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

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[Redacted]

FILE: [Redacted]
EAC 01 151 50754

Office: VERMONT SERVICE CENTER

Date: MAR 03 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:

[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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The director's decision will be withdrawn and the case will be remanded to the director for further consideration and entry of a new decision.

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 minister. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition or that the beneficiary's position qualifies as a religious occupation.

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 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).

In his decision, the director noted that the petitioner's bylaws "do not specifically require advanced religious training in order to perform" the beneficiary's duties. We find the director's requirement of advanced religious training to be in error, as the regulation requires no specific religious training or theological education. The petitioner has submitted copies of the beneficiary's ordination certificate, bachelors degree, and masters degree. Such evidence satisfies the regulatory requirement at 8 C.F.R. § 204.5(m)(3) which states that:

[I]f the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested.

Beyond this error we find the director's decision contains a more fundamental flaw. The regulation makes clear that there are three distinct types of religious workers. The regulation at 8 C.F.R. § 204.5(m)(1) indicates that the beneficiary must be coming to the United States "solely for the purpose of carrying on the vocation of a minister . . . [or] working . . . in a professional capacity in a religious vocation or occupation. Given that the record clearly indicates the petitioner seeks to employ the beneficiary as a minister, and the fact that the regulations clearly distinguish between aliens pursuing the vocation of a minister and aliens engaged in religious occupations, the director's analysis of the beneficiary's proposed employment as an occupation rather than a vocation was in error.

Thus, the next issue to be determined is whether the beneficiary has been employed as a minister for the requisite two-year period. 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." The petition was filed on April 6, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a minister throughout the two years immediately prior to that date, from April 6, 1999 through April 6, 2001.

In support of the original petition [REDACTED] a board member of the petitioning church, submits a letter dated January 23, 2001 which states:

As pastor, [the beneficiary] was employed as Pastor from September 1998 to the present time. His primary duty is conducting religious worship and perform other spiritual functions associated with beliefs and practices of Christian Baptist denomination and provide spiritual and moral guidance and education to church members, under supervision of Petitioner. Specifically, his functions are as follows:

- Lead congregation in worship services (2 hrs.).
- Prepares and delivers sermons and other talks in English and Indonesian (8 hrs.).
- Interprets doctrine of Christianity (1 hr.).
- Instructs people who seek conversion (4 hrs.).
- Conducts weddings and funeral services (if necessary).
- Administer religious rites or ordinances (10 hrs.).
- Visits sick and shut-in, and helps the poor (10 hrs.).
- Counsels those in spiritual need and comforting bereaved (5 hrs.).
- Oversee religious education program (2-3 hrs.)

Beneficiary is fully involved with our Church Outreach Ministry and is paid \$1200 plus \$1950 in housing, transportation and medical benefits and allowances for a total of \$3150 per month.

The petitioner also submits copies of paychecks showing remuneration to the beneficiary from May 1999 through December 2000, as well as copies of the beneficiary's 1998 and 1999 W-2 Wage and Tax Statements which reflect the petitioner paid the beneficiary \$3,300 in salary and \$3,000 in housing allowance for 1998 and \$13,200 in salary, \$12,000 in housing allowance, and \$2,400 in a retirement plan for 1999.

On December 26, 2001, the director requested further evidence of the beneficiary's duties for the two years of qualifying employment

In response, the petitioner submitted copies of paychecks issued to the beneficiary covering the remaining qualifying period from January 2001 through November 2001.

We find such evidence establishes the beneficiary has been carrying on the vocation of a minister for at least the 2-year period prior to the filing of the petition. We, therefore, withdraw the director's finding that the beneficiary's past and proposed duties during the qualifying period did not establish his eligibility for special immigrant religious worker classification.

The next issue is whether the petitioner had the ability to pay the beneficiary from the time of filing up to the time the beneficiary gains lawful permanent residence. 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.

[Emphasis added].

In support of the petition the petitioner submitted copies of bank statements and financial statements from the petitioner's treasurer but did not submit annual reports, federal tax returns or audited financial statements. Though the petitioner is free to submit other kinds of documentation, such submissions must only be in addition to, rather than in place of, the type of documentation required by regulation.

On appeal, counsel for the petitioner submits copies of financial statements that have been audited by a certified public accountant. The statements cover 2001 and part of 2002. Counsel, however, fails to submit audited financial statements demonstrating the petitioner's ability to pay at the time of filing in 1999, through 2002. Despite counsel's failure to submit statements covering the entire period in question, we find the fact that the petitioner paid the beneficiary during 1999 and 2000 to be prima facie evidence of the petitioner's ability to pay. We, therefore, withdraw the director's finding in this regard.

Beyond the decision of the director, we find there is an additional issue that needs to be addressed regarding the petitioner's tax-exempt status. The regulation at 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 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 [IRS] to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

The record contains several documents related to the tax-exempt status of the Southern Baptist Convention, but no conclusive evidence that the petitioner is also covered under this status. The first document, issued on

August 12, 1964, indicates that the IRS issued group rulings to several State Baptist Conventions. The letter does not mention the Baptist Convention of New York in which the petitioner has indicated its affiliation.

In the second document, issued on August 17, 1964, the IRS acknowledges the tax-exempt status of the Southern Baptist Convention, but states that such status does not apply to the Southern Baptist Convention Churches "in the United States since they have been or will be covered by group rulings to your State Conventions."

The third document, dated July 31, 1973, indicates that the IRS issued a group ruling covering all of the "Baptist churches listed in the Directory of Southern Baptist Churches." Although the petitioner has submitted evidence that it is listed in the Metropolitan New York Baptist Association, the record contains no evidence that the petitioner is listed in the Directory of Southern Baptist Churches and, therefore, that it is covered by its group exemption.

A fourth document, issued August 10, 1990, identifies the Southern Baptist Convention employer identification number as [REDACTED]. The beneficiary's 1998 and 1999 W-2 Wage and Tax Statement, however, does not contain the number assigned to the Southern Baptist Convention by the IRS. Instead, the number listed as the petitioner's employer identification number is [REDACTED].

Given this information and the lack of evidence regarding the petitioner's association or listing in the Southern Baptist Convention directory, we do not find the petitioner has submitted sufficient evidence of its tax-exempt status.

While we have reversed the director's stated grounds for denial, the tax exemption issue remains unresolved. Therefore, 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.