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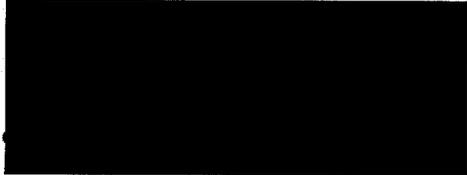
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

01



FILE: [REDACTED]
EAC 04 010 51793

Office: VERMONT SERVICE CENTER

Date: NOV 15 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:

SELF-REPRESENTED

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 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 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 been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

On appeal, the petitioner submits 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 issue presented on appeal is whether the petitioner established that the beneficiary had been continuously employed in a qualifying religious vocation or occupation for two full years prior to 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 October 15, 2003. In his decision, the director indicated that the petition was filed on October 23, 2003. However, the receipt for payment is date stamped on the petition as October 15, 2003. The regulation at 8 C.F.R. § 103.2(a)(7)(i) states, in pertinent part:

An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and, unless otherwise specified in part 204 or part 245 of this chapter, shall be regarded as filed when so stamped, if it is properly signed and executed and the required fee is attached or a fee waiver is granted.

Therefore, the petitioner must establish that the beneficiary was continuously working as a minister throughout the two-year period immediately preceding October 15, 2003.

With the petition, the petitioner submitted a December 1, 2002 letter signed by members of its board of trustees and informing the beneficiary of his compensation and duties, and observing that he had worked for the petitioning organization for the past two years. The petitioner submitted copies of several church bulletins with dates from December 10, 2000 to September 21, 2003 that list the beneficiary as pastor of the church. The petitioner submitted no other documentary evidence to establish that the beneficiary worked full-time as a minister during the qualifying two-year period. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The letter does not indicate that the beneficiary had been previously paid for his work with the petitioning organization.

In a request for evidence (RFE) dated October 13, 2004, the director directed the petitioner to submit evidence of the beneficiary's continuous work experience with "[o]bjective documentary evidence, such as payroll records, tax returns, contracts, etc."

In response, the petitioner submitted additional copies of church bulletins with the beneficiary listed as pastor of the church, flyers and brochures, and photographs that it stated depicted the beneficiary in his work as pastor of the church. The petitioner also submitted documentation showing that the beneficiary had been compensated for work performed outside the church, including work as a project director with the Truth & Love Lighthouse Community Development Corporation for a period of four months from June through September 2003. The purpose of this project and the exact details of the beneficiary's work with it are not

sufficiently clear; however, the work does not appear to be inconsistent with the petitioner's claim that the beneficiary worked as a minister.

Nonetheless, on his January 28, 2003 Form I-589, Application for Asylum and for Withholding of Removal, the beneficiary stated that from January 2002 to the "present," he worked as an equipment operator with Rite Aid Customer Support Center in Aberdeen, Maryland, and that from August 2000 to December 2001, he worked as a security supervisor with Wakenhot Security System in Baltimore, Maryland.

The director stated that the beneficiary could not have worked with the petitioner prior to 2002 as he admitted that he had fled his native country in February 2002. However, the director appears to have misread a March 2004 letter from [REDACTED] the general overseer of Bethel World Outreach Ministries International, who stated that the beneficiary's wife and daughter were forced to flee Liberia in February 2002, and that the beneficiary had not physically seen his daughter and had not been able to provide for his family in over five years.

The petitioner submitted copies of canceled checks written on its account to the beneficiary in March, May, August, September and October 2002. These checks indicated that they were for housing allowance and expenses, and were in amounts ranging from \$300 to \$580. A bank withdrawal slip in August 2002 in the amount of \$240 also indicated that the purpose of the funds was for housing allowance. The petitioner also submitted copies of checks and bank withdrawal slips indicating that the beneficiary received funds in amounts ranging from \$240 to \$863 in 2003. Annotations on these documents indicate that the funds were for housing and utility allowances. The petitioner submitted no documentary evidence of payments that it made to the beneficiary in 2001.

We note that the checks and withdrawal slips are all signed by the beneficiary. The record contains copies of only three checks that appear to be countersigned by another individual. Furthermore, the address of the petitioner listed on the checks reflects the home address of the beneficiary as indicated on a 2003 Form 1099-MISC, Miscellaneous Income, issued by the Truth and Love Lighthouse Development Corporation. The varying amounts and sporadic dates of these documents, together with the beneficiary's apparent unrestricted access to the funds, bring into question the validity and credibility of the financial documentation submitted by the petitioner in support of this petition. 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 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.

On appeal, the petitioner submits a January 28, 2005 letter from [REDACTED] who states that the beneficiary has been "actively involved in the full-time pursuit of religious work and ministry" since 1999. This statement, however, is contradicted by the beneficiary's own statement that he worked in two secular occupations during the qualifying period. Furthermore, the petitioner, however, submitted no documentary evidence that the beneficiary had been consistently compensated for his services with the petitioning organization throughout the two-year period immediately preceding the filing of the visa petition.

The evidence therefore does not establish that the beneficiary was not dependent upon secular employment for his financial well being for the two-year period immediately preceding the filing of the visa petition, and does not establish that the beneficiary was continuously employed as a minister for two full years immediately preceding the filing of the visa petition.

Beyond the decision of the director, the petitioner has 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.

In its letter of December 1, 2002, the petitioner set the beneficiary's compensation at \$1,500 per month to include housing food, and transportation. As evidence of its ability to pay this compensation, the petitioner submitted copies of its monthly checking account statements for August 2002, and March, April and September 2003. As discussed above, the record also contains copies of checks written to the beneficiary in March, May, August, September and October 2002. [REDACTED] stated in a letter of September 25, 2003 that the petitioner was under the umbrella of the Bethel World Outreach Ministries International, which apparently will assist in compensating the beneficiary for his services. The petitioner submitted a copy of an unaudited financial statement for the Bethel World Outreach Ministries International.

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 primary evidence.

The petitioner has not submitted evidence that it consistently paid the beneficiary the proffered wage in the past. In fact, the evidence raises the question as to whether the beneficiary has paid himself from a personal bank account as the bank account, although nominally in the petitioner's name, lists the beneficiary's address and is apparently controlled by him. As the petitioner has not submitted any of the required types of primary evidence, it has not established by competent evidence that it has the continuing ability to pay the beneficiary the proffered wage. This deficiency constitutes an additional ground for denial of the petition.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.