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

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ADMINISTRATIVE APPEALS OFFICE
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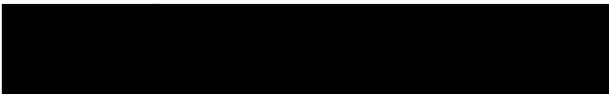
File: WAC 99 203 51524

Office: CALIFORNIA SERVICE CENTER

Date:

NOV 19 2003

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 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Cindy N. Gomez for

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner seeks classification of 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 minister.

The director determined that the petitioner had failed to establish its ability to pay the beneficiary the proffered wage, and that a qualifying job offer had been tendered to the beneficiary. The director further found that the petitioner had failed to establish that the beneficiary had been continuously engaged in a qualifying religious occupation or vocation for the two years immediately preceding the filing date of the petition.

On appeal, the petitioner attempts to explain discrepancies and omissions in the record. The petitioner asserts that the church now has 152 members, a two-story building with rooms available to low-income members, and a parking lot accommodating 30 cars. The petitioner further states that the organization was funded for missionary purposes and that the reason it needs to legalize its ministers is so they can travel to missions in Central America and Mexico preaching the word of God and return to the United States without any problems.

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 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 petitioner is described as a Christian Pentecostal independent church having an affiliation with seven other churches in Mexico. It states that it was funded for missionary purposes and has a congregation of 152 members.¹

The beneficiary is a native and citizen of Mexico who last entered the United States in an undisclosed manner on February 6, 1985. The record reflects that the beneficiary has resided in the United States in an unlawful status since expiration of her authorized stay, if any. The Form I-360, Petition for Amerasian, Widow or Special Immigrant, indicates that the beneficiary has not been employed in the United States without CIS authorization.

In order to establish eligibility for classification as a special immigrant minister, the petitioner must satisfy each of several eligibility requirements.

The director found that the petitioner had not demonstrated its ability to pay the beneficiary the proffered wage.

The regulations at 8 C.F.R. § 204.5(g)(2) state, in pertinent part, that:

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 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 annual reports, federal tax returns, or audited financial statements.

The petition was filed on July 15, 1999. Therefore, the petitioner must have established its ability to pay the beneficiary the offered wage at that time.

¹ As of the date of filing the petition, the petitioner indicated that it had 49 members. On appeal, the petitioner states, and provides documentation to establish, that it now has 152 members.

The record reflects that the petitioner has also filed Form I-360 visa petitions for at least an additional 12 alien workers. Therefore, the petitioner must specify the wages offered and provide proof of its ability to pay the sum of those wages.

The petitioner has provided copies of IRS Forms 990, Return of Organization Exempt from Income Tax, for the years 1999 and 2000 showing total revenue of \$265,230 and \$335,600 respectively. There is no explanation contained in the record as to the origins of these revenue totals, particularly considering that the church is relatively small, having only 152 members. Furthermore, the returns are not certified and there are no annual reports or audited financial statements contained in the record of proceeding to corroborate the information contained in the uncertified returns.

It is also noted that the petitioner's 1999 IRS Form 990 lists the beneficiary as an employee earning \$7,500. However, the beneficiary's 1999 IRS Form 1099, Miscellaneous Income statement, reflects that she received \$7,500 from the petitioner in "nonemployee" compensation.

Doubt cast on any aspect of the evidence submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

Based on the above discussion, it is concluded that the evidence submitted by the petitioner is insufficient to satisfy the requirements of 8 C.F.R. § 204.5(g)(2). For this reason, the appeal will be dismissed.

The director also found that the petitioner had not demonstrated that a qualifying job offer had been tendered to the beneficiary.

The regulations at 8 C.F.R. 204.5(m)(4) state, 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 this case, the petitioner has not identified the specific terms

of the beneficiary's future remuneration. The petitioner has also not stated how the beneficiary will be solely carrying on the vocation of minister or how she will not be dependent on supplemental employment or the solicitation of funds for support. It is, therefore, concluded that the petitioner has not tendered a qualifying job offer. For this reason as well, the appeal will be dismissed.

Finally, the director found that the petitioner had failed to establish that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for the two years immediately preceding the filing date of the petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that:

All three types of 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.

As the petition was filed on July 15, 1999, the petitioner must establish that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for the two-year period beginning on July 15, 1997.

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. 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 or 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).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that

he or she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963); *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

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 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 or 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 salaried. To be otherwise would be outside the intent of Congress.

As evidence of the beneficiary's employment during the required two-year period, the petitioner submitted the following documentation:

Records of payment, created by the petitioner, indicating that the beneficiary was paid \$100.15 weekly from July 15, 1997 to January 2, 1998; \$85.58 weekly from January 5, 1998 to January 1, 1999; and \$144.23 weekly from January 4, 1999 to July 15, 1999.

A photocopy of the beneficiary's 1997 IRS Form W-2 and an uncertified copy of the beneficiary's 1997 IRS Form 1040, U.S. Individual Income Tax Return, indicating a total income of \$5,208 from the beneficiary.

A photocopy of the beneficiary's 1998 IRS Form W-2 and an unsigned, uncertified photocopy of the beneficiary's 1998 IRS Form 1040, indicating a total income of \$4,450 from the beneficiary.

And, as previously noted, a photocopy of the beneficiary's 1999 IRS Form 1099 and an unsigned, uncertified copy of the beneficiary's 1999 IRS Form 1040, indicating "nonemployee compensation" from the petitioner totaling \$7,500.

The evidence submitted fails to establish that the beneficiary's services for the petitioner were full-time and salaried. For the reasons discussed above, the AAO is unable to conclude that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation during the required two-year time period. For this reason as well, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has failed to adequately establish that the beneficiary is a qualified, ordained minister. Furthermore, it appears that the intent of the petitioner is to employ the beneficiary abroad as a missionary, rather than as a minister in the United States. The petitioner states on appeal that the purpose of the petition is to enable the beneficiary to travel to Central America and Mexico and then "come back into the United States without any problems." Since the appeal will be dismissed for the reasons stated above, these issues need not be examined further in this proceeding.

Inherently, CIS must consider that the possible rationale for the instant petition is the church's desire to assist an alien member of its congregation to remain in the United States for purposes other than provided for under the special immigrant religious worker provisions. Based on the record as constituted, the petitioner has not adequately demonstrated that it has either the ability or the intention to remunerate the beneficiary in a permanent salaried position or that the beneficiary seeks to enter the United States solely to pursue this vocation.

In reviewing an immigrant visa petition, the Bureau must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

The burden of proof in these proceedings rests solely 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.