



U.S. Citizenship
and Immigration
Services

61

[Redacted]

FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: **AUG 03 2004**

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.

for Robert P. Wiemann, Director
Administrative Appeals Office

PUBLIC COPY

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 pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a pastor immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary, or that the beneficiary had entered the United States solely to work as a minister.

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 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 April 24, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a minister throughout the two years immediately prior to that date.

Trustee of the petitioning church, states that the beneficiary "is a graduate of theology from Bethel Bible College, ordained by the on September 10, 1998," and that the beneficiary currently works for the petitioner as an R-1 nonimmigrant religious worker. The petitioner submits a copy of a letter, dated April 4, 2000, from Pastor K.C. John, secretary of the Kerala State Council of the Indian Pentecostal Church. states that the beneficiary "is an ordained minister . . . in charge and has received "six months leave" to visit affiliated churches in the United States.

The director requested "a detailed description of the beneficiary's prior work experience" during the qualifying period. In response, [REDACTED] states that the petitioner secured an R-1 nonimmigrant visa for the beneficiary in January 2001, and that "[p]rior to joining our church as a pastor, he was holding the same position with the [REDACTED]. The beneficiary has been in the United States since April 16, 2000, when he entered the United States in order to attend "a few days of revival and gospel meetings in the month of May" in Florida. The petitioner did not apply for the beneficiary's R-1 visa until six months later. Raju John states that the beneficiary "did not work in the United States without permission. He did not begin working for us until January of 2001." The beneficiary's resume similarly shows a gap between April 2000 and January 2001, while accounting for every other period of time since 1976.

The director denied the petition, in part because the record does not show that the beneficiary worked as a minister throughout the two-year qualifying period. On appeal, [REDACTED] treasurer of the petitioning church, states that the beneficiary "has worked in a full-time, salaried capacity for the Pentecostal church for the two year period prior to the filing of the I-360 petition. [REDACTED] asserts that "[f]rom May 1998 through May 2001, [the beneficiary] was employed as a General Minister for the Indian Pentecostal Church in charge of Madras South Centre in India."

As noted above, the beneficiary left India in April 2000, and does not appear ever to have returned, at least during the 1999-2001 qualifying period. [REDACTED] asserts that the beneficiary "has remained in constant contact with his church in India and has continued to supervise matters that require his attention and was paid a salary of 6,000 Rupees per month through May 2001." The beneficiary makes similar assertions in a new affidavit. [REDACTED] secretary of the Indian [REDACTED] South District, states that the beneficiary received his salary "till the month of May 2001. And also he was doing his ministry" during that time. The record contains no contemporaneous documentary evidence to show that the beneficiary drew the claimed salary.

The statute, at section 101(a)(27)(C)(iii), requires that an alien minister must have "been carrying on such vocation . . . continuously" throughout the two-year qualifying period. The regulations echo this requirement at 8 C.F.R. § 204.5(m)(1) and (3)(ii)(A).

The beneficiary's own resume lists no ministerial activities between April 2000 and January 2001. The petitioner has asserted that the beneficiary "did not begin working for us until January of 2001." The record contains nothing to establish the beneficiary's activities during this substantial gap. Carrying on the vocation of a minister involves more than collecting a salary, even if we assume that the beneficiary was paid as claimed. (Such a claim was never made until after the director denied the petition.) Carrying on the vocation of a minister involves performing the full range of duties of ordained clergy. The petitioner has not shown what the beneficiary was doing, or where he was doing it, during this period that occupies fully one-third of the qualifying period. Simply visiting a succession of churches is not carrying on the vocation of a minister.

The next issue concerns the nature of the position offered to the beneficiary. 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.

states that the beneficiary's "job responsibilities include conducting worship services, bible studies, cottage meetings, adult and youth meetings, counseling, baptisms, funeral services, marriages, child and house dedications, and generally supervising the church activities." The petitioner has submitted a copy of the beneficiary's 1983 theology diploma from Bethel Bible College and his 1998 certificate of ordination.

The director, in denying the petition, relied on contradictory arguments. First, the director stated "a training period without being ordained will not satisfy the statute." Later in the same decision, the director acknowledged the petitioner's submission of a certificate of ordination, but stated that the petitioner has not shown that this ordination resulted from specialized training.

The director's arguments appear to have been assembled piecemeal from other decisions, without regard for their presentation as a whole. In this instance, the petitioner has submitted evidence of a degree in theology, a certificate of ordination, and a job description that includes the typical functions of ordained clergy, such as (for example) weddings. The director cited the absence of documents (such as transcripts from the divinity school the beneficiary attended) which do not appear to be necessary in this instance, and the director cited regulations regarding religious occupations, which do not apply to ministers.

It is not clear what, in this instance, led the director to believe that the beneficiary is not carrying on the vocation of a minister. We hereby withdraw the director's finding that the petitioner has not established that the beneficiary is a minister.

The final issue raised in the director's decision concerns the beneficiary's entry into the United States. Section 101(a)(27)(C)(ii)(I) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(I), requires that the alien seeking classification "seeks to enter the United States . . . solely for the purpose of carrying on the vocation of a minister." In this instance, the beneficiary entered the United States as a B-2 nonimmigrant visitor. Thus, the director concluded, the beneficiary did not enter the United States solely for the purpose of working as a minister.

This finding is not defensible. The AAO interprets the language of the statute, when it refers to "entry" into the United States, to refer to the alien's intended *future* entry *as an immigrant*, either by crossing the border with an immigrant visa, or by adjusting status within the United States. This is consistent with the phrase "*seeks to enter*," which describes the entry as a future act. We therefore withdraw this particular finding by the director. While further discussion of the issue is unnecessary, we note that the evidence of record shows that the beneficiary first entered the United States on church business.

The evidence of record appears to be sufficient to establish that the beneficiary is a minister and that the petitioner's job offer is *bona fide*. The substantial gap in the beneficiary's work as a minister, however, is a disqualifying factor (although this ground is without prejudice to any future petition, filed after two years of continuous service as a minister).

Beyond the decision of the director, the petitioner's comments on appeal raise another issue of concern. Pursuant to section 101(a)(27)(C)(i) of the Act, and 8 C.F.R. § 204.5(m)(1) and (3)(ii)(A), the beneficiary must have been a member of the petitioner's denomination throughout the two years immediately preceding the filing of the petition. The following pertinent definitions appear at 8 C.F.R. § 204.5(m)(2):

Religious denomination means a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, religious congregations, or comparable indicia of a bona fide religious denomination. For the purposes of this definition, an interdenominational religious organization which is exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 will be treated as a religious denomination.

Bona fide nonprofit religious organization in the United States means an organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations, or one that has never sought such exemption but establishes to the satisfaction of the Service that it would be eligible therefor if it had applied for tax exempt status.

Bona fide organization which is affiliated with the religious denomination means an organization which is closely associated with the religious denomination and which is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

In India, the beneficiary was a member of the [REDACTED]. Since January 2001, the beneficiary has been working for the petitioner (although the petitioner claims that the beneficiary continued to receive pay from the [REDACTED] for several months after that date).

[REDACTED] states "while [the petitioner] is not officially a part of the Assemblies of God USA, it adheres strictly to the sixteen basic beliefs developed by the Assemblies of God USA and operates as a Pentecostal Church." From the information provided, it is not clear what connection, if any, exists between the petitioning church and the [REDACTED]. There are numerous Pentecostal denominations; simply establishing that the beneficiary has belonged to and worked for a series of Pentecostal churches cannot suffice. As with the beneficiary's experience, this observation applies to the present petition but would not represent an impediment to a petition filed after the beneficiary had remained with the same church for over two years. Therefore, this additional finding is without prejudice to a newly-filed petition.

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.