



U.S. Citizenship  
and Immigration  
Services

C-1



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:

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.

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 missions minister. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a missions minister immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established its ability to pay the beneficiary's salary, or that it had made a qualifying job offer to the beneficiary.

On appeal, the petitioner submits copies of various documents. The petitioner indicates that further materials, to be procured from Cuba, will be submitted within 30 days. To date, a year after the filing of the appeal, the record contains no further submission and the record shall be considered to be complete as it now stands.

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 March 29, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a missions minister throughout the two years immediately prior to that date.

Rev. Carlos Tellez, senior pastor of the petitioning church, states that the beneficiary "has worked in missions since 1981, with experience and leadership in starting new Spanish missions." The petitioner is not in a

position to attest, directly, to the beneficiary's employment outside the United States. We must, instead, examine documentation from the foreign entities that have employed the beneficiary.

The beneficiary's "Certificate in Lay Missionary Ministry" is dated June 15, 2001, nine and a half months before the filing date. A letter from the *Asociación Convención Bautista de Cuba Occidental*, indicates "[i]n 2001 he graduated as [redacted] Havana," but also indicates that the beneficiary "has worked as a missionary" since 1990. Another letter from the same source indicates that the beneficiary is "full time Missionary of the Missions [redacted] of Occidental Cuba," but the letter does not indicate when the beneficiary first began working in that position. The letter is dated October 24, 2001, several months after the issuance of the certificate.

The director noted the date on the beneficiary's missionary certificate, and instructed the petitioner to "[s]ubmit a detailed description of the beneficiary's prior work experience . . . accompanied by appropriate evidence." The director added that "undergraduate or graduate theological studies do not count for any part of the two years of continuous work experience."

In response, the petitioner submits a new letter from the beneficiary's employer in Cuba, who states that the beneficiary "worked full time, 60 hours weekly." The letter also indicates that the beneficiary has received a regular salary since 1997, first from the [redacted] then from "the Missionary Council." The beneficiary "works as [redacted] and "holds the position of Vice-President of the [redacted] Several other witnesses in Cuba offer similar attestations. The petitioner also submits copies of payroll ledger records from the church in Cuba, showing monthly payments made to the beneficiary from January 2000 onward. The records are missing for the early months of 2002.

The director denied the petition, having found that the petitioner had not adequately documented the beneficiary's prior employment. On appeal, the petitioner maintains that the beneficiary has worked continuously, and that the petitioner is attempting to obtain the payroll records for the first months of 2002.

The record does not establish the extent of the beneficiary's studies prior to his receiving the missionary certificate, but the aforementioned payroll records show that the beneficiary has consistently earned the same salary each month. A sudden increase in the beneficiary's wages after June 2001 would be consistent with the beneficiary working longer hours or assuming more duties, but the records show no such increase. The other workers named in the payroll records earned the same salary as the beneficiary, or less, which is another indication that he did not work reduced hours while studying.

Upon review, we find that the petitioner's evidence is sufficient. The payroll records cover most of the qualifying period, and the record contains nothing to undermine the credibility of witnesses (including top church officials) who assert that the beneficiary's work has been uninterrupted. The regulations at 8 C.F.R. § 204.5(m)(3) indicate that letters are sufficient evidence of experience, provided there is no basis to doubt the assertions in those letters. The certificate from 2001 does not, on balance, prove that the beneficiary was not qualified to work as a missionary before he received that certificate.

The next issue is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. 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.

*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.

While the beneficiary's job title includes the word "minister," there is no evidence that the beneficiary is ordained or otherwise authorized to perform the duties usually performed by the clergy. Therefore, we will limit discussion to the question of whether the beneficiary's position is a religious occupation. The statute is silent on what constitutes a "religious occupation" and the regulation at 8 C.F.R. § 204.5(m)(2) states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that 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 states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. We therefore interpret the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

lists several duties in the job description for the minister of missions, including "develop and work on a plan to start mission churches in Orlando and surrounding areas," "reach the Spanish populated areas, preaching the gospel and directing discipleship programs at each mission," and "conduct a mission's ministry in our congregation according to the teaching of the Bible."

The director, in denying the petition, asserted that the job functions ascribed to the beneficiary "are general in nature," and did not rule out a finding that the beneficiary's work is largely secular. Thus, the director determined, "[t]he evidence does not specifically portray the proffered duties [as] traditional religious functions."

The rationale behind this aspect of the director's decision is not clear. Missionaries are listed at 8 C.F.R. § 204.5(m)(2), in the list of examples of qualifying religious occupations. The job duties described appear to be generally compatible with the expected duties of a missionary. The beneficiary has been consistently paid for his work, which supports the inference that the church recognizes this work as an occupation rather than as a task for unpaid volunteers from the congregation. The beneficiary's duties on behalf of the church are considerably more involved than an hour of Sunday school lessons each week, distribution of literature on street corners, or comparable functions that typically may be performed by volunteers from the congregation.

The final issue in the director's decision concerns the petitioner's ability to pay the beneficiary's salary. The petitioner states that the beneficiary is to receive "a monthly salary and housing allowance of \$2,000," plus health insurance. The regulation at 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 petitioner's General Budget for 2002 includes the beneficiary's salary and housing allowance, but a budget is a list of anticipated expenses, rather than evidence of ability to meet those expenses. The petitioner submits a table of "total receipts" from 1998 through 2001, followed by the amount budgeted for 2002. This table amounts to a claim, rather than documentary evidence of the petitioner's receipts. We note that the petitioner's claimed receipts have never exceeded \$126,553.07 (the amount claimed for 2000), which falls short, by nearly ten thousand dollars, of the \$136,000 budgeted for 2002. The petitioner claims that its 2001 receipts were nearly two thousand dollars lower than its 2000 receipts.

Letters from a local bank attest that the petitioner had an aggregate balance of over \$60,000 as of March 1, 2002. These letters do not establish that the petitioner *consistently* carries such a balance, nor do they establish that the petitioner's income exceeds its expenses to an extent that would allow the petitioner to sustain regular payments to the beneficiary.

The above-cited regulation at 8 C.F.R. § 204.5(g)(2) states that evidence of ability to pay "shall be" in the form of tax returns, *audited* financial statements, or annual reports. The denial notice cited this regulation and listed the required documents. The petitioner is free to submit other kinds of documentation, but only *in addition to*, rather than *in place of*, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of evidence or explained why they are unavailable. 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.