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

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **MAR 11 2005**
WAC 03 021 50957

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.

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 dismissed.

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 religious teacher. The director determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization. The director further 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.

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 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.

With the petition, the petitioner submitted a copy of a May 19, 1965 letter from the Internal Revenue Service (IRS) granting the Western Diocese of the Armenian Church of North America, tax-exempt status under section 501(c)(3) of the Internal Revenue Code (IRC). The letter does not indicate that this exemption is applicable to any subordinate units of the Western Diocese of the Armenian Church of North America. The petitioner also submitted a copy of the articles of incorporation for the Western Diocese of the Armenian Church of North America, and a copy of its employer identification number.

In a request for evidence (RFE) dated May 21, 2003, the director instructed the petitioner to submit evidence of its tax-exempt status under section 501(c)(3) or evidence that it was included under a group tax-exemption granted to its parent organization. The director specifically informed the petitioner that the certification of tax exemption submitted with the petition was limited to the Western Diocese of the Armenian Church of North America. In response, the petitioner resubmitted a copy of the May 19, 1965 IRS letter.

The petitioner must either provide verification of individual exemption from the IRS, proof of coverage under a group exemption granted by the IRS to the denomination, or such documentation as is required by the IRS to establish eligibility as a tax-exempt nonprofit religious organization. Such documentation to establish eligibility for exemption under section 501(c)(3) includes: a completed Form 1023, a completed Schedule A attachment, if applicable, and a copy of the articles of organization showing, *inter alia*, the disposition of assets in the event of dissolution.

On appeal, the petitioner submitted a letter from the Western Diocese of the Armenian Church of North America stating that the petitioner is "under the jurisdiction of the Western Diocese of the Armenian Church of North America." The petitioner also submitted a copy of a "2000 Religious Exemption Change in Eligibility or Termination Notice" from the state of California to the Western Diocese of the Armenian Church of North America. Counsel notes in his letter accompanying the appeal that the address of the Western Diocese of the Armenian Church of North America is the same as that of the petitioner. Counsel states that each church in the diocese "is a separate branch but is under the jurisdiction, control, ownership and auspices of the Diocese." Counsel further states that the diocese is comprised of "at least 26 churches in the western United States," including California, Oregon, Washington, Nevada, Utah, Arizona, Texas and New Mexico.

The petitioner submitted a copy of the bylaws of the Western Diocese of the Armenian Church of North America. The bylaws, however, do not support the expansive interpretation of the diocese's ownership as advocated by counsel. Article II of the bylaws outline the organization and jurisdiction of the diocese, and indicates that the diocese's headquarters "shall be located in such city within the Diocese as may be designated by the Diocesan Assembly," and indicates that the diocese is comprised of "parishes, religious communities, and affiliate bodies" located within specific states in the western United States. Article V provides for a degree of autonomy for parishes and requires them to incorporate under the laws of the state

where they are located. Article V requires that real property and appurtenant structures must be titled in the name of the diocese; however, it allows other real and personal property to belong to the parish.

Furthermore, the employer identification number submitted as evidence by the petitioner is assigned to the petitioner and not to the diocese, and the financial documentation submitted by the petitioner is for the petitioning organization and not that of the diocese.

The evidence establishes that the petitioner, while subordinate to the Western Diocese of the Armenian Church of North America, is a separate entity, and as the beneficiary's prospective U.S. employer, must establish that it has tax-exempt status as a religious organization.

The petitioner has failed to produce sufficient evidence of its tax-exempt status, either by providing evidence of an individual grant of tax-exempt status from the IRS, by showing that it is covered under a group exemption granted to the Western Diocese of the Armenian Church of North America, or by providing the alternate evidence permitted by 8 C.F.R. § 204.5(m)(3)(i)(B).

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 September 12, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as a religious instructor throughout the two-year period immediately preceding that date.

The petitioner stated that the beneficiary began working for the petitioning organization in 2001 upon her arrival in the United States pursuant to an H1-B, Alien in a Specialty Occupation or Profession, visa. The Form I-360, Petition for Amerasian, Widow or Special Immigrant, reflects that the beneficiary entered the United States on November 10, 2001. The petitioner submitted evidence that it had compensated the beneficiary for her services from March 2002. The record contains no evidence of the beneficiary's employment during the qualifying two-year period prior to March 2002.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of “a number of safeguards . . . to prevent abuse.” See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged “principally” in such duties. “Principally” was defined as more than 50 percent of the person’s working time. Under prior law a minister of religion was required to demonstrate that he/she had been “continuously” carrying on the vocation of minister for the two years immediately preceding the time of application. The term “continuously” was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

The term “continuously” also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

On appeal, counsel argues that, although the beneficiary was granted approval of an H1-B visa in January 2001, she was unable to leave Iraq until November 2001. Counsel states that the beneficiary’s inability to leave Iraq because of oppressive government regulations, including the inability of a female to travel alone, should not constitute a break in the two-year experience requirement. Counsel states that the beneficiary’s situation falls within the parameters of the May 8, 1992 letter from Acting Commissioner of Adjudications,

Assuming that Acting Commissioner [redacted]’s memorandum is applicable in the current petition, counsel’s arguments are still without merit. The petition was filed on September 12, 2002. The petitioner did not allege that the beneficiary was working at any time during the year 2000. The beneficiary’s résumé reflects no employment from 1996 to 2001. Further, the petitioner submitted no evidence to establish that the beneficiary was employed by the petitioning organization from November 2001 after her arrival in the United States through February 2002.

The evidence does not reflect that the beneficiary was continuously employed in a qualifying religious occupation for two full years prior to the filing of the visa petition.

The director also determined that the petitioner had not established 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 indicated that it paid the beneficiary \$1,100 bimonthly. The copies of pay vouchers it submitted during the initial stages of these proceedings did not reflect either the payer or the period of compensation. The petitioner also submitted a copy of the beneficiary's year 2002 Form 1040, which reflected wages of \$22,200.

On appeal, the petitioner submitted copies of earnings statements indicating that it paid the beneficiary \$1,100 on March 15, 2002 and continuing through September 15, 2003. These statements, together with other financial documentation submitted by the petitioner, provide sufficient evidence of its ability to pay the proffered wage.

Nonetheless, as the petitioner has not established that it qualifies as a bona fide nonprofit religious organization, exempt from taxation or that the beneficiary has been continuously employed in a religious occupation for two full years prior to the filing of the visa petition, the appeal must be dismissed.

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.