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MAY 03 2005

[Redacted]

FILE: [Redacted]
SRC 98 179 50931

Office: TEXAS SERVICE CENTER Date:

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.

Mari Johnson

& Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, initially approved the employment-based immigrant visa petition. On further review, the director determined that the petitioner was not eligible for the visa preference classification. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke the approval of the preference visa petition and her reasons therefore, and subsequently exercised her discretion to revoke the approval of the petition on May 3, 2004. The petition 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 pastor. The director determined that the petitioner had not established it had the ability to pay the proffered wage.

On appeal, counsel submits a brief and copies of previously submitted documentation.

Section 205 of the Act, 8 U.S.C. § 1155, states that the Secretary of the Department of Homeland Security “may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204.”

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

On appeal, counsel argues that CIS abused its discretion in revoking the visa petition “because it based its decision on a reversal of its own previous positive evaluation of evidence earlier submitted . . . without clearly indicating or explaining why its previous evaluation was wrong. The Service is required to explain in specific details why its previous evaluation was wrong.” Counsel further argues that the beneficiary will be “unfairly prejudiced by the revocation of the petition” initially approved in 1999.

Counsel's argument is without merit. The director set forth the reasons for the review of the approval of the petition in her Notice of Intent to Revoke the approved visa petition (NOIR), and specifically stated her reasons for revoking the approval in her decision. Further, the record is clear that the petitioner failed to submit the required evidence during the initial stages of the petition and never established the beneficiary's eligibility for the benefit sought. A petitioner must establish eligibility at the time of filing. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The AAO is not required to approve applications or petitions where eligibility has not

been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988).

Furthermore, by itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*, 19 I&N Dec. at 590.

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(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 petition was filed on June 1, 1998. Therefore, the petitioner must establish that it had the continuing ability to pay the beneficiary the proffered wage of \$2,500 monthly as of that date.

The record contains copies of the petitioner's monthly checking account statements for the period July 1997 through April 1998, and September through November 2003. The record also contains a May 15, 1998 letter from the pastor of the Redeemed Christian Church of God, Jesus House, in Silver Spring, Maryland, stating that the parish was serving as "guarantor" of the petition, assuring that all obligations of the petition would be complied with. The petitioner also submitted copies of the financial documents for the Redeemed Christian Church of God, Jesus House, for various periods in 1997 and February and March 1998. In response to the director's NOIR of December 14, 2003, the petitioner stated that both the petitioning organization and its national office had the financial ability to pay the beneficiary the proffered wage. We note first that the petitioner submitted no evidence regarding the financial ability of its national organization, and second, that the regulations require that the petitioner establish that the prospective U.S. employer, the petitioning organization in this case, has the ability to pay the proffered wage.

Additionally, the above-cited regulation at 8 C.F.R. § 204.5(g)(2) 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 evidence of its ability to pay the proffered wage as of June 1, 1998, or any of the required types of evidence.

On appeal, counsel does not address the director's determination that the petitioner had not established that it had the ability to pay the proffered wage as of the filing date of the petition, and submits no additional documentation to address this issue.

The record does not establish that the petitioner had the ability to pay the beneficiary the proffered wage as of the filing date of the visa petition.

Beyond the decision of the director, the petitioner has not established that the beneficiary was continuously engaged in a qualifying religious occupation or vocation for two full years preceding 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 June 1, 1998. Therefore, the petitioner must establish that the beneficiary was continuously working as a pastor throughout the two-year period immediately preceding that date.

According to the petitioner in its December 14, 2003 response to the NOIR:

[The] Church Parish . . . pioneered in Atlanta, Georgia was commissioned in May 1996 and pastored by Pastor [REDACTED] and [REDACTED] the beneficiary herein . . . as the Associate Pastor. At a special Convention of RCCG [Redeemed Christian Church of God] Worldwide . . . in 1996, they were both anointed with oil and ordained Pastors by the General Overseer of RCCG Worldwide. This Church Parish . . . [became] known as The Redeemed Christian Church of God –Victory International Center (RCCG – VIC)[, and although the beneficiary’s husband subsequently departed the United States, the beneficiary remained] as an Associate Pastor . . . Initially when [the beneficiary] was working as Associate Pastor under the leadership of her husband, she had an employment authorization, which enabled her to accept secular jobs being a beneficiary of I-485, which was filed by her husband. At this time also, she was working full time as an Associate Pastor in the Church Parish receiving salary as a full time church worker and the secular job was only a part time job for her. However, upon the reassignment of her husband and due to her tight work schedule in the Church, she has since left her part time secular job.

The petitioner further stated that, prior to the filing of the visa petition, the beneficiary “was working full time with RCCG – VIC in a Non stipend capacity.” The petitioner submitted no documentary evidence to substantiate the beneficiary’s employment as a pastor during the two-year period immediately preceding the filing of the visa petition. 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).

In a June 11, 2003 letter, Pastor [REDACTED] writing for the Chairman, Board of Coordinators, The Reformed Christian Church of God, North America, in support of the beneficiary’s application for adjustment status, stated:

The beneficiary did not work full time for the petitioner in 1999. The petition was approved in August 1999. Before then, the beneficiary held a derivative status having been a spouse of another beneficiary (petitioner’s [sic] husband) with an approved form I-360 with a pending application for adjustment of status.

At that time, the beneficiary had employment authorization issued out to her in that category. Been [sic] a person with derivative status, the beneficiary was working full time doing a secular job while working with the Church on [a] volunteer basis . . . [D]ue to logistic reasons,

the church did not place her on any remuneration apart from honorarium, which she received until January 2000.

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.

In the rare case where volunteer work might constitute prior qualifying experience, the petitioner must establish that the beneficiary, while continuously and primarily engaged in the traditional religious occupation, was self-sufficient or that his or her financial well being was clearly maintained by means other than secular employment.

The petitioner submitted no evidence that the beneficiary was engaged as pastor during the qualifying two-year period. Further, the record reflects that the beneficiary was dependent upon secular income for her support during that time frame.

The evidence does not establish that the beneficiary was continuously employed as a pastor for two full years preceding the filing of the visa petition. This deficiency constitutes an additional ground for denial of the petition and dismissal of the appeal.

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.