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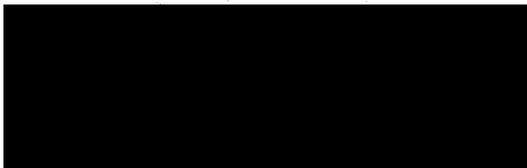
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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services



FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **SEP 23 2004**

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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.

Mari Johnson

6 Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) 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 (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a minister of praise and worship and post-audio engineer. The director determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization. The director also 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. The director determined that the petitioner had failed to establish that the position qualifies as that of a religious worker or that it had the ability to pay the beneficiary the proffered wage.

On appeal, the petitioner submits 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)(3)(i) states, in pertinent part:

(3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with § 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 § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code (IRC) of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement, which applies to, churches, and a copy of the organizing instrument of the church which contains a proper dissolution clause and which specifies the purposes of the organization.

With the petition, the petitioner submitted a copy of a May 1, 1992 letter from the Secretary of State for the State of Texas, which acknowledges receipt of an "assumed name" certificate for the petitioner. The petitioner also submitted copies of its articles of incorporation.

In a request for evidence (RFE) dated March 8, 2003, the director requested that the petitioner submit a copy of the IRS letter granting the petitioner tax exempt status under section 501(c)(3) of the IRC or evidence that the petitioner is covered under the tax exemption of a parent organization. In response, the petitioner submitted a copy of a Texas Sales and Use Tax Exemption Certification and the other documentation previously submitted.

On appeal, the petitioner submitted a copy of an April 29, 1988 letter from the IRS, notifying the petitioner of its tax exempt status under sections 509(a)(1) and 170(b)(1)(A)(i) of the IRC.

The regulation at 8 C.F.R. § 103.2(b)(12) states:

Effect where evidence submitted in response to a request does not establish eligibility at the time of filing. An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed.

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director. As the petitioner failed to provide evidence of its tax-exempt status as a religious organization with the petition or in response to the RFE, the petition must be denied.

The director also 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.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file an 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 December 6, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working in the religious occupation throughout the two-year period immediately preceding that date.

A letter from [REDACTED] the petitioner’s mission pastor and corporate director, states that the beneficiary “has been a member of our Church since April of 2000.” [REDACTED] also states that the beneficiary “assists in pastoral responsibilities as designated by his supervisors in youth ministries and music ministry,” and that he “directs [the] youth music ministry.” [REDACTED] further states that the beneficiary’s duties “include but are not exclusive to Spiritual counseling, leadership training, conducting the sacraments of water baptism, Holy Communion, marriage ceremonies and funeral services.” In a later letter, [REDACTED] adds that the beneficiary receives an annual salary of \$24,500 for his services. The petitioner submitted copies of W-2s, Wage and Tax Statements, that it issued to the beneficiary in 2000, 2001 and 2002. The W-2 for 2001 indicates that the petitioner paid the beneficiary approximately \$2,433 in 2000 and \$23,390 in 2001.

In response to the RFE, the petitioner submitted a letter from [REDACTED] the senior pastor of the beneficiary’s previous church, who stated that the beneficiary served as full-time worship pastor of the church from 1994 to 2000. [REDACTED] stated that the beneficiary worked 40 hours per week and received a salary “commensurate with the standard of Colombia.” No further evidence of the beneficiary’s work in Colombia was submitted, such as specific hours worked or actual compensation received.

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. 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 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 states that the beneficiary moved to the United States in March 2000 after receiving approval of an R-1, Alien in a Religious Occupation, nonimmigrant visa in February 2000. According to the petitioner, the beneficiary continued to receive funds from his previous church until November 2000, when the petitioner began paying his salary.

The petitioner submitted no evidence of any compensation received by the beneficiary prior to November 2000. 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). Further, although the record establishes that the beneficiary received an R-1 visa in February 2000, and according to the petitioner, entered the United States in March 2000, the record does not reflect that the beneficiary performed any work in the United States prior to November 2000, when the beneficiary began

compensating him for his services. Although Reverend Holland states that the beneficiary became a member of the church in April 2000, he does not state when the beneficiary began working for the petitioner.

The record does not establish that the beneficiary worked continuously in a qualifying religious occupation for two full years prior to the filing of the visa petition.

The director determined that the petitioner had not established that the proffered position qualifies as that of a religious occupation.

The petitioner indicates that the position offered to the beneficiary is that of minister of praise and worship and post-audio engineer. It lists the job qualifications as a bachelor's degree, five years experience in digital editing, knowledge of audio equalization, and advanced knowledge of pro-tool and peak programs. It lists the job duties to include:

- Plan a program of studies that meets the need, interest, and ability of each student.
- Prepare praise and worship and Spanish classes.
- Teach the students how to lead praise and worship.
- Meet and instruct praise and worship and Spanish classes.
- Edit weekly radio and TV production.
- Direct praise and worship team for youth ministry and for general congregation upon request.

According to 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work in a religious occupation.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions would reasonably be expected to perform services directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

Citizenship and Immigration Services (CIS) therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

The requirements of the position as outlined by the petitioner do not establish that the duties of the proffered position are not primarily secular in nature. The record is unclear as to the nature of the "praise and worship" classes that the proffered position requires. Additionally, although the petitioner states that the beneficiary's duties have involved "counseling, leadership training, conducting the sacraments of water baptism, Holy

Communion, marriage ceremonies and funeral services," the duties of the proffered position do not include these duties.

The petitioner has submitted no evidence to establish that the duties of the proffered position are directly related to the creed of the denomination, that the position is defined and recognized by the petitioner's governing body, or that the position is traditionally a permanent, full-time salaried occupation with the petitioner's denomination. The record does not establish that the proffered position is a religious occupation within the meaning of the regulation.

A petitioner must also demonstrate its ability to pay the proffered wage.

The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part, that:

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 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 annual reports, federal tax returns, or audited financial statements.

The petitioner proposes to pay the beneficiary \$24,500 per year. The W-2s submitted by the petitioner reflect that it paid the beneficiary approximately \$23,390 in 2001 and approximately \$29,260 in 2002. On appeal, the petitioner submitted a copy of an audited financial statement for the period ending July 30, 2002. The evidence sufficiently establishes that the petitioner had the continuing ability to pay the beneficiary the proffered wage from the date the petition was filed.

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.