



U.S. Citizenship
and Immigration
Services



FILE: [Redacted]
EAC 03 018 50905

Office: VERMONT SERVICE CENTER

Date:

DEC 08 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:



PUBLIC COPY

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 clearly unwaranted
disclosure of personal information

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

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 an associate 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.

On appeal, counsel submitted 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 Revenue 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 October 18, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as a pastor throughout the two-year period immediately preceding that date.

The petitioner states that it has employed the beneficiary as an associate minister on a full time basis since September 1, 1999. The petitioner submitted copies of the Form W-2s, Wage and Tax Statements, that it issued to the beneficiary in 2000, 2001 and 2002. The Form W-2s reflect wages of approximately \$6,704, \$931 and \$435, respectively. The petitioner also submitted copies of the beneficiary's Form 1040, U.S. Individual Income Tax Return, for the same years. The tax returns reflect total income of \$10,446, \$7,131, and \$6,244, and reflect that the difference in income as "unused clergy housing." The petitioner also submitted a copy of the beneficiary's pay stub for the period of May 15, 2003. The stub indicates that the beneficiary was paid approximately \$769 (\$189 in salary and \$581 for housing). The stub reflects gross pay year to date of approximately \$7,692. The petitioner explained in a letter that the housing portion of the beneficiary's pay is not reflected on the beneficiary's Form W-2, as it is nontaxable income.

On appeal, the petitioner submits copies of its "employee payroll history report" for the beneficiary for 2000, 2001 and 2002, and copies of the beneficiary's bank statements, which, according to the petitioner, reflect deposits in the amount of the checks issued by the petitioner. Additionally, the petitioner submitted copies of the beneficiary's weekly timesheets reflecting the hours she worked. We note that many of these timesheets do not reflect the year and as such are of little evidentiary value.

The evidence is sufficient, however, to establish that the beneficiary worked continuously in the religious occupation for two full years prior to the filing of the visa petition. The record further establishes that the beneficiary is otherwise qualified for the visa preference classification.

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 met that burden.

ORDER: The appeal is sustained. The petition is approved.