



U.S. Citizenship
and Immigration
Services

C

[REDACTED]

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date: AUG 26 2012

IN RE:

Petitioner:
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:

[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.

Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to
prevent disclosure of unwarrented
invasion of personal privacy

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DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The director granted a subsequent motion to reopen, and reaffirmed his original decision. The petition 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 a minister. 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.

On appeal, counsel submits a brief.

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).

(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 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 July 3, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a pastor throughout the two-year period immediately preceding that date.

According to the beneficiary, he discontinued his secular job in December 1999 and began working full time in the ministry in January 2000. He stated that he conducted religious services, teaching seminars, and baptisms; held prayer services and performed counseling. A undated letter from the elders of the beneficiary's church in Kuwait addresses his service with the church in 1999 and 2000. According to the elders, the beneficiary founded the church and served as its pastor during 1999 and 2000. They confirmed that he performed the duties as stated above, and stated that from March to December 1999, the beneficiary was compensated in cash in the amount of 300 Kuwaiti dinars, which was increased to 450 Kuwaiti dinars in 2000. The petitioner also submitted pictures that it said were of the beneficiary performing his ministerial duties from 1995 to 2001.

The petitioner submitted no evidence of the time the beneficiary worked at his ministry prior to January 2000. The petitioner also did not submit any documentary evidence, such as pay vouchers or receipts, confirming that the beneficiary was paid for his services to the church in Kuwait. On appeal, counsel argues that neither the statute nor the regulation requires that prior work experience be full time.

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 at section 101(a)(27)(C)(iii) requires 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.

The beneficiary admitted that he had not been engaged full time as a minister prior to January 2000. Further, the petitioner submitted no corroborative evidence to substantiate that the beneficiary worked full time or was paid for his services to the church during the requisite two-year period. 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 record does not establish that the beneficiary continuously worked as a minister for two full years preceding the filing of the visa petition.

Beyond the decision of the director, the petitioner has not established that the beneficiary possessed the required two years membership in the denomination. The record contains a copy of a 1991 "Certificate of Ministry" issued to the beneficiary by The Adonai Bible School in Bangalore, India. The record also contains a "Certificate of Ordination" issued to the beneficiary by the [REDACTED] of India in 1991. The petitioner does not identify the denomination to which it belongs; however, in his résumé, the beneficiary describes his church in Kuwait as an "independent ministry."

The evidence does not establish that the petitioner and the beneficiary's current church are of the same denomination or that the petitioner is in any way affiliated with the beneficiary's current church in Kuwait. This deficiency constitutes another ground for dismissal of the petition.

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:

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 proposes to pay the beneficiary \$12,000 annually. The petitioner stated that the beneficiary could supplement his income through (apparently) the petitioner's employment relationship with Paramount's King's Island. The petitioner does not state the nature of this employment relationship, or how the beneficiary can use it to "supplement" his income.

The petitioner submitted a copy of a "Balance Sheet" dated June 30, 2002, which shows that it had cash accounts of approximately \$1,700 and fixed assets of approximately \$22,600. It also submitted copies of its bank statements for the months ending January, March, April and June 2002. Each of these statements reflects an ending balance of less than \$1,000.

The above-cited regulation 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. Further, the evidence submitted does not establish that the petitioner had the continuing ability to pay the beneficiary the proffered salary. This deficiency constitutes another ground for dismissal of the appeal.

The petitioner must also demonstrate that a qualifying job offer has been tendered. As noted above, the petitioner states that the beneficiary can supplement his income through employment with Paramount's King's Island. The regulation at 8 C.F.R. § 204.5(m)(4) states, 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.

The petitioner indicates that the beneficiary can supplement his income through employment with Paramount's King's Island. The petitioner does not indicate whether this proposed employment is ministerial work such that the beneficiary will be "solely carrying on the vocation of a minister." This deficiency constitutes an additional ground for dismissal of the appeal.

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.