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20 Mass. Ave., N.W., Rm. A3042
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U.S. Citizenship
and Immigration
Services



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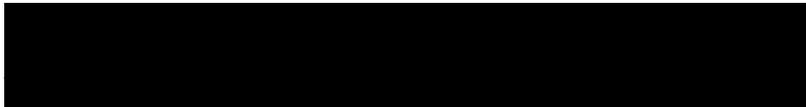
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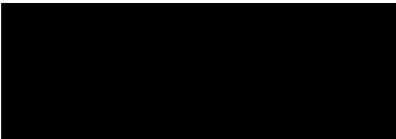
IN RE:

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

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 (AAO) on appeal. The appeal will be dismissed.

The petitioner 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 literature evangelist. The director determined that the petitioner had not established that the position qualified as that of a religious worker or that it had the ability to pay the beneficiary the proffered wage.

On appeal, counsel submits a letter. Counsel indicated that a brief and/or additional evidence would be submitted within 30 days of filing the appeal. As of the date of this decision, more than 11 months after the appeal was filed, no further documentation has been received by the AAO. Therefore, the record will be considered complete as presently constituted.

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).

The alien must be coming to the United States at the request of the religious organization to work as a religious worker. 8 C.F.R. § 204.5(m)(1).

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that

positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions would reasonably be expected to perform services directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

Citizenship and Immigration Services (CIS) therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

In its letter of September 12, 2003, the petitioner stated:

The mission of Literature Evangelist is to visit primarily those persons not attached to the Seven-day [sic] Adventist (SDA) church, and to introduce such persons and households to our church's doctrines and beliefs. The publications have broad appeal because they address family and society problems such as juvenile delinquency, drugs, and alcoholism. It is a Literature Evangelist[s] mission to show how faith can deflect anti-social and self-destructive conduct through the teaching of the Bible.

The petitioner stated that in addition to the above duties, the proffered position will include leading sermons, leading a Bible study group and "more aggressively spread[ing] the Gospel of Jesus Christ among the Metropolitan area's disaffected Spanish-speaking youth." The petitioner stated that the position will require a minimum of 40 hours per week, allocated as follows: 8 hours preaching and teaching the word of God; 12 hours doing home, hospital and prison visits; 5 hours organizing prayer groups; and 15 hours distributing Christian literature. The petitioner proposes to pay the beneficiary an annual salary of \$17,000 as compensation.

The petitioner submitted an undated letter from the publishing department of the Greater New York Conference of Seventh-day Adventists, which states:

The Literature Evangelist's work is a full-time outreach of the Church and is designed to spread the gospel and also to promote good reading material for the home. While the greatest emphasis is on Bible-related books, . . . it also includes books on health, such as medical books and other books to promote healthful living. Other topics treated in our publication[s] are: A five-day stop smoking plan, a monthly magazine for teenagers to help prevent them from using drugs and other harmful substances, as well as books on marriage and child raising . . . Literature Evangelists visit mainly non-Seventh day Adventist homes . . . They are evangelists who preach through literature. The Church believes that introducing people to our Christian Literature is missionary work of the highest order.

The record reflects that the primary responsibility of the literature evangelist is to sell publications to non-Seventh-day Adventists. While some of these publications are religious in nature, the literature evangelist is also responsible for selling publications on other topics, such as smoking cessation, juvenile delinquency, marriage and child rearing, to "mainly in non-Seventh-Day Adventist homes." Accordingly, the evidence reflects that a literature evangelist is primarily engaged in the sale of goods.

It is noted that selling literature relating to smoking cessation, juvenile delinquency, marriage and child rearing issues is not an inherently religious activity. The Board of Immigration Appeals (BIA) has previously held that an alien engaged in the sale of toys, jewelry, and trinkets as a means of fund-raising for the Unification Church, even for as little as one-third of his time, was engaged in impermissible secular employment which placed the Church in competition with other sellers of such goods. *Matter of Hall*, 18 I&N Dec. 203, 207 (BIA 1982). The BIA found that such a position may be filled by obtaining an approved application for alien employment certification, Form ETA-750, from the Department of Labor, and then filing an employment-based immigrant visa petition on Form I-140.

Further, while the determination of an individual's status or duties within a religious organization is not under CIS's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Id.* See also *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

It is fundamental to this immigrant visa classification that the beneficiary must be coming to the United States to work in a *religious* vocation or occupation. See § 101(a)(27)(C)(ii)(II) of the Act. Upon review, the petitioner has not met its burden of proof by establishing that the beneficiary's activities as a "literature evangelist" are religious in nature. Although the petitioner asserts that the sale of health and family issues literature is inherent to its religion, the petitioner has not submitted sufficient evidence to distinguish this activity from the similar entrepreneurial activities of a commercial enterprise.

The evidence does not establish that the position of literature evangelist is a religious occupation within the meaning of these proceedings.

The director also determined that the petitioner had not established that it has the ability to pay 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 submitted documentation reflecting the combined financial status of the Greater New York Conference of Seventh-day Adventists and the Greater New York Corporation of Seventh-day Adventists for the years 2000 through 2002. According to Note 1 or the documentation:

Seventh-day Adventist congregations within New Your City, Long Island, and surrounding areas have formed the Greater New York Conference of Seventh-day Adventists (the

Conference) and the Greater New York Corporation of Seventh-day Adventists, Inc. (the Corporation). Because the Conference and the Corporation are commonly controlled, their statements are combined (the Organization).

The evidence does not reflect, however, that the Conference or the Corporation is responsible for the individual debts and obligations of each congregation, nor does the documentation reflect individual contributions by congregations. The evidence reflects that the beneficiary's commission checks were paid by the petitioner using its own individual checking account.

The regulation requires that the petitioner must establish that the prospective U.S. employer has the ability to pay the beneficiary the proffered wage. The petitioner submitted no evidence to establish that it has the ability to meet this regulatory requirement. We note that the beneficiary's prior compensation from the petitioner was generated completely by her sales activities on which she was paid a commission.

The evidence does not reflect that the petitioner has the ability to pay the beneficiary the proffered wage.

Beyond the decision of the director, the petitioner has not established that the beneficiary was 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 September 23, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a literature evangelist throughout the two-year period immediately preceding that date.

In its September 12, 2003 letter, the petitioner stated that the beneficiary has worked as a literature evangelist with the Seventh-day Adventist Church since August 2000. The petitioner submitted a copy of the beneficiary's Schedule C from her year 2002 Form 1040, U.S. Individual Income Tax Return, which indicates the beneficiary earned gross income of \$19,277 from the sales of religious books. The petitioner, however, failed to submit a complete copy of the income tax return or provide evidence that the return was filed with the Internal Revenue Service.

The petitioner also submitted copies of checks that reflect payments from the petitioner in September 2003, July 2003, August 2002, December 2001 and July 2001. In response to the director's request for evidence dated October 28, 2003, the petitioner stated that it was submitting a detailed activity log of the beneficiary's work for the two years preceding the filing of the visa petition. However, the record does not indicate that the petitioner submitted the log. 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).

The evidence does not establish that the beneficiary was continuously engaged as a literature evangelist for two full years prior to the filing of the visa petition. This deficiency constitutes an additional ground for dismissal of the appeal and 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.