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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

01

[REDACTED]

FILE: [REDACTED]
EAC 01 230 55345

Office: VERMONT SERVICE CENTER

Date: APR 06 2005

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:

[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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion to reconsider will be granted, the previous decision of the AAO will be affirmed and the petition will be denied.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Citizenship and Immigration Services (CIS) policy. 8 C.F.R. § 103.5(a)(3).

On motion, counsel states that additional evidence will be provided in support of the motion. However, as of the date of this decision, more than 14 months after the motion was filed, the AAO has received no further documentation. Additionally, there is no provision in the regulations for a petitioner to supplement a previously filed motion. Any new materials submitted on motion must be submitted at the time the motion is filed.

The director determined that the petitioner had not established that the beneficiary worked continuously as a minister for two full years preceding the filing of the visa petition. In its prior decision, the AAO affirmed the director's decision, finding that the evidence did not establish that the beneficiary had ever worked for the petitioner as a salaried employee. We withdraw that portion of the AAO's decision, as self-employment may be qualifying employment for the purpose of establishing prior work experience.

The petitioner submitted evidence that the beneficiary had worked and was paid as a minister with the Faith Revival Ministries World Outreach Victory Christian Church in Nigeria until January 1999. According to the petitioner, the beneficiary began working with the petitioning organization in February 1999. The petition was filed on April 30, 2001.

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) 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.”

According to the petitioner, the beneficiary works 35 to 38 hours per week as a minister with the petitioning organization. The petitioner further stated that, due to his immigration status, the beneficiary is not paid a salary but is supported by “love offerings” of approximately \$350.00 to \$400.00 per week. The petitioner, however, submitted no evidence to corroborate the beneficiary’s association with the petitioning organization nor did it submit evidence of the financial support provided by the church. 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).

In its previous decision, the AAO discussed the legislative history of the religious worker provision. As noted in our previous decision, in accordance with prior case law and the intent of Congress, CIS requires that the qualifying two years of religious work must be full-time and generally salaried.

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.

The petitioner has provided no documentary evidence of the beneficiary’s employment with the petitioning organization. Further, the petitioner has provided no evidence that the beneficiary was not dependent upon secular employment for his financial support during the three months that he worked for the petitioner.

The record is insufficient to establish that the beneficiary worked continuously as a minister for two full years prior to the filing of the visa petition.

In its previous decision dismissing the appeal, the AAO found that the petition was not approvable based on additional grounds not cited in the director’s decision. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp.

2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F. 3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis). Because the AAO dismissed the appeal on multiple alternative grounds, the petitioner can succeed on motion only if it overcomes all of the AAO's enumerated grounds. *See, e.g., Spencer Enterprises, Inc. v. U.S.* 229 F. Supp.2d at 1037. These additional grounds raised by the AAO in its previous decision were the petitioner's failure to establish that it had the ability to pay the beneficiary the proffered wage and the petitioner's failure to establish that the beneficiary was qualified for the religious position within the petitioning organization.

We withdraw that portion of the AAO's decision finding that the petitioner had not established that the beneficiary was qualified for the proffered position. The evidence sufficiently establishes that the beneficiary meets the qualifications to be a minister within the petitioning organization.

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 an annual salary of \$24,000. As evidence of its ability to pay this proffered wage, the petitioner submitted a copy of its balance sheet as of March 31, 2002 and a copy of a letter from a certified public accountant indicating that he had audited that balance sheet. The petitioner also submitted a copy of its December 2003 savings account statement. The petitioner submitted no evidence of its ability to pay the proffered wage in 2001, the year the petition was filed.

The petitioner's motion has caused the AAO to reopen and reexamine the record. Accordingly, it is further noted, beyond the previous decisions, that the petitioner has not established that it qualifies as a bona fide nonprofit religious organization.

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 an exempt certificate from the state of New Jersey, exempting the petitioner from New Jersey sales and use tax, and a copy of its articles of incorporation with the appropriate dissolution clause required by the IRS for tax-exemption under section 501(c)(3) of the IRC.

The petitioner failed to submit a letter from the IRS granting it tax-exempt status as an organization under section 501(c)(3) of the IRC pursuant to 8 C.F.R. § 204.5(m)(3)(i)(A). The petitioner also failed to submit all of the alternative evidence to prove its tax-exempt status as permitted by 8 C.F.R. § 204.5(m)(3)(i)(B) in that it failed to submit a completed IRS Form 1023.

The evidence is insufficient to establish that the petitioner is a bona fide nonprofit religious organization. This deficiency constitutes an additional ground for denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. As insufficient evidence has been presented to overcome all of the grounds for the previous dismissal, the previous decisions of the AAO and the director will be affirmed. The petition is denied.

ORDER: The AAO's decision of December 16, 2003 is affirmed. The petition is denied.