



U.S. Citizenship
and Immigration
Services

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FILE:



Office: TEXAS SERVICE CENTER

Date:

SEP 23 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:

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

for 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 "non-profit Christian organization." 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 missions coordinator. 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.

On appeal, the petitioner submits a letter 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)(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, if applicable, and a copy of the organizing instrument of the organization which contains a proper dissolution clause and which specifies the purposes of the organization.

The petitioner submitted a copy of a March 2, 2000 advance ruling letter from the IRS granting it tax-exempt status under section 501(c)(3) of the IRC as an organization described under sections 509(a)(1) and 170(b)(1)(A)(vi) of the IRC. The advance ruling was scheduled to end on December 31, 2003. In response to the director's request for evidence dated April 8, 2003, the petitioner submitted a copy of a Form 872-C, Consent Fixing Period of Limitation Upon Assessment of Tax Under Section 4940 of the Internal Revenue Code, and a copy of the Form 1023 that the petitioner filed with the IRS. The record also contains a copy of the petitioner's December 2002 newsletter.

On appeal, the petitioner submits a copy of portions of its Articles of Incorporation, which show that the petitioner was incorporated as a religious organization and which contain the dissolution clause required by the IRS for tax-exempt purposes.

The evidence establishes that the petitioner is a bona fide nonprofit religious organization, exempt from taxation as required by the regulation.

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 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 7, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a missions coordinator throughout the two-year period immediately preceding that date.

In its letter accompanying the petition, the petitioner stated that the beneficiary has been a volunteer with the organization since August 2000. The petitioner also stated that, while involved with the petitioner, the beneficiary completed the educational requirements to obtain his Bachelor of Arts degree, which is a prerequisite for the job. The petitioner further stated that the beneficiary was "at the present time," performing the work as missions coordinator; however, the petitioner does not state when the beneficiary assumed that role.

The job description indicates that "[a]cademic requirements at the bachelor degree level are desired." The record contains a copy of a certificate granting the beneficiary a Bachelor of Arts degree from North Greenville College in December 2002.

The beneficiary submitted an affidavit, certified as true by the petitioner's founder, purporting to show his work with the petitioning organization from August 2000 to March 2003. However, the petitioner submitted no contemporaneous evidence to corroborate the beneficiary's statement of service. 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 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.

In its response to the director's requisite for evidence (RFE) dated April 8, 2003, the petitioner stated that it provided the beneficiary with support for his living expenses, including housing, food, transportation and domestic needs. The petitioner stated that the beneficiary lives in a house owned by the petitioning organization and submitted a list of checks it said were made payable to the beneficiary. Although the petitioner does not submit copies of the cancelled checks, the list shows only four checks to the beneficiary during the first third of 2001, each in the amount of \$400.00 and designated for "education - other." The list also includes three checks in 2002 and 14 in 2003, totaling \$2,690 and designated as student aid and tuition. The list also shows one check in March 2002 for \$100.00, designated for "marketing," and two in April 2003, for \$13.00 and \$7.00, designated for "automobile" and "staff luncheon."

The petitioner submitted copies of Form W-2, Wage and Tax Statement, issued to the beneficiary by the North Greenville College, indicating that he earned \$1,710 in wages in 2002 and \$1,035 in 2001. A Form 1098-T, Tuition Payments Statement, issued by the college in 2002 also shows that the beneficiary received \$4,675 in tuition payments in 2002 and was at least a part-time student at the school. Other documentation from the school indicates that the beneficiary received tuition assistance in the form of scholarships from several sources during the academic years of 2001 and 2002, including a contribution of \$350 by the petitioner in December 2002.

The evidence does not establish when the beneficiary began working as a missions coordinator for the petitioner. Although the petitioner submitted a detailed work schedule for the beneficiary, the schedule reflects only one week in May 2003. The record clearly indicates that the beneficiary was at least a half-time student at North Greenville College during 2001 and 2002, and was not working full time for the petitioner during this time frame.

The evidence does not establish that the beneficiary was continuously employed as a missions coordinator for two full years preceding the filing of the visa petition.

Beyond the decision of the director, the petitioner has not established that it has extended a qualifying job offer to the beneficiary. The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

Although the petitioner stated that in 2003, the support given to the beneficiary would exceed \$18,000, it did not further identify the terms of remuneration for the proffered job or otherwise show that the alien would not be dependent on supplemental employment. Therefore, the petitioner has not tendered a qualifying job offer.

The record reflects that the beneficiary entered the United States on August 2, 2002 on an F-1 student visa. The director stated it cannot be determined that the beneficiary's sole purpose for 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.