Form I-360 petition identifies the church 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 does not affect the validity of the appeal, because the alien's attorney of record properly filed 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 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 December 1, 2006. Therefore, the petitioner must establish that he was continuously performing the duties of an assistant pastor throughout the two years immediately prior to that date.

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 (Sept. 19, 1990). In *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980), the Board of Immigration Appeals ruled that an alien’s experience was non-qualifying for special immigrant classification, in part because the alien’s duties were “of a voluntary nature” and “without compensation.” *Id.* at 402.

In a June 7, 2006 letter accompanying the initial filing of the petition, [REDACTED] Senior Pastor of the Spanish Church of God of Nashville, stated that the petitioner “is an experienced Christian Minister” who has been a member of the church “since December 31, 2001 . . . and his participation as disciple as well as his spiritual growth, allowed him to be appointed as Associate[] Pastor.” [REDACTED] did not specify when the petitioner began working as an assistant pastor. The wording of his letter indicates that the petitioner’s appointment occurred some time after he first joined the church. In a second letter also dated June 7, 2006, [REDACTED] repeated the assertion that the petitioner “has been a member of our church since December 31, 2001.” Again, the bishop did not specify when the beneficiary began performing the duties of an assistant pastor.

The petitioner’s initial submission includes a photocopy of a “Certificate of Identification,” signed by [REDACTED] which refers to the petitioner as a “Bible Study Program Pastor.” The Certificate is undated, but bears the annotation “void after 9/13/2001.” This expiration date implies that the church issued the card some time before September 13, 2001; otherwise, the card would have been void immediately upon issuance. [REDACTED], however, indicated that the beneficiary joined the church on December 31, 2001, several months after the card’s printed expiration date. Therefore, the letter and the card, both signed by Bishop [REDACTED] appear to contradict one another.

[REDACTED] stated that the petitioner’s payroll records were unavailable because “all the work that he has been doing at our church has been voluntary and without payment, because he does not have a work permit in The United States yet.” The bishop did not say whether or not any effort had been made to secure an R-1 nonimmigrant visa, which would have allowed the petitioner to work lawfully and for compensation.

The director denied the petition on April 18, 2007, stating that unpaid volunteer work does not constitute qualifying experience and “[t]herefore, the evidence is insufficient to establish that the beneficiary has been performing full-time work as a[n] associate pastor for the two-year period immediately preceding the filing of the petition.”

On appeal, counsel states:

[C]ertain circuit courts have “rejected AAO[’s] ruling that [the] position must be paid as contrary to the regulations because the ‘agency explicitly stated’ that the regulations had been ‘revised to account more clearly for uncompensated volunteers, whose services are engaged but who are not technically employees.’”

Counsel refers to “circuit courts,” plural, but the petitioner submits a copy of only one circuit court decision, specifically the Third Circuit Court of Appeals’ ruling in *Camphill Soltane v. US Department of Justice, Immigration & Naturalization Service*, 381 F.3d 143, 2004. Some of counsel’s argument that is contained in quotation marks is not, in fact, quoted from that decision. The relevant passage of the court’s decision reads:

The requirement that the position be “salaried” appears to be inconsistent with the list of religious occupations given in the regulation itself, which includes positions—perhaps most notably “missionaries”—who do not always receive salaries. We further note that in promulgating the final rules at issue, the agency explicitly stated that they had been “revised to account more clearly for *uncompensated* volunteers, whose services are engaged but who are not technically employees.” 56 Fed.Reg. 66965 (Dec. 27, 1991) (emphasis added).

Id. at 150. According to the record of proceeding, the petitioner’s intended place of work is in Tennessee, which is not under the jurisdiction of the Third Circuit. *Camphill Soltane* was never a binding precedent for this case. Even then, we note that *Camphill Soltane* involved an alien who received room, board, and a stipend; she received no “salary” as such, but she was not an uncompensated volunteer.

In support of its finding that the AAO’s decision was “questionable,” the court cited to the supplemental language in the promulgating rule at 8 C.F.R. § 214.2(r)(3)(ii)(D) that applies to a separate class of aliens: R-1 nonimmigrant religious workers. 56 Fed. Reg. 66965, 66966 (Dec. 27, 1991). In contrast to the special immigrant classification under review here, the R-1 nonimmigrant religious worker classification does not require any previous experience, whether compensated or not. It is unclear why the court cited to language from an unrelated regulation rather than one that applied to the special immigrant religious worker petition under review. In any event, while the court found that the AAO “failed to show why the position offered by Camphill . . . does not qualify,” it also determined that it “need not set forth here a definitive test regarding when a job may or may not be characterized as a ‘religious occupation.’” Instead, the court vacated and remanded the case to allow the AAO to develop its position (as well as its position on three other determinations) because the court could not “sustain the decision of the AAO on this ground without further evidence of explanation.” *Camphill Soltane* at 151.

There is nothing in the implementing regulations for special immigrant religious workers to indicate that “uncompensated volunteers” can qualify for that classification. For nonimmigrants, the regulation at 8 C.F.R. § 214.2(r)(3)(ii)(D) requires petitioners to specify “[t]he arrangements made, *if any*, for remuneration for services to be rendered by the alien” (emphasis added). This “if any” clause was inserted “to account more clearly for uncompensated volunteers,” as reported in the Federal Register. The parallel regulation for the immigrant classification at 8 C.F.R. § 204.5(m)(4) contains no comparable “if any” clause.

Review of the record demonstrates other issues of concern. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Apart from the uncompensated nature of the petitioner’s claimed work for the church, another factor prevents a finding that the petitioner possesses the required experience. An alien seeking classification as a special immigrant minister must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought. *See Matter of Faith Assembly Church*, 19 I&N 391, 393 (Commr. 1986). We note that the Ninth Circuit Court of Appeals has upheld the AAO’s interpretation of the two-year experience requirement set forth in that precedent decision. *See Hawaii Saeronam Presbyterian Church v. Ziglar*, 2007 WL 1747133 (9th Cir., June 14, 2007).

If, as stated, the petitioner received no compensation for his ministerial work, then the petitioner must have had some other means of support during the two-year qualifying period. In the absence of evidence of that support, the assumption is that he would be required to earn a living by obtaining other employment. *See Matter of Bisulca*, 10 I&N Dec. 712, 713-14 (Reg. Commr. 1963) and *Matter of Sinha*, 10 I&N Dec. 758, 760 (Reg. Commr. 1964). The evidence of record is not sufficient to demonstrate that the petitioner worked solely as a minister during the qualifying period, and held no other employment during that period.

Furthermore, [REDACTED] claimed that the church intends to pay the petitioner \$12,000 per year. The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by 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 did not submit any financial documentation to establish the church’s ability to pay him \$12,000 per year. This evidentiary deficiency constitutes an additional basis for denial of the petition.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal. 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. Here, that burden has not been met.

ORDER: The appeal is dismissed.