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U.S. Citizenship
and Immigration
Services

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FILE: WAC 07 248 54386 Office: CALIFORNIA SERVICE CENTER Date: NOV 24 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:



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.


John F. Grissom, Acting 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 pastor. The director determined that the petitioner had not established that it has extended a qualifying job offer to the beneficiary.

On appeal, counsel asserts that the petitioner's pastor "mistakenly" stated that the beneficiary "must work a public job to cover the rest of his expenses until the Hispanic ministry grows enough to support his ministry full time." 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 has extended a qualifying job offer to the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

In a July 6, 2007 letter accompanying the petition, the petitioner's senior pastor, Reverend [REDACTED] stated that the beneficiary had been pastor for the Hispanic Church at the petitioning organization since June 2006. Reverend [REDACTED] stated:

[The beneficiary's] responsibilities are to minister to the Hispanic people of [the petitioning organization], our surrounding community and city. His time of ministry is Tuesday evening, Wednesday evening, and Sunday. He is responsible to teach the Word of God from the Bible how to be a Christian and a good citizen. He is responsible to have classes to teach the English language to the Hispanic community to all that want to participate at no cost to participants. He also teaches the Spanish language to those who are interested. Other responsibilities include building community relationship with the community, visiting the sick, counseling families and individuals, working with inmates at the county jail, home Bible studies, provide reports and budget to church leadership, make new contacts for church growth, advertise and promote the Hispanic Church of [the petitioner].

Reverend [REDACTED] did not indicate specific hours that the beneficiary was expected to work or the amount of the beneficiary's compensation for the position. However, he stated that the petitioner "has agreed to pay [the beneficiary's] housing and utilities cost as long as he occupies the position of Hispanic Pastor," and that "[o]ur agreement with [the beneficiary] is, he must work a public job to cover the rest of his expenses until the Hispanic Church grows enough to support his ministry full time." The petitioner submitted copies of eight checks, indicating that it paid \$500 for the beneficiary's rent in February, March, May and June 2007, and paid his electric bills in March, April, May and June 2007. Only the rent check dated February 25, 2007 reflects that it was processed by the bank.

In a request for evidence (RFE) dated September 10, 2007, the director instructed the petitioner to:

Provide a detailed description of the work to be done, including specific job duties, level of responsibility/supervision, and number of hours per week to be spent performing each duty. Include daily and weekly schedule for the proffered position.

In a November 16, 2007 letter submitted in response, Reverend [REDACTED] stated:

[The beneficiary] ministers preaches, teaches, trains [the Hispanic congregation and community] during their own Spanish speaking church services. He outlines and translates bible studies into the Spanish language. He goes into the community to meet contacts and invites them to come to the church. He also assists and directs them with any situation that they might request fro him with issues that pertains to them.

The petitioner also provided a schedule of the beneficiary's duties as follows:

- Attends Church Services 4 times a Week, 3 of those services he ministers to the Hispanic congregation and is completely under his supervision and direction. Total time involved 10 – 12 hours.
- Spends 6 – 8 hours weekly preparing lessons and messages for presentation to the Hispanic congregation.
- 3 Nights a week teaches a Bible Study Class which 1 night includes the English class after the Bible class. He is totally in charge of all these classes. Total time involved 6 -7 hours.

- 1 evening and every Saturday morning goes on visitation in the Hispanic community. He is responsible for this work and also for those assisting. Total times involved 6 – 8 hours.
- Attends weekly mandatory Administrative meeting; submits required planning, visitation, Bible study and attendance forms. Plans weekly and monthly schedules with the rest of the staff. Meet personally with the Senior Pastor to discuss Pastoral issues concerning the members, church services and personal life. Total time involved 4 hours.
- [The beneficiary] is totally responsible for the members of the Hispanic congregation in dealing with family issues, marriages, funerals, hospital visitation and spiritual and pastoral counseling on a daily basis [sic] or as they are needed. Also does miscellaneous duties as needed assigned by the Senior Pastor. Total estimated time varies each week, but around 12 – 15 hours weekly.

[The beneficiary] is also compensated by [the petitioner] in which his house rent and all utilities are paid and has been since his arrival to this church.

The director, quoting Reverend [REDACTED] statement that the beneficiary must find work in a public job to meet his expenses not paid by the petitioner, denied the petition, stating that “the petitioner has clearly demonstrated [] that the beneficiary must seek additional employment to be able to support himself and his family.”

On appeal, counsel asserts that Reverend’s [REDACTED] statement that the beneficiary must find work in an outside job for his expenses not paid by the petitioner was a “total misunderstanding” on the part of Reverend [REDACTED]. In a January 22, 2008 letter, Reverend [REDACTED] states that his “perception was that only the money collected from the Hispanic Church congregation could be used to support” the beneficiary and his family, and that until the congregation was built up, “he had to support himself with a public job.” Reverend [REDACTED] further stated that he “would like to clarify” that the beneficiary will not be solely dependant on supplemental employment or the solicitation of funds for his support and would be solely carrying on the vocation of minister.

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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner submits no competent objective evidence that the offer to the beneficiary was in error. In fact, Reverend [REDACTED] confirmed that the job offer extended to the beneficiary required him to obtain outside employment to supplement his finances. Although Reverend [REDACTED] states on appeal that this offer was based on his mistaken assumption that the petitioner could only pay for the beneficiary’s living expenses, the petitioner did not modify the job offer. Further, a visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to Citizenship and Immigration Services (CIS) requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). Therefore, even had the petitioner attempted to change the terms of the job offer, it would have constituted a material change that would have resulted in the denial of the petition.

Accordingly, the petitioner has not established that it has extended a qualifying job offer to the beneficiary.

Beyond the decision of the director, the petitioner has not 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 August 9, 2007. Therefore, the petitioner must establish that the beneficiary was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

In his July 6, 2007 letter accompanying the petition, Reverend [REDACTED] stated that the beneficiary had become pastor with the petitioning organization in June 2006 with the duties as discussed previously. Additionally, as previously discussed, the petitioner submitted copies of checks indicating that it paid the beneficiary’s rent and electricity in 2007.

The petitioner submitted an August 21, 2006 letter from [REDACTED], Superintendent of the United Pentecostal Church of Mexico, in which he certified that the beneficiary had been a minister in the church since June 2004. The petitioner also submitted an April 21, 2006 letter from [REDACTED], the director of Personalized English in Coatzacoalcos, Veracruz, in which he certified that the beneficiary “has performed as instructor of the English language from the first day of February of 2004 to date,” and that “his present salary is: \$7,500 pesos monthly.” The petitioner submitted an April 21, 2006 letter from the United Pentecostal Church of Mexico signed by Reverend [REDACTED] in which he stated that the beneficiary “works as District Secretary in this **South Gulf District and Instructor of Theology of the Boanerges Pentecostal Theological Institute** and as Assistant Pastor in the Central Pentecostal of Coatzacoalcos Church. As far as his salary is concerned, his monthly income is \$3,400 (pesos).” The petitioner submitted no documentary evidence such as canceled pay checks, pay vouchers, or similar documentation, to corroborate the beneficiary’s employment in 2005 and 2006. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In a request for evidence (RFE) dated September 10, 2007, the director instructed the petitioner to:

Provide evidence of the beneficiary's work history beginning August 9, 2005 and ending August 9, 2007, only. Provide a breakdown of duties performed in the religious occupation for an average week. Include the employer's name, specific job duties, the number of hours worked, [and] remuneration . . . Ideally, this evidence should come in a way that shows monetary payment, such as W-2 forms, pay stubs, or other items showing the beneficiary received payment. Documentation showing the withholding of taxes is good evidence. However, you may also show payment through other forms of remuneration. If any work was on a volunteer basis, provide evidence to show how the beneficiary supported himself or herself (and family members, if any) during the two-year period and any other activity the beneficiary was involved in that would show financial support.

The director also instructed the petitioner to "[p]rovide [a] copy of the beneficiary's Federal Tax Return and W-2's for the year 2006."

The petitioner's November 16, 2007 response included the work schedule and duties discussed above. In a separate letter also dated November 16, 2007, Reverend ██████ stated that in 2005, the beneficiary was "still in Mexico" and did not receive any compensation from the petitioner. He stated that the beneficiary received compensation from the petitioner in the amount of \$5,160 in 2006, and was advised by an accountant that he did not have to file a tax return because the compensation was less than \$6,000. The petitioner resubmitted copies of the checks previously submitted with the petition. The petitioner again failed to submit any corroborative documentation of the beneficiary's work during the qualifying period. *Id.*

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).

Section 101(a)(27)(C)(iii) of the Act provides 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 evidence, the beneficiary worked as an instructor for Personalized English during 2005 and part of 2006. Therefore, he did not work solely and continuously as a minister throughout the qualifying period. Further, the petitioning organization stated that it provided the beneficiary with housing and utilities. However, the documentary evidence indicates that the petitioner paid the beneficiary's rent and electricity bills. The documentation submitted does not indicate that the petitioner provided the beneficiary with other monetary or in-kind support to pay his other utility bills, including water and telephone services. Further, the petitioner submitted no corroborative evidence of having provided the beneficiary with any financial support in 2006. Thus, the record does not establish that the petitioner compensated the beneficiary for his services during 2006 or that he was solely working as a minister during that period.

Accordingly, the petitioner has failed to establish that the beneficiary continuously worked as a minister for two full years immediately preceding the filing of the visa petition.

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).

The petition will be denied 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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.