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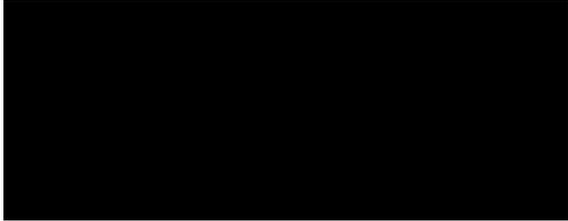
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U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: TEXAS SERVICE CENTER

Date: OCT 20 2008

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:

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

**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 appeal will be dismissed.

The petitioner is an organization established to “represent in North America the ethnic Christians and churches of Asia.” 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 executive director and 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 it had extended a qualifying job offer to the beneficiary.

On appeal, the petitioner 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 January 13, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working in the religious vocation or occupation throughout the two-year period immediately preceding that date.

In documentation dated December 7, 2001, [REDACTED] of Lift Jesus Worldwide Ministries, Inc., certified that the beneficiary was ordained in 1984, had been a member of that organization since 1992, and had served in “various posts of the church and other mission organizations involving evangelism, discipleship, church planting, community development and training programs.” [REDACTED] further stated that Lift Jesus Worldwide Ministries, Inc. was sending the beneficiary to the United States to help develop the organization through its U.S. based affiliate, the petitioner. The petitioner submitted no corroborating evidence, such as canceled checks or pay vouchers, to substantiate the beneficiary’s prior employment.

In a request for evidence (RFE) dated April 8, 2003, the director instructed the petitioner to submit a “detailed description of the beneficiary’s prior work experience including duties, hours and compensations . . . accompanied by appropriate evidence.” In response, the petitioner stated, “The beneficiary is a pastor since 1992 of the Lift Jesus church who [sic] is the founding partner and affiliate of Asians to the World. His job includes preaching, Bible study, follow-up, spiritual counseling, mentoring, relief and community development. He is working full time with an equivalent of 45 hours per week.” The petitioner further stated that the beneficiary was able to receive official compensation in the United States only after approval of his R-1, nonimmigrant religious worker, visa. According to the petitioner, the Lift Jesus Worldwide Ministries, Inc. in the Philippines paid the beneficiary’s salary and compensation. The petitioner submitted a copy of the beneficiary’s 2002 Form 1040, U.S. Individual Income Tax Return, reflecting income of \$1,650.00. The petitioner submitted no other evidence of the beneficiary’s work experience from January 2001 to January 2003.

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 argues that the director misapplied the provisions of the Act as it applied to the beneficiary as the director incorrectly determined that the beneficiary was engaged in a religious occupation rather than a religious vocation. The petitioner asserts that as the beneficiary is employed in a religious vocation, evidence that he was compensated for this position is not required, as the beneficiary receives in-kind compensation.

Nothing in prior AAO decisions or case law support the petitioner's interpretation of the regulation. The statute and regulation require that the alien have continuous experience in the occupation **or** vocation for the two years immediately preceding the filing of the visa petition. The petitioner cannot simply assert that the alien has the required experience. It must submit evidence to support its assertions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner did not indicate at any stage during the initial stages of the proceedings that the beneficiary received in-kind compensation from his church, first raising the issue on appeal. As it submits no contemporaneous documentary evidence to substantiate its statements, the petitioner has not established that

the beneficiary possesses the statutory two years continuous work experience in the religious occupation or vocation.

The director stated that it could not be determined from the evidence whether the proffered job was that of executive director or of a pastor. She therefore concluded that the petitioner had not extended a qualifying job offer to the beneficiary.

The petitioner submitted a copy of a March 1979 certificate indicating that the beneficiary received a Bachelor of Theology degree from the [REDACTED] and a copy of March 22, 1984 certificate of ordination, ordaining the petitioner as an elder in the Church of the Nazarene. Although the record contains a certification from [REDACTED] that the beneficiary is an ordained minister and a certification from [REDACTED] the petitioner's authorized representative, stating that the beneficiary is a minister, no evidence of ordination as a minister appears in the record. The petitioner's evidence does not establish that ordination as an elder also authorizes the beneficiary to function as a minister within the petitioner's denomination.

As discussed above, the documentation includes certifications that the beneficiary has served as a minister with the petitioner and its parent organization since 1992. However, the petitioner submits no evidence to substantiate the beneficiary's employment. While the position of executive director and pastor are not mutually exclusive, the petitioner has not established that the beneficiary is qualified or has served as a pastor.

The petitioner stated that the duties of the proffered position included follow up for spiritual guidance of Filipino Christians, establishment of Filipino/Asian Christian churches and conceptualization and implementation of community development and other holistic programs. These duties may be consistent with those of a religious occupation and, as noted above, are not necessarily inconsistent with work that may be performed by a pastor. Nevertheless, the documentation submitted does not establish that the beneficiary is qualified for either position.

The petitioner must also establish that it has the ability to pay the beneficiary the proffered wage. 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 submitted copies of its monthly bank statements for July through August 2002, and March and April 2003. In her RFE, the director instructed the petitioner to submit conclusive evidence that establishes its ability to support the beneficiary. The petitioner responded, "The beneficiary is the only person receiving compensation that [sic] the monthly revenues we received . . . [are] more than sufficient."

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. In this instance, the petitioner has not submitted any of the required types of evidence. On appeal, the petitioner again asserts that this provision is inapplicable as the beneficiary is engaged in a vocation. The petitioner further asserts that the petitioner’s reference to compensation includes in-kind compensation provided by the church. Nonetheless, in response to the RFE, the petitioner states that the beneficiary is paid a salary of \$1,500 but does not state the frequency of payment.

The petitioner has submitted no evidence to establish that it has the ability to pay the beneficiary the proffered salary or any in-kind compensation.

The director stated that as the beneficiary entered the United States as a visitor before receiving an R-1, nonimmigrant religious visa, it could not be determined that the beneficiary’s sole purpose in entering the United States was to work for the petitioner. The regulation does not require that the alien’s initial entry into the United States to be solely for the purpose of performing work as a religious worker. “Entry,” for purposes of this classification, would include any entry under the immigrant visa granted under this category or would include the alien’s adjustment of status to the immigrant visa. We withdraw this statement by the director.

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.