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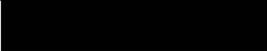
U.S. Citizenship
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Services

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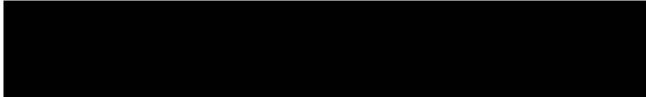
EAC 04 075 50630

Office: VERMONT SERVICE CENTER

Date: OCT 21 2008

IN RE:

Petitioner:



Beneficiary:

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.

A handwritten signature in cursive script that reads "Mai Phuu".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) withdrew the director's decision and remanded the matter to the director for a new decision. The director again denied the petition and, pursuant to the AAO's instructions, certified the decision to the AAO for review. The AAO will affirm the director's decision.

The petitioner is a Baptist 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 is able to compensate the beneficiary at the proffered level.

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).

8 C.F.R. § 204.5(m)(4) requires the religious organization to set forth the terms by which it intends to compensate the alien beneficiary. With respect to the employer's ability to meet those terms, 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 petition was filed on January 22, 2004, and therefore the petitioner must establish its ability to compensate the beneficiary at the proffered level from that date onward.

Area Minister for the Boston Southwest and Associations and “an official representative of The American Baptist Churches of Massachusetts,” stated in an April 8, 2002 letter: “The church will pay [the beneficiary] a yearly salary of \$25,000 – plus a housing allowance to cover his rent expense, and health insurance.”

The AAO stated, in its May 24, 2006 remand order:

The petitioner has submitted materials from a credit union, showing an account balance between \$30,000 and \$36,000 at any given time, but nothing to show a full picture of the petitioner’s income and expenses or to indicate that the petitioner has, thus far, paid the proffered amount to the beneficiary. The director should address this issue and allow the petitioner a final opportunity to submit evidence that conforms to 8 C.F.R. § 204.5(g)(2).

On August 1, 2006, the director issued a request for evidence (RFE), citing the evidentiary requirements outlined above. The director also requested evidence of the petitioner’s tax-exempt status. Pursuant to 8 C.F.R. § 103.2(b)(8), the maximum time allowed for submission of a response to an RFE cannot be greater than twelve weeks (84 days), and additional time to respond to an RFE may not be granted.

On September 27, 2006, the director received a response to the RFE. This response addressed the tax-exemption issue, but not the issue of the petitioner’s compensation of the beneficiary. Subsequently, the petitioner submitted what counsel termed a “supplement to [the petitioner’s] response to [the] Request for Additional Evidence,” consisting of copies of bank statements from 2005. It is not clear when the director received this “supplement,” but the date could not have been any earlier than October 27, 2006, which is the date on counsel’s cover letter. The petitioner submitted the “supplement” at least 88 days after the date of the RFE, a delay that exceeds the regulatory maximum response period for an RFE.

The director issued a certified denial on October 30, 2007, stating that the petitioner had been “clearly advised” on more than one occasion of the requirements for establishing its ability to compensate the beneficiary. In response, the petitioner submits copies of the beneficiary’s federal tax returns for 2004, 2005 and 2006. All three of the tax returns were prepared in November 2007, after the denial notice went out. There is no evidence that the beneficiary filed any of the returns with the Internal Revenue Service. It appears, therefore, that these tax returns were prepared not to comply with tax law, but to create documentation to support the petition. Like a delayed birth certificate, the delayed tax returns prepared after the denial raise serious questions regarding the truth of the facts asserted. *Cf. Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991) (discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings).

Even setting aside the untimely preparation of the tax returns, the documents do not facially indicate that the petitioner has, at any time, paid the beneficiary the proffered base salary of \$25,000 per year, and the documents are silent as to the additional benefits of housing allowance and health insurance. The beneficiary reported his earnings as "business income" on Schedule C, Profit or Loss From Business. The tax documents indicate that the beneficiary took in "gross receipts" of \$19,755 in 2004, \$21,570 in 2005 and \$22,500 in 2006. The 2005 return also shows \$443 in "wages, salaries, tips, etc.," with no Internal Revenue Service Form W-2 Wage and Tax Statement provided to identify the source of those wages.

Upon consideration of the evidence submitted (and the petitioner's failure to submit requested evidence), the AAO finds that the petitioner has failed to establish that it is, and since the filing date has been, able to compensate the beneficiary at the proffered rate of \$25,000 per year plus housing and insurance.

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 AAO will affirm the director's decision.

ORDER: The director's decision of October 30, 2007 is affirmed. The petition is denied.