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U.S. Citizenship
and Immigration
Services

CA



FILE:



Office: TEXAS SERVICE CENTER

Date: **AUG 02 2004**

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:

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, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office 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, 8 U.S.C. § 1153(b)(4), to perform services as a sound and electronics systems specialist. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience in a qualifying occupation immediately preceding the filing date of the petition, or that the position offered qualifies as a religious occupation or vocation.

On appeal, the petitioner submits a letter from its pastor, who asserts that the job offer is genuine, and that the beneficiary would fill a significant need for the congregation.

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).

Submitted with the petition is a letter from Hugo Lopez, owner of The City Discount Store, Miami, Florida. Mr. Lopez states:

I . . . am presently searching for an individual with experience to head my "Sound and Electronic Department" in my store. I will pay a salary of \$24000.00 per year and provide shelter for him and his family.

The person I am currently interested in hiring to fill this position is [the beneficiary]. He is a qualified Sound and Electronic Specialist and an outstanding musician who is well informed about his work and well known among his kind. The Church where I am a deacon is also very interested in his services, since he is an ordained Minister. He will be in charge of all activities related to our choirs and congregational music and in charge of our sound and

electronic systems. The Church is also committed in sharing salary and all benefits for him a his family.

(Sic. [REDACTED] pastor of the petitioning church, offers similar assertions, stating that the church seeks “an accredited, active church member with experience as a ‘Sound and Electronic Systems Specialist.’ . . . We are committing ourselves to share with ‘The City Discount Store,’ who is giving him a contract, all matters related to salary, benefits, insurance, and shelter for him a his family [sic].”¹

The grounds for denial focus on the beneficiary’s past experience and the nature of the job offered. Because, in this proceeding, the two issues are interrelated, we will consider these issues together.

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 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 14, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing duties similar to the job offered throughout the two years immediately prior to that date. The petitioner must also establish that the position qualifies as a religious occupation or vocation.

The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

There is no claim that the beneficiary works in a religious vocation (other than the vocation of a minister). The petitioner appears to fluctuate between claiming that the beneficiary is a minister, and that he works in a religious occupation.

¹ We note that both letters contain the unusual grammatical error “him a his family,” suggesting common authorship, or perhaps portions of one letter were “cut and pasted” from the other.

While the determination of an individual's status or duties within a religious organization is not under the purview of Citizenship and Immigration Services (CIS), the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

states that the beneficiary "worked in our church as a part time minister during 2000-2001." Officials of other churches in Guayaquil affirm that the beneficiary worked for them as well, but they offer few details regarding the terms of employment (if indeed he was employed, rather than an unpaid volunteer).

The director informed the petitioner that the petition could not be approved unless the beneficiary was a full-time, compensated religious worker throughout the two-year qualifying period, for the same denomination that now seeks to employ him. The director noted the job offer from The City Discount Store. The director requested detailed information regarding the beneficiary's employment history.

In response, the petitioner has submitted new letters from various witnesses and a copy of the beneficiary's ordination certificate, dated March 25, 2000. The letters do not address many of the director's questions; they merely reaffirm that the beneficiary has performed work as a sound technician for [redacted] until 2001. The record is silent as to the beneficiary's employment activities in 2002, the year the petition was filed.

Rev. Ruiz states "[t]he activities in our church are mostly at weekends at night times and at some other nights during the week. . . . [The beneficiary] will be working in our Music Department and in our Sound Studio at nights."

The director denied the petition, stating "[t]he petitioner has not demonstrated that the beneficiary worked full-time or will work full-time for the petitioner or that he was paid a salary." The director further concluded "[t]he evidence indicates that the beneficiary plans to work for The [City] Discount Store full-time and volunteer his services in his free time to the petitioner."

On appeal [redacted] maintains that the beneficiary "is a duly ORDAINED MINISTER specializing in music and sound engineering. . . . These capacities are indispensable to the operation and ministry of this congregation." [redacted] adds that "City Discount is an organization mutually interested in community service," such as the proposed joint employment arrangement with the petitioner.

We note that a "minister of music," who does not perform the full range of duties of the clergy, is not considered a "minister" for immigration purposes (regardless of whether the individual is ordained). See *Matter of Rhee, supra*, at 610, and 8 C.F.R. § 204.5(m)(2). If we found otherwise, and concluded that the beneficiary is a minister, such a finding would only open a new ground of ineligibility, as the statute (at section 101(a)(27)(C)(ii)(I) of the Act) and regulations (at 8 C.F.R. § 204.5(m)(1) and (4)) require that an alien minister must seek to enter the United States *solely* to work as a minister. Here, it is clear that the beneficiary does not intend to work solely as a minister. He seeks to divide his time between the petitioning church and The City Discount Store.

If the beneficiary is not a minister, then the other option is to classify him as a worker in a religious occupation. 8 C.F.R. § 204.5(m)(2) defines "religious occupation" as an activity which relates to a traditional religious function. Not all employees of a religious organization are considered to be engaged in a religious

occupation for the purpose of special immigrant classification. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. The petitioner has not demonstrated that its denomination traditionally employs paid sound technicians and musicians, rather than relying on volunteers from the congregation. The beneficiary relies on the same skills in his undeniably secular work outside the church. This calls into question the degree to which the same work, performed in a church, can reasonably be deemed a religious occupation.

The statute and regulations require the beneficiary to have been *continuously* engaged as a religious worker throughout the two years immediately prior to the filing date. 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). Part-time religious work is not continuous. See *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980). The record amply demonstrates that the beneficiary has worked in secular jobs involving audio electronics, and thus he has not *continuously* performed religious work throughout the qualifying period.

The director has apparently concluded that the beneficiary seeks to enter the United States primarily to work in an electronics store, and that his religious work is essentially an attempt to secure entry by alternative means, without resort to the labor certification process which would apply to aliens seeking employment in retail sales. The information in the record is consistent with such a conclusion, but it is also consistent with a finding that the beneficiary has a *bona fide* intention of working for both employers, through the joint employment offer described by the petitioner and by the store owner. For the purposes of the issues discussed in this decision, speculation about the beneficiary's intentions is superfluous; whatever the beneficiary's intentions, the employment situation and history described by the petitioner fail to qualify the beneficiary for the benefit sought.

Beyond the decision of the director, we note that the petitioner has not submitted evidence of its ability to pay the beneficiary's salary, as required by 8 C.F.R. § 204.5(g)(2). According to that regulation, evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. Obviously a church does not submit federal tax returns, but nothing would prevent the existence of the other named documents. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

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.