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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

APR 06 2005

WAC 03 018 54925

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, California 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 religious worker. The director determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization. The director further 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 the ability to pay the beneficiary the proffered wage.

On appeal, the petitioner submits 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)(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) 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 that contains a proper dissolution clause and which specifies the purposes of the organization.

With the petition, the petitioner submitted a copy of its articles of incorporation containing the dissolution clause required by the IRS for tax-exemption under IRC section 501(c)(3) and a copy of a letter from the California Franchise Tax Board, refunding the petitioner's tax and indicating that it was tax-exempt as of January 2, 1985. The petitioner also submitted a letter from the American Baptist Churches of Los Angeles (also identified as the Los Angeles Baptist City Mission Society), indicating that the petitioner was affiliated with that organization and the American Baptist Churches USA. The copy of the June 11, 1971 letter from the IRS to the Los Angeles Baptist City Mission Society confirming its tax-exempt status does not indicate that the exemption applies to any subordinate units.

On appeal, the petitioner submitted a copy of a November 13, 2003 letter from the IRS notifying the petitioner that, in 1990, it had been granted tax-exempt status under section 501(c)(3) of the IRC as an organization described in sections 509(a)(1) and 170(b)(1)(A)(i).

The record is sufficient to establish that the petitioner is a bona fide nonprofit religious organization, exempt from taxation as required by the statute and regulation.

The director also determined that the petitioner had not established that the beneficiary had been continuously employed in a qualifying religious vocation or occupation for two full years prior to the filing of the visa 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 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 October 24, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as a religious worker throughout the two-year period immediately preceding that date.

In its letter of October 14, 2002, the petitioner stated that the beneficiary "came from Guatemala on September 5, 2002 and since then she has been ministering in our midst." The petitioner did not identify specifically the work that the beneficiary performed.

In response to the director's request for evidence (RFE) dated May 21, 2003, the petitioner submitted a letter from [REDACTED] of the Iglesia Bíblica Bautista, in Guatemala. Reverend Guevara stated that the beneficiary worked as a religious worker with the church from July 1, 2000 to August 31, 2002, and that her duties included visitation, preparing educational activities for the children, helping to promote and direct Bible studies, directing and teaching children's Sunday classes, and "[e]ventually, she supplied the pulpit during mid-week services." [REDACTED] that the beneficiary worked 36-hours per week at a salary of \$400.00 (U.S.) per month. The petitioner submitted no evidence such as canceled paychecks, pay vouchers, or other documentary evidence to corroborate the beneficiary's employment with the [REDACTED]. 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, the petitioner submitted no evidence of any employment by the beneficiary with the petitioning organization from September 2002 until the date the petition was filed.

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 the rare case where volunteer work might constitute prior qualifying experience, the petitioner must establish that the beneficiary, while continuously and primarily engaged in the traditional religious occupation, was self-sufficient or that his or her financial well being was clearly maintained by means other than secular employment.

On appeal, the petitioner submitted another letter from [REDACTED] with an hourly breakdown of the beneficiary's work. However, the petitioner again failed to submit documentary evidence to corroborate Reverend Guerra's statements. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190.

The petitioner also asserts on appeal that the beneficiary arrived in the United States on September 5, 2002, and that it took until October 24 "to organize all of her activities." Nonetheless, the petitioner stated that the beneficiary started "ministering" with the church in September 2002. However, it has provided no evidence of any work that the beneficiary performed for the petitioning organization. The statute requires that the alien must be working in the religious occupation for two full years prior to the filing of the visa petition.

The evidence is insufficient to establish that the beneficiary was continuously employed as a religious worker for two full years prior to the filing of the visa petition.

The director also determined that the petitioner had not established that it had 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 indicates that it will pay the beneficiary \$1,500 per month plus housing. As evidence of its ability to pay this wage, the petitioner submitted a copy of its Income and Expense Report from January 2002 to September 2002, a copy of its 2002 budget, and a copy of its September 2002 bank statement.

In response to the director's RFE, the petitioner submitted a copy of its Income and Expense Report for January to June 2003, a copy of its 2003 budget, and copies of its bank statements for April, May and June 2003. On appeal, the petitioner submitted copies of its August, September and October 2003, and January 2005 bank statements.

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.

Beyond the decision of the director, the petitioner has not established that the position qualified as that of a religious worker.

Pursuant 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 record is unclear as to the exact position the petitioner is offering. According to the petitioner, the duties of the proffered position includes "[p]reaching, [t]eaching, [b]aptizing, programming workshops and seminars for the Sunday School Department, [and] leading the Christian Education Program for children." In its response to the RFE, the petitioner stated that the responsibilities of the proffered position will include leading all children and youth activities of the church, conducting and supervising home Bible studies, visitation and evangelism.

On appeal, the petitioner stated that it needs someone with the beneficiary's "knowledge and experience in Christian Education Teaching, Preaching and other important activities like: Visiting the needed [sic] families, ailing abandoned and older people, not to mention some of many cases among our community."

The petitioner has submitted no evidence that the duties of the proffered position are directly related to the religious creed of the denomination, that the position is defined and recognized by American Baptist Churches, or that the position is traditionally a permanent, full-time, salaried occupation within its denomination. This deficiency constitutes an additional ground for denial of the petition.

The evidence is insufficient to establish that the proffered position is that of a religious worker within the meaning of the statute and regulation.

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.