



U.S. Citizenship
and Immigration
Services

CJ

[Redacted]

FILE: [Redacted]

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE:

Petitioner:

Beneficiary:

[Redacted]

OCT 29 2004

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]

PUBLIC COPY

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.

Mari Johnson

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Robert P. Wiemann, Director
Administrative Appeals Office

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 dismissed.

The petitioner is a ministry of the Church of God. 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 missionary/religious outreach worker. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a missionary/religious outreach worker immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established its ability to pay the beneficiary's proffered wage.

On appeal, counsel asserts that the beneficiary's compensation is not a valid subject of inquiry in this proceeding. The petitioner submits additional information about the beneficiary's earnings and whereabouts during 2002 and 2003.

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) 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 February 7, 2003. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a missionary/religious outreach worker throughout the two years immediately prior to that date. The I-360 petition form indicates that the beneficiary entered the United States on March 3, 2001, and thus the beneficiary spent most, but not all, of the two-year qualifying period in the United States.

Pastor Alberto Cordero, the petitioner's senior pastor for Southern California, describes the beneficiary's past work experience:

From 1998 until he arrived in the United States, [the beneficiary] received training in ministry. . . .

This training enabled [the beneficiary] to fill the position of Assistant Coordinator of one of the Zone areas of Dubai. [The petitioner] is seeking to establish small congregations throughout the U.A.E. [United Arab Emirates] in order to reach out to more souls. In his position as Assistant Coordinator, [the beneficiary] played an important role in the establishment and oversight of these congregations in his assigned area of Dubai.

While in Dubai engaged in his work with our church, [the beneficiary] enrolled in, and began his studies in, the Ministerial Internship Program of [the petitioner].

[The beneficiary] originally came to the United States for surgery. . . . After he arrived here in Los Angeles, we called [the beneficiary] to continue his outreach work. . . .

[The beneficiary] has been committed to outreach work among persons of Muslim background.

Pastor Cordero discusses the beneficiary's activities as of the petition's filing date:

[The beneficiary] has been engaged in Christian outreach work on our behalf here in the United States under his R-1 status (valid to 11/01/2004). At this time, however, we are sending him to Germany to complete his theological studies at the European Theological Seminary. . . .

Upon approval of their immigrant visas, [the beneficiary and his spouse] are to return to the United States to lead our outreach to persons of Muslim background here on a permanent basis. . . .

After completing his theological studies in Germany, [the beneficiary] is to return to the United States for ordination. [The beneficiary and his spouse] will then lead our outreach work among Muslim-background populations in the San Diego area and wherever needed in our Church of God congregations throughout the United States.

Pastor Cordero does not indicate that the beneficiary has acted, or will act, as an assistant coordinator in the United States, nor does he indicate that the beneficiary worked as a missionary before entering the United States. Pastor Cordero describes the duties that the beneficiary "will" undertake upon his return from Germany, but there is no indication that the beneficiary has already performed those duties. Pastor Cordero indicates that the beneficiary "is a Ministerial Intern of our parent church (Church of God, Cleveland, Tenn.) and is continuing his progress toward ordination." The initial submission contained no documentation from sources in Dubai to attest to the beneficiary's claimed work there.

The director instructed the petitioner to submit additional evidence, including tax documents, to establish the nature and extent of the beneficiary's past religious work. In response, the petitioner submits tax documents from 2002. Counsel states that tax documents from 2001 are not available because "the beneficiary was not

employed in the United States in 2001. He was only receiving medical treatments in the US.” The petitioner has submitted copies of checks from the petitioner to the beneficiary. The earliest checks are dated November and December 2001, for “Love Offerings” and “Living Allowance.” In 2002, the beneficiary claimed \$2,655 in income from the petitioner. This sum will be discussed in greater detail below, in the context of the petitioner’s ability to pay the beneficiary’s wage. The petitioner has also established some payments to the beneficiary in 2003. The documentation does not show regular salary payments to the beneficiary throughout the qualifying period.

The petitioner has submitted a new letter, from Rev. Angel S. Cano, the petitioner’s senior pastor in Dubai. Rev. Cano lists the beneficiary’s duties in Dubai, such as “Church pioneering in Abu Dhabi,” “local mission outreaches” and “Bible Study groups as Bible Study leader.” Rev. Cano provides no specific dates or supporting documents.

The director denied the petition, in part because the record does not persuasively establish that the beneficiary continuously performed the duties of the position offered throughout the qualifying period. On appeal, counsel states that the denial “is based on the allegation that the beneficiary is not paid as much as INS thinks such religious workers should be paid. This basis for denial . . . is a mere bureaucratic fabrication in defiance of law and regulation.” Counsel’s characterization of the grounds for denial distorts some of the director’s findings, while completely ignoring other findings.

The statute and regulations, cited above, plainly require the petitioner to establish that the beneficiary has the necessary continuous experience throughout the two years immediately prior to the filing date. The amount paid to the beneficiary is relevant not because it fails to meet some arbitrary “bureaucratic” standard, but because it is not consistent with a claim of full-time employment. Because the petitioner has offered absolutely no contemporaneous evidence of employment except for the paychecks and tax documents, those materials must necessarily figure in the director’s decision.

The petitioner submits list of parishioners with whom the beneficiary purportedly resided, and a list of benefits the beneficiary claims to have received, between January 2002 and December 2003. The record contains no corroboration from any of the named individuals, nor any contemporaneous documentation or other evidence to place the beneficiary at the addresses claimed. The list indicates that, in 2002, the beneficiary received \$100 per month as a “personal allowance,” and \$150 per month as a “transportation allowance,” in addition to gifts from parishioners and clergy. The beneficiary states “[t]hese allowances and love gifts I received were separate amounts from [the] \$600 regular living allowance that [the petitioner] is giving to me monthly.” The beneficiary’s allowances alone add up to \$3,000, without the “\$600 regular living allowance.” Yet the petitioner claimed only \$2,655 in income in 2002, and he received most of that sum in March and April of that year. Thus, the new claims on the list contradict prior evidence. Even if we were to assume that the new claim is correct and the old claim is incorrect, that assumption inescapably requires a second assumption of tax fraud, abetted by the petitioner’s issuance of a 1099-MISC that shows only \$2,655 paid to the beneficiary in 2002.

The petitioner has, thus, presented two very different and fundamentally incompatible claims regarding the beneficiary’s compensation during and after the qualifying period. Doubt cast on any aspect of the petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988).

Beyond the credibility issues discussed above, the list, on its face, offers no information regarding what the beneficiary was doing during the months covered by the list. Also, the list contains no information at all regarding the beneficiary during 2001, including the first eleven months of the two-year qualifying period. The petitioner has offered only vague descriptions of the beneficiary's past activities. In previous correspondence, counsel herself had stated "the beneficiary was not employed in the United States in 2001. He was only receiving medical treatments in the US." If the beneficiary was not employed in the United States in 2001, then he was not continuously engaged in qualifying religious work from February 2001 to February 2003. The hypothetical explanation that the beneficiary was not "employed," but performed unpaid religious work, is not consistent with counsel's assertion that the beneficiary "was *only* receiving medical treatments" during that time (emphasis added).

Earlier statements by Pastor Cordero indicate that the beneficiary is pursuing additional seminary training, with the goal of "ordination" into the "ministry." If the beneficiary seeks to enter the United States to carry on the vocation of a minister, then he must have been a minister throughout the two-year qualifying period. In this case, the beneficiary was not, and evidently still is not, a minister; rather, the ministry is his eventual goal. If the beneficiary seeks to continue doing what he has been doing, then the question arises as to why the beneficiary must travel to Germany to study for ordination, in order to continue activities that, the petitioner claims, the beneficiary has successfully pursued without such study and without ordination.

The petitioner has listed several job titles for the beneficiary, indicating that the beneficiary has worked in a variety of positions during the qualifying period. 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 period. An alien who seeks to work in occupation A has not been carrying on "such work" if employed in occupation B for the past two years. The credibility issues that surface on appeal serve to further cloud the issue of what exactly the beneficiary has been doing since February 2001.

The other issue in the director's decision concerns the petitioner's ability to pay the beneficiary's proffered salary of \$600 per month "in addition to freewill offerings and significant assistance in kind, e.g. room and board, transportation, etc.". 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 initial submission contained no financial documentation. The director, therefore, instructed the petitioner to submit evidence of its ability to pay the beneficiary's proffered wage. In response, counsel asserts that the General Assembly of the Church of God has billions of dollars in holdings. The petitioner is not the General Assembly of the Church of God, but rather a particular entity within the denomination. We note that the petitioner has its own tax exemption, rather than inclusion in a group exemption held by the Church of God, and the petitioner has its own articles of incorporation, establishing it as a distinct legal entity. The petitioner

has not shown that it has unrestricted access to the assets of the General Assembly of the Church of God, or that the beneficiary is paid from those funds. A financial report prepared by the Church of God shows that some of its ministries and missions have millions of dollars on hand, but the petitioner has not explained which of these ministries or missions is the source of its funding; the itemized list provided by the Church of God does not directly identify the petitioning entity.

A Form 1099-MISC shows that the petitioner paid the beneficiary \$2,655.00 in "nonemployee compensation" during 2002 (despite the petitioner's assertion that the beneficiary "has been employed" by the church since January 29, 2002). The beneficiary reported no other income on his 2002 tax return. The beneficiary received his R-1 nonimmigrant religious worker visa in late January 2002, and therefore the sum of \$2,655.00 represents eleven months of earnings from the petitioner. This total equates to \$241.36 per month, substantially less than the proffered wage of \$600 per month. The petitioner did not pay the beneficiary in equal installments. Rather, he received varying amounts at irregular intervals. The beneficiary received a check for \$1,300.00 on March 1, 2002, and a check for \$855.00 on April 6, 2002. These two checks, issued five weeks apart early in the year, represent all but \$500 of the beneficiary's total reported income for 2002. The checks are annotated "LO," apparently an abbreviation for "Love Offering" (which appears on some other checks).

The petitioner has also submitted copies of three checks issued to the beneficiary after the petition's February 2003 filing date. Two, dated June 7 and August 25, 2003, are for \$400 each. The third check, issued August 26, 2003, is for \$73.45, and bears the annotation "Printer Ink." Thus, the checks do not show that the petitioner has paid the beneficiary \$600 per month since the filing date.

The director, in denying the petition, stated that the beneficiary's proposed salary of \$600 per month falls well below federal poverty guidelines. Counsel rightly argues that the director failed to take into account the value of room, board, and transportation, over and above the monthly stipend as promised by Pastor Cordero. It remains, of course, that the petitioner must establish that it has actually been providing, or able to provide, room, board, and the other claimed non-monetary considerations. Because the petitioner, prior to the decision, had provided no documentation to establish the value of the claimed room, board, and transportation, the director can hardly be faulted for failing to take that value into consideration.

As noted above, counsel appears to have interpreted the denial as a commentary on the level of the beneficiary's compensation. Counsel argues that the beneficiary, as a religious worker, is motivated by faith rather than gain, and that the petitioner's payments and living arrangements are sufficient to meet the beneficiary's needs. Counsel even suggests that the beneficiary's minimal compensation enhances the credibility of the petition, because it shows that the beneficiary is not exploiting religion for financial gain. The amount of the beneficiary's compensation is of relatively little concern in and of itself. Nevertheless, the petitioner chose to offer the beneficiary \$600 per month, plus room and board. The burden is on the petitioner to demonstrate that it can, in fact, honor this obligation. As discussed above, the record contains financial information about the national parent organization, with no clear evidence to show that the parent organization is directly responsible for the beneficiary's compensation. The record documents a handful of payments to the beneficiary, but these payments are nowhere near \$600 per month. The petitioner states that it provides room, board, and transportation, but there is no direct evidence that these have been provided. The petitioner's appeal includes a list of residences where the beneficiary has allegedly stayed, but this list also contains financial information that is entirely inconsistent with the canceled checks and tax documents provided previously, thus undermining the credibility of that list.

The above-cited regulation at 8 C.F.R. § 204.5(g)(2) 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. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

The petitioner has not persuasively or credibly demonstrated that the beneficiary performed the duties of the position offered throughout the 2001-2003 qualifying period. The petitioner has not established its ability to pay the beneficiary's proffered wage. We are not persuaded by counsel's attempt, on appeal, to recast these findings as unacceptable government intrusion into religious matters.

Further, while the determination of an individual's status or duties within a religious organization is not under the purview of Citizenship and Immigration Services (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 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.