



U.S. Citizenship
and Immigration
Services



FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: SEP 24 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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]

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

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office 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 an assistant pastor, evangelist, and director of education and outreach. The director determined that the petitioner had not established its ability to pay the beneficiary's proffered wage.

On appeal, the petitioner submits copies of bank statements. Counsel states that the petitioner has always carried a monthly balance that exceeds the beneficiary's monthly wage.

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 petitioner has offered the beneficiary \$1,500 per month, equal to \$18,000 per year. 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 priority date would be the petition's filing date, in this instance April 23, 2001. Thus, the petitioner must demonstrate that it has been able to pay the beneficiary's salary from April 23, 2001, onward. In the initial

filing, the petitioner submitted a partial copy of the *1999 Annual of the Baptist General Convention of Texas*, which includes financial reports from member churches. The petitioner is listed as a member church, but no figures are provided because the petitioner filed no 1999 report with the convention.

Bank statements submitted with the petition show a balance of \$9,022.27 on December 31, 2000; \$9,612.02 as of January 31, 2001; and \$7,989.89 as of February 28, 2001.¹ There is no evidence that the petitioner was paying anyone in the beneficiary's position in late 2000 or early 2001; the beneficiary was in Korea at the time, and the petitioner has referred to the job offered to the beneficiary as a "new position," rather than an existing position in which the beneficiary would replace a former employee. The bank balances shown are adequate only for five to six months of the beneficiary's proposed salary, without sufficient new income to replace the sums paid to the beneficiary.

The director requested further documentation to establish the petitioner's ability to pay the proffered wage. In response, the petitioner has submitted three more recent bank statements, showing that the petitioner's account carried a balance of \$4,834.75 on July 31, 2002; \$3,191.77 on August 31, 2002; and \$3,784.16 on September 30, 2002. Statements from a second bank show an average daily balance of \$2,070.49 for May 2002; \$2,496.37 for June 2002; and \$2,763.63 for July 2002. These bank statements facially indicate that the petitioner had less cash on hand in mid-2002 than it did in early 2001. Even then, the regulations require evidence of ability to pay from the filing date onward. The new statements concern a period over a year after the filing date, and thus they cannot remedy any deficiency in the evidence pertaining to the petitioner's ability to pay as of the April 2001 filing date.

The director denied the petition, stating that the bank statements are insufficient to establish the petitioner's ability to pay the beneficiary's proffered wage. On appeal, the petitioner submits still more bank statements, from late 2002 and early 2003. Counsel asserts that the bank statements all show balances that are more than sufficient to cover the beneficiary's \$1,500 monthly wage. Thus, argues counsel, "Petitioner has always had enough fund[s] to cover beneficiary[']s salary."

Counsel does not explain how these bank statements establish the petitioner's *continued* ability to pay the beneficiary's proffered wage. The beneficiary's salary is cumulative, whereas the bank statements are not. Twelve months of \$1,500 payments to the beneficiary equal \$18,000; but twelve months of bank statements, each showing a balance of, say, \$4,000, do not show that the petitioner had \$48,000 throughout the year. Rather, those statements would show that the petitioner has consistently had \$4,000 available at any one time. Once an amount is withdrawn for payment to the beneficiary, that amount is removed from the account and thus would not carry forward into the next month's balance. A bank account, carrying an average balance of \$4,000 *without* taking the beneficiary's salary into account, would be exhausted after less than three months of \$1,500 payments to the beneficiary.

Counsel would have a stronger argument if each month's statement was \$1,500 higher than the one before, but this is not the case. The bank statements do not show that the church's current income exceeds its expenses by at least enough to pay the beneficiary's wage.

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

¹ Counsel states that the petitioner has submitted "6 months bank statements" but the initial submission contains only the above three.

by the regulation. In this instance, the petitioner has not submitted any of the required types of evidence, even after receiving the denial notice which quoted the regulation's documentary requirements. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

For the above reasons, we affirm the director's finding that the beneficiary has failed to establish its ability to pay the beneficiary's proffered wage.

Beyond the director's decision, we note that 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.

In this proceeding, the petitioner has offered a minimal description of the position offered to the beneficiary, and virtually no information about the beneficiary's past work apart from job titles (which describe the beneficiary only as a "pastor" at a mission and at a seminary). Therefore, the petitioner has not established that, throughout the two-year period immediately preceding the petition's filing date, the beneficiary was continuously engaged in the same religious work for which the petitioner now seeks to employ the beneficiary.² 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 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.

² Whatever the nature of the beneficiary's work in Korea, it appears to have involved a very substantial amount of travel. Computerized records maintained by Citizenship and Immigration Services appear to indicate that the beneficiary has made roughly fifty short trips to the United States since 1988. The minimal description of the position offered to the beneficiary does not indicate that the position involves frequent international travel.