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U.S. Department of Homeland Security
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Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

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C/

FILE: [REDACTED]
LIN 04 161 51795

Office: NEBRASKA SERVICE CENTER

Date: NOV 22 2005

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is described as "a family of churches." 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 its "Director of Evangelism for the Southeast Region of the United States." The director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary, or established its ability to compensate the beneficiary.

On appeal, the petitioner changes the terms of the beneficiary's job offer.

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 director did not dispute that the beneficiary's intended duties conform to the regulatory definition of "minister" at 8 C.F.R. § 204.5(m)(2). The petition must include a letter from an authorized official of the religious organization in the United States, stating how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration). In doubtful cases, additional evidence such as bank letters, recent audits, church membership figures, and/or the number of individuals currently receiving compensation may be requested. 8 C.F.R. § 204.5(m)(4).

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.

██████████ secretary and treasurer of the petitioning organization, states that the petitioner intends for the beneficiary "to come to the Atlanta, Georgia area for the purposes of planting a church in the greater Atlanta area." ██████████ letter does not address the terms of the beneficiary's compensation as required by 8 C.F.R. § 204.5(m)(4). Also, the petitioner's initial submission does not include any evidence regarding the petitioner's financial status.

On September 17, 2004, the director instructed the petitioner to "[s]ubmit evidence that the alien will not be dependent on supplemental sources of income for support, such as bank letters and or financial records for the religious organization, recent audits, church membership figures, and the number of individuals currently receiving compensation. You must submit evidence that the religious organization has the financial capability to pay the beneficiary's wage." In response, ██████████ states that the beneficiary "has demonstrated that he is financially in good standing and is not in need of remuneration. He has provided thorough documentation of his financial situation to" the petitioning organization. ██████████ maintains that the beneficiary "will be working solely as a minister . . . and that he will seek no other employment." The petitioner's response includes none of the specific evidence that the director had requested in the aforementioned notice.

The petitioner submits documentation showing that the petitioner has been paying the beneficiary £21,000 (roughly equivalent to \$36,000) per year. The petitioner also submits bank documents showing that the beneficiary had over £200,000 (\$350,000) in the bank as of October 1, 2004. Finally, the petitioner submits a letter from Les and Debbie Osborn of Whitstable, Kent, offering £100 (\$175) per month for the beneficiary's support. The letters does not indicate that the Osborns are officials of, or affiliated with, the petitioning entity, nor does the record establish the Osborns' ability to meet this commitment.

It is not readily apparent that \$350,000 is sufficient to provide indefinite support to the beneficiary, his spouse, and their two minor children. The purchase of a home, alone, would consume a significant amount of that cash reserve. Similarly, once the beneficiary's personal funds are exhausted, \$175 per month is well below poverty level for a family of four.

The director denied the petition, stating:

The record, in the initial and subsequent documentation, makes no mention of a salary offered to the beneficiary. Although the beneficiary contends he is able to financially support himself through personal funds, the record establishes he is willing to accept the financial support from a private family. The petitioner has failed to provide the required documentation of its ability to pay a proffered wage in accordance with 8 C.F.R., Part

204.5(g)(2). As a result, the record does not establish that the petitioner has extended a valid job offer suitable for an employment-based visa petition.

The director observed that the beneficiary accepted payment from the church while working in the United Kingdom, but intended to live off of his savings in the United States while supposedly working for the same religious organization. The director questioned whether a genuine offer employment existed.

On appeal, Mr. Hein states that the petitioner will pay the beneficiary "an annual salary of \$30,000" because "we are so keen to have this man join our team that we are prepared to offer [the beneficiary] employment even though he needs no employment." The petitioner submits a "Balance Sheet" showing that the petitioner had current assets of nearly \$230,000, and negligible liabilities, as of June 2, 2005. There is no evidence that this information comes from an audit.

Apart from the petitioner's failure to submit acceptable financial evidence, the petitioner's new offer to pay the beneficiary a regular salary comes too late to establish eligibility. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to CIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998), and *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), which require that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Here, it is clear that the petitioner initially intended to pay the beneficiary no salary; the beneficiary was to be, in essence, an unpaid volunteer living off his savings and small contributions from friends in England. The petitioner has now changed the terms of the job offer. While these new terms could support a new petition (if supported by the appropriate evidence), they cannot retroactively establish eligibility as of this present petition's May 28, 2004 filing date.

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.

This denial is without prejudice to the filing of a new petition by a United States employer, accompanied by the appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.