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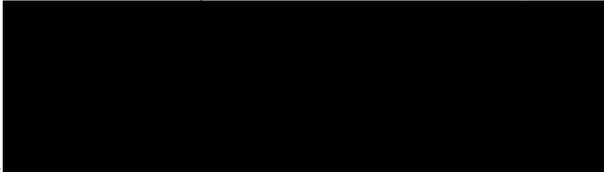
U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **AUG 04 2004**

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:



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 (AAO) 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 (the Act), 8 U.S.C. § 1153(b)(4), to perform services as pastor. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition or that the beneficiary possessed the required two years membership in the denomination. The director also determined that the petitioner had not established that the beneficiary was qualified for the religious worker position within the religious organization, or that it had the ability to pay the beneficiary the proffered salary.

On appeal, counsel submits a brief and additional documentation.

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) echoes the above statutory language, and states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States.” The regulation 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.”

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) 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 22, 2001. In his decision, the director indicated that the petition was filed on August 2, 2001. However, the receipt date-stamped on the petition indicates the service center received the petition and the appropriate fee on August 22, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a pastor throughout the two-year period immediately preceding that date.

The record contains an August 29, 2002 letter from the then senior pastor of the petitioner, Dr. Michael P. Hamilton, who stated that the beneficiary “has been leading the Mision Hispana Shalom at [the petitioner church], from January 1, 1999 through the date of this letter.” The record also contains a copy of a March 1999 “Certificate of License” indicating that the beneficiary was licensed to preach by the Primera Baptist church, and a copy of a June 2001 “Certificate of Ordination” issued by the petitioner church. A December 2000 letter from Dr. Tom Law, director of missions at the Tarrant Baptist Association, confirms that the beneficiary was pastor of the Shalom Baptist Mission with the petitioner.

In response to the director’s request for evidence (RFE) dated March 11, 2003, the petitioner submitted a general outline of the beneficiary’s duties, which included teaching Sunday school, leading and preaching in worship services, making visitations, and meeting with the church leadership and membership as needed. The petitioner also submitted a statement indicating that the beneficiary worked at a Christian bookstore before becoming a pastor, and in roofing before coming to work for the petitioner. No dates were given for either of these two prior occupations. The petitioner also included copies of several checks made payable to the beneficiary and other payees. These checks were drawn in 2001 on the joint account of German Lopez and Jorge Cañada, and indicate that they were for various purposes including salary and rent on an apartment. A few of the checks indicate that they may have been for pastoral services, but the petitioner provided no evidence as to whether these payments were made on its behalf.

The director determined that the petitioner had not established that the beneficiary was continuously employed as a pastor during the relevant two-year period as the evidence indicates he relied on supplementary income for his financial support. The director further determined that the evidence did not establish that the beneficiary was a member of the same denomination for two years immediately preceding the filing of the visa petition.

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, with the addition of "a number of safeguards . . . to prevent abuse." 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/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/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *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, therefore 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/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 generally salaried. To hold otherwise would be contrary to the intent of Congress.

On appeal, the petitioner submits a letter from [redacted] minister of missions for [redacted] [redacted] states that the [redacted] was sponsored by a joint association of the [redacted] the [redacted] the [redacted]

Texas, the Tarrant Baptist Association and the [redacted] According to Mr. Hudson, the beneficiary became the third pastor of Principe de Paz in July 199 [redacted] further states that, because of its growth [redacted] d to find another space in which to hold its services. The petitioner became the host of the [redacted] in early 1999, and the name of the mission was changed from [redacted] The record also contains a copy of a document entitled [redacted] in which Tarrant Baptist Association and the petitioner requested the [redacted] change sponsorship of [redacted] to the petitioner.

Evidence submitted includes an affidavit from the beneficiary, in which he states that he worked full time for the petitioner church from July 1998 through the present, earning approximately \$1,400 to \$1,800 monthly. He states that he was paid in cash by the church treasurers Mr. Lopez and Mr. Cañada through March of 2000, and through their personal checks or in cash beginning in April 2000.

The petitioner submits a letter from Marisol Quiroz, a founding member of Principe de Paz, who states that the beneficiary began working for the organization in July 1998, and worked a minimum of 40 hours per week at a salary of \$300 per week. The petitioner also submits a document signed by Mr. Lopez and Mr. Cañada, labeled "Year 1999," "Year 2000" and year "2001." The documents contain dates and figures that are apparently salary and other expenses, and indicate that Mr. Lopez and Mr. Cañada are treasurers. The documents do not reflect the name of the organization of which the two gentlemen are treasurers, nor do they indicate to whom the payments were made. Copies of bank statements submitted indicate the checking accounts are maintained as personal accounts by Mr. Lopez and Mr. Cañada, and not as a business account for the petitioner. The petitioner resubmits copies of checks for 2001, but provides no additional evidence for 1999 and 2000.

On appeal, the petitioner a letter from submits that the Baptist General Convention of Texas, which states the petitioner is a member of that organization and is covered under its group tax exemption. The evidence is sufficient to establish that the beneficiary has been a member of the denomination for two full years prior to the filing of the visa petition.

The evidence is insufficient, however, to establish that the beneficiary worked continuously as a pastor during the requisite two-year period. The record indicates that the beneficiary was attending classes from 2000, with the expectation of receiving a diploma in "Pastoral Ministry" in 2004. Further, although the beneficiary stated he was paid in cash by the petitioner church and apparently members of the congregation, no evidence in the record adequately supports his statements. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The documents signed by [REDACTED] do not confirm the beneficiary's statements, as they do not identify themselves as treasurers of the petitioner or that the monies apparently paid in 1999 and 2000 were paid to the beneficiary, or paid on behalf of the petitioner.

The record does not conclusively establish that the beneficiary was continuously employed as a pastor during the two years immediately preceding the filing date of the petition.

The director determined that the petitioner had not established that the beneficiary was qualified for the proffered religious position.

As noted above, the record contains copies of a March 1999 "Certificate of License" issued by the [REDACTED] and a June 2001 "Certificate of Ordination" issued by the petitioner. The record also contains statements from the petitioner's former pastor who states that the beneficiary has been leading the Shalom Baptist Mission at the petitioner church since January 1999, and from Dr. Law, the director of missions for

the [REDACTED] who states in an August 2000 letter that the beneficiary is currently the pastor of the [REDACTED]

On appeal, the petitioner submits a statement from [REDACTED] pastor of the [REDACTED] [REDACTED] who states that the beneficiary was co-pastor of the church from June 1988 to July 1993. According to Marisol Quiroz of the Principe de Paz, as pastor of the mission beginning in July 1998, the beneficiary preached, conducted marriages and funerals, directed the church in baptism and Last Supper requirements and evangelized in the community.

The evidence is sufficient to establish that the beneficiary is qualified for the position of pastor within the petitioner church and the denomination.

A petitioner must also demonstrate its ability to pay the proffered wage.

The regulation at 8 C.F.R. § 204.5(g)(2) states, 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 petitioner proposes to pay the beneficiary \$500.00 per week for his services. To establish that it has the ability to pay the proffered salary, the petitioner submitted copies of its 1999, 2000 and 2001 budgets. The petitioner also submitted copies of the financial reports for the Shalom Baptist Mission for the months of January through May and August through December of 2001, and January through April of 2002. The petitioner provides no translation for the mission's financial reports as required by the regulation at 8 C.F.R. § 103.2(b)(3).

The petitioner also submitted a statement from its associate pastor, in which he states, "Unfortunately the Hispanic mission has not kept the best financial records. There are times when the mission cannot pay his full salary." As discussed above, the petitioner also submitted copies of various checks made payable to the beneficiary and other payees during 2001. These checks, however, were drawn on the personal account of [REDACTED]. No evidence of record establishes that these checks were drawn from funds that belonged to the petitioner.

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 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.

Additionally, in response to the RFE, the associate pastor of the petitioner stated, "Unfortunately the Hispanic mission has not kept the best financial records. There are times when the mission cannot pay his full salary." This raises questions as to who, in reality, is responsible for payment of the beneficiary's salary. The proffered job duties include preparation and submission of a budget by the pastor of the Shalom Baptist Mission to the petitioner. The record is unclear as to the exact nature of the financial relationship between the mission and the petitioner.

According to the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, the beneficiary entered the United States in August 1993 without inspection. The director stated that it could not be determined that the beneficiary's sole purpose in entering the United States was to work for the petitioner.

We withdraw this statement by the director. The regulation does not require that the alien's initial entry into the United States to be solely for the purpose of performing work as a religious worker. "Entry," for purposes of this classification, would include any entry under the immigrant visa granted under this category or would include the alien's adjustment of status to the immigrant visa.

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.