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MAR 28 2005

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

01

[Redacted]

FILE: [Redacted]
LIN 02 151 51925

Office: NEBRASKA SERVICE CENTER

Date: MAR 28 2005
MAR 28 2005

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, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The Form I-360, Petition for Amerasian, Widow or Special Immigrant, filed with Citizenship and Immigration Services (CIS) indicates that the Deeper Life Bible Church of Saint Paul, Minnesota, is the petitioner. The petition, however, is signed by [REDACTED]. Furthermore, the G-28, Notice of Entry of Appearance as Attorney or Representative, is signed by [REDACTED]. Therefore, the Deeper Life Bible Church cannot be considered as having filed the petition on behalf of [REDACTED]. [REDACTED] shall be considered as the self-petitioner.

The self-petitioner seeks classification 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 failed to establish that the religious organization with which he will be associated qualified as a bona fide nonprofit religious organization.

On appeal, counsel submits a brief and additional evidence.

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.

The petitioner submitted copies of a 1989 "Certificate of Incorporation," from the state of Minnesota, for Deeper Life Bible Church, Inc., a May 2001 amendment to the articles of incorporation for Deeper Life Bible Church filed with the Minnesota Secretary of State, and a May 1994 "Certificate of Exempt Status" issued to Deeper Life Bible Church in Saint Paul by the Minnesota Department of Revenue.

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code (IRC) as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement, if applicable, and a copy of the organizing instrument of the organization that contains a proper dissolution clause and which specifies the purposes of the organization.

In response to the director's request for evidence (RFE) dated January 9, 2003, in addition to documents previously submitted, the petitioner submitted copies of a notice of change of registered office/agent for Deeper Life Bible Church filed with the Minnesota Department of State in December 2002, another amendment to the articles of incorporation for the Deeper Life Bible Church in Saint Paul, and an annual registration filed with the Minnesota Secretary of State in December 2002.

On appeal, the petitioner submits a copy of an April 19, 1993 letter from the IRS to the Deeper Life Bible Church, Inc. in Brooklyn, New York, granting that organization tax-exempt status under section 501(c)(3) as an organization described in sections 509(a)(1) and 170(b)(1)(A)(i) of the IRC. The petitioner submitted no evidence of any affiliation between the Deeper Life Bible Church, Inc. in Brooklyn, New York and the Deeper Life Bible Church in Saint Paul, Minnesota. Further, the IRS letter does not indicate that the tax-exemption granted to the Deeper Life Bible Church, Inc. in Brooklyn, New York extends to any subordinate units of that organization.

The record does not establish that the petitioner's prospective U.S. employer is a qualifying bona fide tax-exempt nonprofit religious organization.

Beyond the decision of the director, the petitioner has not established that he had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the 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 16, 2002. Therefore, the petitioner must establish that he was continuously working as a minister throughout the two-year period immediately preceding that date.

In a letter dated March 31, 2002, J. Eric Albakporo, the Midwest Regional Coordinating Pastor of the Deeper Life Bible Church, headquartered in Bronx, New York, "certified."

That the [petitioner] . . . has been continuously serving in different ministerial capacities since 1992, under the DEEPER LIFE BIBLE CHURCH, first in Nigeria, and then in United States, prior to the submission of the above reference I-360 petition; . . . He is currently the Pastor of the DEEPER LIFE BIBLE CHURCH at the church's State headquarter[s], located . . . [in] Saint Paul, MN . . . In this capacity, has he [sic] been so engaged, and accommodated with a bi-weekly stipend.

The petitioner submitted no corroborative evidence, such as canceled paychecks, pay vouchers, or other documentary evidence of his employment with the Deeper Life Bible Church. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Further, we note that other evidence in the record indicates that the petitioner worked as a journalist in Nigeria from 1992 until 1994, when he entered the United States pursuant to a J-1, exchange visitor program, sponsored by the United States Information Agency. Additionally, the evidence indicates the petitioner worked in nursing from 1995 until at least 1997. While these positions fall outside the qualifying two-year period, the evidence is inconsistent with the statement by Reverend Albakporo. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may, of course,

lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The evidence does not establish that the petitioner worked continuously in a religious occupation or vocation for two full years preceding the filing of the visa petition. This deficiency constitutes an additional ground for denial of the petition.

Additionally, beyond the decision of the director, the petitioner has not established that his prospective U.S. employer has the ability to pay the petitioner 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.

According to the job offer, dated February 3, 2003, Deeper Life Bible Church proposes to pay the petitioner an annual salary of \$28,000. As evidence of the church's ability to pay this wage, the petitioner submitted copies of Deeper Life Bible Church's monthly checking and savings account statements for April through August, October and November 2002, and January 2003.¹ The petitioner also submitted copies of the bank statements for the church's December 2002 and January 2003 savings in its "improvement escrow account."

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 evidence. This deficiency also constitutes an additional ground for denial of the petition.

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.

¹ The petitioner also submitted financial statements for the Deeper Life Bible Church in 1997-2001; however, as these periods precede the filing date of the petition, they provide no evidence of the church's ability to pay the proffered wage as of April 2002, the date the petition was filed.