



U.S. Citizenship
and Immigration
Services

61

[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: JUL 19 2004

IN RE:

Petitioner:
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.


Robert P. Wiemann, Director
Administrative Appeals Office

APR 19 2004

Identifying data deleted to
prevent clearly unwarranted
disclosure of personal privacy

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office 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, 8 U.S.C. § 1153(b)(4), to perform services as a pastor of evangelism. The director determined that the petitioner had not established that it qualifies as a tax-exempt religious organization, or that the beneficiary had the requisite two years of continuous work experience immediately preceding the filing date of the petition.

On appeal, the petitioner submits substantial documentation to address both findings.

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).

8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

The petitioner has submitted a June 26, 1984 letter from the Internal Revenue Service (IRS), indicating that the [REDACTED] Los Angeles, California, is a tax-exempt church. [REDACTED] corporate secretary of the [REDACTED] states that [REDACTED] is a subordinate unit in good standing with the [REDACTED] and "is therefore under the group ruling" issued by the IRS. The letterhead of [REDACTED] letter states the church's address as [REDACTED] Angeles.

The director instructed the petitioner to submit further evidence, because the IRS letter does not show the address of the petitioning church. In response, the petitioner notes that the petitioning church is listed as a member of the [REDACTED] denomination at <http://www.foursquare.org>. The petitioner adds that the address on the IRS letter "reflects the physical address/location of [REDACTED] pioneer church. . . . It is located across the street from [REDACTED] denominational headquarters." The petitioner also notes that the church has changed addresses as it has grown. In this respect, we note that the IRS letter reproduced in the record is now 20 years old.

[REDACTED] regional administrator for [REDACTED] asserts that [REDACTED] is the former name of the petitioning church, which "is in the process of changing its name." Indeed, the listing at the above web site shows both the old and new names of the petitioning church.

In denying the petition, the director repeated the assertion that nothing from the IRS shows that the petitioner qualifies as a tax-exempt church. On appeal, the petitioner submits a copy of a letter from [REDACTED] president [REDACTED] who states that the petitioning church "is a subordinate of the [REDACTED] of the [REDACTED] and is exempt under [REDACTED] exemption." The petitioner also submits a copy of a new IRS letter, dated June 26, 2003, specifying that [REDACTED] exemption is a group exemption. This new letter clarifies, rather than contradicts, the 1984 letter submitted previously. The petitioner also submits a copy of another new IRS letter, dated August 8, 2003, confirming that the petitioning church is covered by the ICFG's group exemption.

While the changes in address and name have added some degree of confusion, the totality of the evidence is credible and consistent with the petitioner's claims. The petitioner has submitted evidence from numerous [REDACTED] officials at high levels of the organization, and the church is listed on the denomination's web site. The evidence submitted previously tended to support the inference that the petitioner was a qualifying subordinate, covered by a group exemption. The new evidence on appeal confirms this inference.

We hereby withdraw the director's finding regarding the petitioner's tax-exempt status, as the petitioner has submitted compelling evidence of its qualifying tax-exempt status.

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 September 16, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a pastor of evangelism throughout the two years immediately prior to that date.

In a letter accompanying the initial filing, [REDACTED] states that the beneficiary "is a licensed minister approved to perform ecclesiastical duties in a professional capacity," and that the beneficiary has been performing these duties "during the last two years."

The director requested more detailed information regarding the beneficiary's work history. In response, the petitioner has submitted a partial copy of a Form W-2 Wage and Tax Statement, showing that the petitioner paid the beneficiary \$5,120.00. The copy does not show the year on the form; the petitioner asserts that the form is from 1999, outside the 2000-2002 qualifying period. The petitioner indicates that the beneficiary earned \$3,626.17 in 2001 and \$4,345.00 in 2002. The petitioner submits copies of pay receipts, dated between 2000 and 2003, indicating numerous small payments to the beneficiary.

In the denial notice, the director stated "these documents neither show that the beneficiary was engaged in full time employment with the petitioning entity nor does it [sic] show that the checks cleared with the bank." The director concluded "the evidence is insufficient to establish that the beneficiary has been performing full-time work as a Senior Pastor for the two-year period immediately preceding the filing of the petition." We note that there is no indication that the petitioner seeks to hire the beneficiary as a senior pastor. The petitioner has referred to the beneficiary as a "minister" and as a "pastor of Evangelism."

The petitioner submits copies of cancelled checks, proving that the petitioner paid the beneficiary as claimed. The petitioner also indicates that the beneficiary "is the recipient of a \$1600.00 per month housing arrangement by the church." The beneficiary resides in a condominium owned by a parishioner, who provides a letter describing the arrangement. The \$1600 figure derives from an appraisal provided by a realtor. The petitioner argues that the provision of free housing greatly reduces the beneficiary's salary needs.

The petitioner has, on appeal, demonstrated that the beneficiary has consistently received money and housing provided, directly or indirectly, by the petitioning church. The record contains nothing to indicate that the beneficiary's work has been interrupted by lengthy absences or by other, secular employment. Based on the evidence in the record, we find the petitioner's claim persuasive that the beneficiary has worked continuously for the church throughout the qualifying period.

The petitioner has, thus, overcome the two cited grounds for denial. The director cited no other grounds for denial, and review of the record does not readily reveal additional grounds.

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. Accordingly, the appeal will be sustained.

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