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U.S. Citizenship
and Immigration
Services

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FILE: LIN 02 247 53596 Office: NEBRASKA SERVICE CENTER Date: FEB 28 2005

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:



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 Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a church and mission 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 develop and manage its new branch in Chicago. The director determined that the petitioner had not established: (1) that the beneficiary has the required qualifications to work as a minister; (2) that the position offered to the beneficiary qualifies as a religious occupation; (3) that the beneficiary has the requisite two years of continuous work experience in essentially the same position as the position offered; or (4) that the petitioner is able to pay the beneficiary's compensation.

On appeal, counsel indicates that a brief will be forthcoming within 30 days. To date, over 14 months after the filing of the appeal, the record contains no further substantive submission from the petitioner. We therefore consider the record to be complete as it now stands.

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).

Several of the grounds for denial revolve around the nature of the position offered to the beneficiary. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

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. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

8 C.F.R. § 204.5(m)(3)(ii)(B) through (D) indicate that the petitioner must establish that the beneficiary possesses the necessary qualifications and authorization to perform the duties of a minister, or in a religious occupation or vocation.

In a letter submitted with the initial filing, Rev. Luis B. Castano, the petitioner's senior pastor and international field director, states:

[The beneficiary] has been a missionary and pastor for our Church, in various cities in Colombia, since 1987. Her duties consisted of missionary work to preach the word of God, spread the gospel of the Church, to hold and conduct services, and to minister to the faithful in any manner they may need. She qualified for these posts by successfully completing the courses offered by the Church to those who demonstrate a willingness and ability to be leaders. In addition, before joining the Church, she obtained a degree in Business Management. . . . For these reasons, and with these qualifications, we wish to assign her to develop and manage our new branch in Chicago, IL.

The duties to be performed in Chicago will be the organization of the branch, as well as the duties she has performed in the past: conducting services, organizing the mission, ministering to the faithful, and preaching the word of God. . . . For a branch in a principal city as large as Chicago, we feel that an extended period would be necessary for organizing and placing the branch in a satisfactory position, and as a result are requesting that she be considered for permanent resident status.

The last sentence above seems to indicate that the position is inherently temporary, limited to the time it will take to "plac[e] the branch in a satisfactory position." It is not clear why permanent immigration benefits are required.

The director instructed the petitioner to specify whether the position offered to the beneficiary is that of a minister, a religious professional, a religious occupation (other than professional), or a religious vocation. The director listed the regulatory requirements for each category, and instructed the petitioner to show that the beneficiary is authorized and qualified to perform the functions of the proffered position.. In response, Rev. Castano repeatedly describes the beneficiary as a "minister," and uses the title "Rev." before the beneficiary's name. Rev. Castano also, however, states "our ministers are in the category of missionaries." He does not indicate that the beneficiary has ever been ordained as a minister or otherwise authorized to perform all the duties of clergy.

The petitioner submits certificates showing that the beneficiary completed various training courses at the Colombian Center of Integral Theotherapy, the most recent being "Formation 2" and "Superior Teachings for Missionaries" in 1996.

The director denied the petition, having determined that "[t]he beneficiary cannot be classified as a minister within the [regulatory] definition," and that "[t]he record fails to establish that the beneficiary's business management training involved any specific religious training or theological education." On appeal, counsel argues "[i]t is not for the DHS [Department of Homeland Security] to determine how a recognized church is organized, or to delineate what the duties of a minister of that church are. . . . It is for the church to determine who or how a minister of that religion is 'ordained'" (emphasis in original).

While the determination of an individual's status or duties within a religious organization is not under the purview of Citizenship and Immigration Services (CIS), the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978). Otherwise, as the Board of Immigration Appeals noted in *Rhee*, "accommodating religious organizations" could circumvent the law simply by declaring unqualified aliens to be "ministers." *Id.* at 610.

With regard to the beneficiary's status in the religious occupation of a missionary, the director appears to have disregarded her many training certificates. The duties described appear to be consistent with that of a missionary, and we withdraw this particular finding by the director.

The next issue concerns the beneficiary's past experience. 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 experience in the religious vocation, professional religious work, or other religious work. The petition was filed on July 29, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing essentially the same duties as those of the proffered position throughout the two years immediately prior to that date.

The director instructed the petitioner to submit evidence that the beneficiary performed the duties of the proffered position continuously throughout the two-year qualifying period. In response, Rev. Castano states "[t]he duties [the beneficiary] has performed and will perform will be the same as she has performed for the past three years in Miami, and now Chicago: conducting services, organizing the mission, ministering to the faithful, and preaching the word of God." The petitioner did not address the director's request for evidence that the beneficiary was compensated for this work.

The director, in denying the petition, stated "[t]he duties of developing and managing the mission would not be the same as when [the beneficiary] was assigned to the mission in Miami as a missionary." Counsel's short appellate statement does not address this finding. The record contains no contemporaneous evidence to establish that, from 2000 to 2002, the beneficiary was performing duties that are largely similar to her intended future duties in Chicago. There is no indication that the establishment of a new branch, so central to her intended work, was part of her past duties. The petitioner has failed to overcome the director's finding in this area.

The last issue concerns the petitioner's ability to pay the beneficiary's salary. 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's initial submission included an unaudited financial statement, indicating a net loss of \$6,185.61 for calendar year 2001, and "cash & equivalents" of \$20,784.43 at the end of the year. The initial submission did not indicate the amount of the beneficiary's proffered salary. The director instructed the petitioner to provide additional information and evidence about the beneficiary's compensation and the petitioner's ability to provide that compensation. In response, Rev. Castano states "there is no formal contract with the Church," and that the beneficiary "is compensated by payment by the Church of rent, utilities, insurance and all other expenses, both personal and professional, and additional monthly monetary payments." Rev. Castano does not specify the amount of these payments or offer any proof of past payments.

The petitioner has submitted a second unaudited financial statement, this one for calendar year 2002. This statement indicates that the petitioning organization has total assets of \$96,723.38 among its eight locations in the United States. The Chicago branch, where the beneficiary is to work, had the lowest assets, totaling only \$338.42 remaining after expenses from \$10,383.60 in gross revenue. The petitioner has not specified whether the beneficiary's compensation would come from the petitioner's national headquarters in Miami or from the Chicago branch. The unaudited statement appears to indicate that each branch is responsible for its own expenses. The statement shows that the Chicago branch incurred expenses for rent and utilities, but there is also a line item showing that the branch spent nothing on "housing allowances." The Chicago branch also claims no assets in the form of property. Therefore, the "rent" appears to be for the branch's own place of business rather than for the beneficiary's housing. The line item for "compensation [of] pastor" also shows a total of "0.00"

The director, in denying the petition, found that "the petitioner has failed to credibly establish the ability to provide for the beneficiary's needs." The director noted the Chicago branch's extremely modest resources, and the absence of any evidence that other branches or the petitioner's headquarters have contributed or will contribute to the beneficiary's support. The director also concluded that "[t]here is insufficient evidence to establish that the petitioner has either adequate room or the financial means to provide the beneficiary and all other individuals dependent on the organization with room, board and other essentials." The director also observed that the unaudited financial documents submitted do not conform to the requirements of 8 C.F.R. § 204.5(g)(2). Counsel's statement on appeal does not address this ground for denial, and therefore the director's finding stands undisturbed.

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.