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U.S. Citizenship
and Immigration
Services



FILE:



Office: TEXAS SERVICE CENTER

Date:

OCT 20 2004

IN RE:

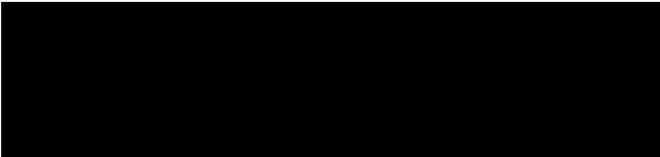
Petitioner:

Beneficiary:



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:



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, Texas Service Center. The petition is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

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 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 or that the beneficiary was qualified for the position within the religious organization.

On appeal, counsel submitted a brief and 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 March 13, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a pastor throughout the two-year period immediately preceding that date.

During the initial phases of these proceedings, the petitioner did not indicate the date that the beneficiary began serving as pastor with the petitioner. It submitted a letter dated August 23, 2001 from God’s Word Deliverance Ministry International, Inc., granting the beneficiary power, under its authority, to establish and operate the petitioning organization. The record also contains evidence, however, that the petitioning organization was established in 1999. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In correspondence submitted on appeal, the petitioner states that the beneficiary has been pastor of the petitioning organization since its inception in 1999. The petitioner also submitted copies of the beneficiary’s 2000 and 2001 Form 1040, U.S. Individual Income Tax Return, on which the beneficiary listed his occupation as minister. No evidence in the record establishes that these returns were filed with the Internal Revenue Service, however, and we note that the preparer dated the returns in 2003. The petitioner also submitted a copy of the beneficiary’s 2002 W-2, Wage and Tax Statement, issued by the petitioner.

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 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 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.

On appeal, the petitioner submitted a copy of the beneficiary’s 2001 W-2 issued by the petitioner. In a letter from the International Gospel Fellowship Ministries, Inc. and the I.G.F. & Theological Seminary conferring an honorary Doctor of Ministry degree upon the beneficiary, Bishop [REDACTED], the presiding bishop, indicates that the beneficiary graduated from the seminary and had been in the ministry since 1979, starting his own ministry in Dallas in 1999.

A letter from Pastor [REDACTED], head of administration with Holy Ghost Fire Ministries, Int’l, “attests” that the beneficiary served as pastor in various branches of the organization in Nigeria, Botswana and South Africa. [REDACTED] also states that in 1997, the beneficiary was posted to Dallas as branch pastor, from which he founded the petitioning organization.

Despite the inconsistency in the record as to the date the beneficiary began his association with the petitioner, the evidence is sufficient to establish that the beneficiary had, for two years prior to the filing of the visa petition, worked continuously in the vocation of minister.

The director determined that the petitioner had not established that the beneficiary was qualified for the position within the organization; therefore it had not established that it had extended a qualifying job offer.

As discussed above, the evidence establishes that the beneficiary has been serving as pastor of the petitioner since at least March 2001. The record contains a copy of a “ministerial license” issued to the beneficiary in September 1995 by the Zoe Ministries Worldwide, and a copy of a certificate of ordination issued to the beneficiary in March 1998 from the Anchor Bay Evangelistic Association. The record also contains a copy of

credentials/certificate of ordination issued in November 1999 from God's Word Deliverance Ministry International.

On appeal, the petitioner submits a letter from the Anchor Bay Evangelistic Association, stating the beneficiary has been an active member in good standing with the association since 1998, and that he meets the qualifications of ordained minister and has served as such. The supporting documentation includes a copy of the association's requirements for ordination, which include working full time as a minister.

The evidence is sufficient to establish that the beneficiary possesses the necessary qualifications for the position. The petitioner states it will compensate the beneficiary at a rate of \$31,200 per year plus housing. The evidence is sufficient to establish that the petitioner has extended a qualifying job offer to the beneficiary.

Nevertheless, the case may not be approved as the record now stands, and it will be remanded to the director to request further evidence and to enter a new decision.

The director should address whether the petitioner has established that it has the ability to pay the proffered 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.

The petitioner indicates that it will pay the beneficiary \$31,200 per year (or \$2,600 per month) plus housing, utilities and miscellaneous travel expenses. The petitioner submitted a copy of the beneficiary's 2002 W-2 reflecting wages of \$27,530 and a copy of a 2002 financial statement on which it annotated that it paid the beneficiary \$27,530. The petitioner also submitted copies of checks made payable to the beneficiary in January and February 2003. These checks indicate that the beneficiary received \$1,900 for "allowance" and \$476.48 for "payment" in January, and \$1,700 for "allowance" in February. This reflects a compensation rate that is less than the \$2,600 the petitioner proposes to pay the beneficiary as salary. The petitioner submitted no evidence of its ability to pay the proffered wage from March 2003, the date the petition was filed.

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. On remand, the petitioner should be given the opportunity to establish that it has the ability to pay the beneficiary the proffered wage as of the date the petition was filed.

This matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review