

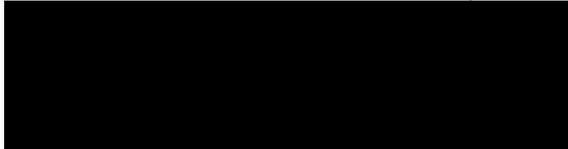
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U.S. Citizenship
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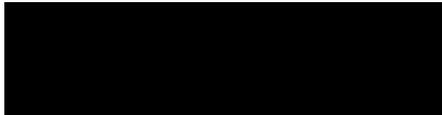
Office: CALIFORNIA SERVICE CENTER

Date: JUL 05 2005

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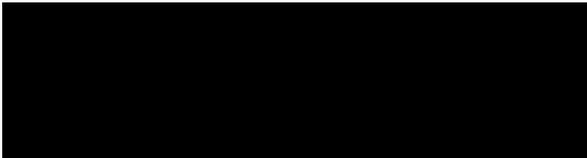
Petitioner:



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:



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 sustained and the petition will be approved.

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 associate pastor. The director 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 the petitioner has the ability to pay the beneficiary the proffered wage.

On appeal, counsel 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 first issue on appeal is whether the petitioner 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 April 11, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as an associate pastor throughout the two-year period immediately preceding that date.

In its letter of April 4, 2003, the petitioner stated that the beneficiary had served as a full-time associate pastor with the petitioning church since January 2001, and that he was responsible for leading the Korean and English worship services. According to the petitioner, the beneficiary preaches sermons, teaches the Bible, conducts weekly orientation classes for the newly registered members, provides personal religious and spiritual counseling, conducts baptisms and funerals, and officiates at weddings.

Although the petitioner did not state the terms of the beneficiary's employment prior to the filing of the petition, it indicated that the proffered position required the beneficiary to work at least 40 hours per week at a salary of \$2,700 per month. The petitioner submitted copies of Forms W-2, Wage and Tax Statements, that it issued to the beneficiary in 2001 and 2002, reflecting wages paid of \$19,200 and \$23,115, respectively. The petitioner also submitted copies of canceled checks, reflecting that it paid the beneficiary's housing (\$1,000 in 2001 and \$1,263 in 2002), transportation costs (typically \$300 per month), and in some instances, issued separate checks for utilities.

In response to the director's request for evidence dated April 14, 2004, the petitioner submitted a copy of the Form W-2 that it issued to the beneficiary in 2003 reflecting wages paid of \$26,312 that were subject to income tax, and total social security wages of \$36,640.

The director concluded that, as the beneficiary's Form W-2s did not indicate that the beneficiary was paid the proffered salary, they were evidence that he did not work for the petitioner in the same capacity or under the same terms of employment as the proffered position. This determination is unsupported and is not based on the evidence of record. The statute and regulation do not require the alien to be compensated at the same level as that of the proffered position. Further, considering the additional sums paid to the beneficiary for housing, utilities and transportation expenses, the compensation the beneficiary received in 2001 and 2002 are comparable to the proffered salary of \$2,700 per month. Additionally, the year 2003 Form W-2 clearly indicates that the beneficiary received additional compensation that was not subject to income taxation.

On appeal, the petitioner submits copies of canceled checks reflecting that it paid \$1,342 per month for the beneficiary's housing in 2003.

The evidence sufficiently establishes that the beneficiary worked continuously as an associate pastor for two full years immediately preceding the filing of the visa petition.

The second issue on appeal is whether the petitioner 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 stated that it would pay the beneficiary \$2,700 per month. As evidence of its ability to pay this salary, the petitioner submitted copies of canceled checks, reflecting that, since April 2003, it has paid the beneficiary a salary of at least \$1,823 after appropriate deductions, plus at least \$1,263 for his lodging. The petitioner also submitted copies of its 2003 and 2004 budget statements, and copies of its monthly bank statements for December 2003 through February 2004.¹

On appeal, the petitioner submits copies of its monthly checking account statements from April 2001 to October 2004.²

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. However, the petitioner has submitted evidence that it has paid the beneficiary the proffered wage as of the date the petition was filed.

The evidence sufficiently establishes that the petitioner has the ability to pay the beneficiary the proffered wage, and the beneficiary is otherwise qualified for the visa preference classification.

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 met that burden.

ORDER: The appeal is sustained. The petition is approved.

¹ The petitioner also submitted copies of its monthly checking account statements for September 2002 through January 2003. However, as these statements are prior to the filing of the petition, they are not relevant to the issue of the petitioner's ability to pay the proffered wage as of the filing date of the petition.

² As noted, the statements prior to April 2003 are not relevant to the issue of whether the petitioner has established its ability to pay the proffered wage as of the filing date of the petition.