



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: JUL 23 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:

[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

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont 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 an assistant pastor. The director determined that the petitioner had not established (1) that the beneficiary had the requisite two years of continuous work experience as an assistant pastor immediately preceding the filing date of the petition; (2) that the beneficiary's prospective duties are those of a minister rather than of a lay member of the congregation; (3) the petitioner's ability to pay the beneficiary's proffered salary, or (4) the petitioner's status as a religious organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986.

On appeal, the petitioner submits copies of previously submitted documents and arguments from counsel.

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 director's decision contains the observations that the petitioner employs several ministers already, has only 155 members, and has "not established a realistic need for an additional position." On appeal, counsel asserts that "a lower Pastor-to-Member ratio would ensure better service and understanding of the bible." Counsel claims, without proof, that the church actually has hundreds of members apart from the 155 "officially active" members named in the record. The director cites no statutory or regulatory basis for arriving at a finding regarding the petitioner's need for the beneficiary's services. The finding appears to be a general observation regarding the *bona fides* of the petition, rather than a basis for denial in and of itself.

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 November 21, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an assistant pastor throughout the two years immediately prior to that date.

The beneficiary last entered the United States on July 21, 2001, four months before the petition's filing date. Therefore, the beneficiary spent most of the two-year qualifying period outside the United States, and the petitioner is not in a position to offer first-hand corroboration of the beneficiary's duties during that time.

██████████ pastor of the petitioning church, states that the beneficiary "is a professionally trained and experienced minister who has held credentials with our denomination since 1994. . . . [The beneficiary] has ministered internationally since 1981, most recently serving as a missionary to China for seven years." A certificate from ██████████ Korea, dated January 17, 2003, indicates that the beneficiary "is a missionary in CHINA." Despite the use of the present tense, stating that the beneficiary "is" rather than "was" in China as a missionary, the letter states the beneficiary's address as being in care of the petitioning church in Connecticut.

██████████ district superintendent for the ██████████ Council, ██████████ California, states that the beneficiary "actively served in China from August 1994 through July 2001. In these seven years, she had the authorization to conduct many religious activities, such as evangelism, teaching, and preaching the gospel. Over the years, she performed all religious duties as befitting a full-time licensed minister." This last statement is somewhat ambiguous; the duties of a minister are not synonymous with those of a missionary.

In a sworn affidavit, the beneficiary states that she "served as a Christian missionary to China from August 1994 to July 2001." The beneficiary says nothing about what she has done since July 2001. There is no indication that the beneficiary has actually begun working for the beneficiary as an assistant pastor, or that she has otherwise engaged in any religious occupation or vocation since her July 2001 arrival in the United States.¹ This indicates a four-month gap from July to November 2001, during which the beneficiary was not carrying on the vocation of a minister or otherwise performing qualifying religious work.

In addition to the very substantial gap in the beneficiary's activity after July 2001, the record shows that, prior to her arrival in the United States, the beneficiary was a missionary, rather than an assistant pastor. The petitioner has offered no first-hand information about the beneficiary's work in China that would demonstrate that her work in China was largely identical to the work she intends to perform for the petitioner in the United States. The burden of proof is on the petitioner to establish that her past work is similar to her intended future activities; the burden is not on Citizenship and Immigration Services (CIS) to prove that the past and future activities are different.

The regulations at 8 C.F.R. § 204.5(m)(1) and (3)(ii)(A) require that the beneficiary must have carried on *the* vocation or occupation, rather than *a* vocation or occupation, indicating that the work performed during the qualifying period should be substantially similar to the intended future religious work. The underlying statute, at section 101(a)(27)(C)(iii), requires that the alien "has been carrying on such . . . work" throughout the qualifying

¹ We note that the petitioner's annual reports from 2000 and 2001 contain complete lists of church members. The beneficiary's name does not appear on either list. The petitioner has not claimed that the beneficiary is already a member of the petitioning church.

period. An alien who seeks to work as a minister has not been carrying on "such work" if employed as a missionary for the past two years.

The director denied the petition, in part because the petitioner had not demonstrated that the beneficiary has *continuously* carried on the vocation of a minister throughout the November 1999-November 2001 qualifying period. On appeal, counsel does not address this finding, focusing instead on other aspects of the director's decision. The petitioner submits copies of previously submitted documents, but no new materials to overcome the director's findings regarding the beneficiary's past experience.

While the determination of an individual's status or duties within a religious organization is not under the purview of CIS, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

The next issue is whether the petitioner seeks to employ the beneficiary in a qualifying position. The regulation at 8 C.F.R. § 204.5(m)(2) defines a "minister" as 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. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties. The same regulation indicates that a missionary occupies a religious *occupation*, which is a classification separate from the *vocation* of a minister.

states that the beneficiary's "duties would include organizing and conducting evangelistic services, preaching, teaching weekly Bible study classes, pastoral visitation and counseling, and officiating at communion, water baptism, infant dedication, wedding and funeral services. Our denomination requires that only qualified clergy perform these duties." asserts that the beneficiary's duties would occupy "an estimated 46 hours of work per week."

The director stated that statements do not constitute "sufficient documentary evidence to demonstrate that the beneficiary's duties involve responsibilities that are primarily those of an Assistant Pastor." It is not clear what documentary evidence the director would like to have seen, regarding the nature of duties that the beneficiary has not yet performed. The regulations simply call for a letter from the intending employer, describing the prospective duties, and the petitioner has met this requirement. There is no indication that the duties described for the beneficiary are inherently unrealistic in the context of her intended position with the petitioner. The description provided by appears to be consistent with the duties of ordained clergy in the petitioner's denomination.

The director's concerns regarding a lack of documentary evidence are more germane to the beneficiary's *past* work, which has already taken place and therefore, presumably, generated some trail of documentation and other evidence. We have already discussed the beneficiary's past work and need not revisit that issue here. Pursuant to the above, we withdraw the director's finding that the petitioner has not shown that the beneficiary's responsibilities are intended to be those of an assistant pastor.

The director denied the petition in part because of concerns over the petitioner's ability to pay the beneficiary's salary. 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.

Rev. Harvison states that the beneficiary's "compensation would include a base salary of \$24,000 annually, medical and dental insurances, and housing at the parsonage." An audited financial statement, contained within the petitioner's annual report for 2000 (the last full year before the petition's November 2001 filing date) states that the petitioner had \$263,540 in current assets as of December 31, 2000, offset by only \$21,648 in current liabilities, with a \$148,314 net increase in cash for the year. The director's decision contains no explanation as to why this documentation is supposedly deficient. We therefore withdraw the director's finding that the petitioner has not established its ability to pay the beneficiary's salary.

The final issue raised by the director pertains to the petitioner's required tax exemption. 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's initial submission contained no documentation regarding its tax-exempt status. The director instructed the petitioner to submit the documentation described in the above regulations. In response, the petitioner has submitted a copy of a tax exemption permit issued by the Connecticut Department of Revenue Services. This document pertains to *state* taxation, and does not establish the required exemption from *federal* taxation.

On appeal, counsel argues that the petitioner submitted the Connecticut tax exemption permit "and as such [the petitioner] is exempt from taxation" as required in the regulations. Counsel, however, does not explain how this state documentation establishes federal tax exemption. The petitioner has not submitted documentation showing that it is exempt from *federal* taxation under section 501(c)(3) of the Internal Revenue Code, nor has the petitioner submitted such documentation as is required by the Internal Revenue Service to establish eligibility for such exemption (such as a completed Form 1023 and the Schedule A attachment to that form). The petitioner has therefore failed to meet its burden of proof relating to this issue.

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.