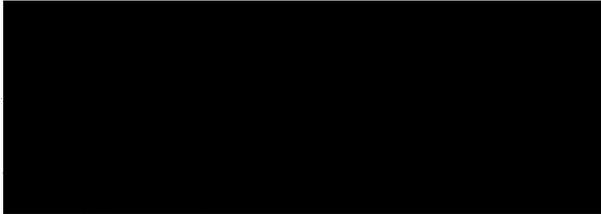


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U.S. Citizenship
and Immigration
Services

C1



FILE: LIN 05 057 52489 Office: NEBRASKA SERVICE CENTER Date: DEC 22 2005

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

2 Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Acting Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

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 youth leader/religious instructor. The director determined that the petitioner had not established that the position qualifies as that of a religious worker.

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 issue presented on appeal is whether the petitioner established that the position qualifies as that of a religious worker. According to the regulation at 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 as a religious worker.

The proffered position is that of youth leader/religious instructor.

In its letter of December 18, 2004, the petitioner stated:

A significant part of our membership consists of recent immigrants from Romania who require religious instruction and other services in the Romanian language . . . Each service requires a youth leader to attend to the needs of the younger members of the congregation

who receive Bible instruction and religious verses in the Romanian Christian tradition. The youth leader also provides training in American culture.

Another activity of our church has been the collection of food and clothing for shipping to Romania. Other duties of the youth leader include the teaching of religious hymns and songs, teaching classes of Biblical verses and the Pentecostal doctrine, directing the youth choir and providing instruction about the history of our faith. Another responsibility of the youth leader is to teach the youth of the congregation important rites such as the Christian walk, which is unique to Romania Christian worship.

The youth leader also assists the senior pastor of the church and replaces him when he is unable to perform his duties.

The petitioner stated that the beneficiary would be paid \$1,500 for her services and would be expected to work 40 hours per week.

In its June 11, 2005 letter submitted in response to the director's request for evidence (RFE) dated May 4, 2005, the petitioner stated that the position would also require the beneficiary to "visit the ill, elderly, and the children and youth in school, at home and to participate with them in their activities, such as, having a picnic, going to the library, praying with them, and going to social gatherings as a chaperone."

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

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters.

We find that the petitioner has submitted evidence sufficient to establish that the duties of the proffered position are not inconsistent with those of a religious instructor, and that the position qualifies as that of a religious worker within the meaning of the statute and regulation.

Nevertheless, the petition may not be approved as the record now stands, and it will be remanded to the director to enter a new decision.

On remand, the director should address whether the petitioner has established that the beneficiary was continuously engaged in a qualifying religious vocation or occupation for two full years preceding 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 January 19, 2005. Therefore, the petitioner must establish that he was continuously working as a youth leader/religious instructor throughout the two-year period immediately preceding that date.

The petitioner submitted a copy of a "letter of introduction" from The Pentecostal Union – Branch of Suceava The Romania Church of God, "certifying" that the beneficiary worked as a "youth evangelist" with the organization since 1996, and that her duties included coordinating meetings and programs for the youth, Biblical study and "The Romanian Pentecostal culture, preaching, musical training and leadership for the youth, and visiting the ill and the elderly. The petitioner, however, submitted no evidence to corroborate the beneficiary's employment. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

On remand, the director should give the petitioner an opportunity to submit documentary evidence establishing that the beneficiary has the required two years experience in the religious occupation.

The petitioner also failed to submit evidence that it has 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. As evidence of its ability to pay this wage, the petitioner submitted a letter from its bank, certifying that the petitioner has maintained an account the banking institution since March 2002 and indicating that, as of December 17, 2004, the account balance was in excess of \$54,600.

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 primary evidence.

On remand, the director should give the petitioner and opportunity to submit evidence of this criterion in accordance with the regulation.

This matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.