



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: JUN 15 2004

IN RE: Petitioner: [Redacted]
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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska 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, evangelist, and translator. The director determined that the petitioner had not established (1) that it qualifies as a tax-exempt religious organization, or (2) that the beneficiary had the requisite two years of continuous work experience in the occupation immediately preceding the filing date of the petition.

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 first issue concerns the petitioner's tax exemption. The regulation at 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 did not address the issue of tax-exempt status. The director therefore instructed the petitioner to submit documentation of such status. In response, the petitioner has submitted documentation to show it is listed in Assemblies of God church directories. The petitioner has also submitted

a copy of a letter establishing its Employer Identification Number. This is not direct evidence that the petitioner is recognized as tax-exempt, nor are church directories "such documentation as is required by the Internal Revenue Service to establish eligibility for exemption." [REDACTED] of the petitioning church explained in a letter that the church's district and corporate structures were being reorganized and therefore documentation was not yet available.

The director denied the petition, in part because the petitioner did not submit evidence that it is exempt from taxation or that it is eligible for such exemption. On appeal, the petitioner submits a copy of a letter establishing a group exemption for the General Council of the Assemblies of God. The previously submitted directories show that the petitioner is a subsidiary church of that entity, and thus it is covered by the group exemption.

The remaining issue concerns the sufficiency of the beneficiary's prior experience. 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 27, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an assistant pastor, translator, and evangelist throughout the two years immediately prior to that date.

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." H.R. Rpt. 101-723, at 75 (Sept. 19, 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 prior law 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. Clearly, therefore, the qualifying two years of religious work must be full-time and salaried. To hold otherwise would be contrary to the intent of Congress.

The petitioner has offered the beneficiary \$1,700 per month (including housing) in exchange for working forty hours per week as an assistant pastor, evangelist and translator. In a letter accompanying the initial filing, [REDACTED] stated that the beneficiary "has been an active member of our church since 1994. He has been an active participant aiding me as an Assistant Pastor, as a translator in the Tarasco dialect, and as an active Evangelist." This ambiguous statement does not establish when the beneficiary assumed those duties. 8 C.F.R. § 204.5(m)(3)(iv) states that, in appropriate cases, the director may request appropriate additional evidence relating to the eligibility of the alien. Therefore, the director therefore requested more detailed information about the beneficiary's work during the 2000-2002 qualifying period.

In response, Rev. Pineda has stated:

[The beneficiary] is a volunteer associate pastor assisting me and active for the past 5 years. He serves in the church board and translat[e]s in the Tarasco dialect, to a large group of Mexican people from the state of Michoacan, Mexico. He is active in the Evangelist/ Associate Pastor role. He helps other pastors in the area to fill in while they are out of town.
...

[The beneficiary] meets the qualification[s] to receive his credentials through the Assemblies of God with the Northern Pacific Latin American District but under our policy [an] applicant must be documented to receive credentials. . . .

[The petitioner] currently provides housing and pays for the filing of his immigration papers. We give him periodically a love offering of \$200.00. In addition to the position he holds within the church, he continues expanding his education in Theology, Bible studies, church administration, and English language.

The petitioner has submitted copies of certificates that establish the beneficiary's involvement with the church, but do not establish that the beneficiary has continuously worked full-time at the petitioning church throughout the two years immediately prior to the filing date.

The director denied the petition, stating that volunteer work is not qualifying employment in a religious occupation. On appeal, [REDACTED] repeats the assertion that the beneficiary has been "active as a [REDACTED] for the past 5 years," and that the petitioner "currently provides housing for him and his family." The record contains no documentary evidence to support this claim. The petitioner has not shown, nor even expressly claimed, that the beneficiary worked full-time for the petitioner throughout the two-year period that ended on September 27, 2002.

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.