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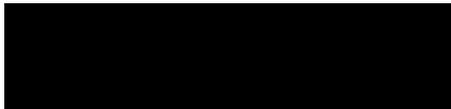
Date: **AUG 09 2006**

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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:

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, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Acting Director, Texas 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 pastor. The director determined that the petitioner had not established that it qualifies as a bona fide nonprofit religious organization, 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, that the position qualifies as that of a religious worker, that the petitioner has extended a qualifying job offer to the beneficiary, or that it has the ability to pay the proffered wage.

On appeal, the petitioner submits a letter and 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 first issue on appeal is whether the petitioner established that it qualifies as a bona fide nonprofit religious organization.

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.

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) of 1986 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, which contains a proper dissolution clause and which specifies the purposes of the organization.

The petitioner submitted no documentation with the petition.

In response to the director's request for evidence (RFE) dated April 21, 2005, the petitioner submitted a copy of a July 11, 2002 letter from the State of California Franchise Tax Board to God's Embassy in Sacramento, California, exempting that organization from state franchise and income tax. The petitioner also submitted copies of several church flyers and newspaper excerpts, most of which are in Russian and are not accompanied by English translations. The regulation at 8 C.F.R. § 103.2(b)(3) requires that documents submitted in a foreign language "shall be accompanied by a full English translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English."

On appeal, the petitioner states that it is a subordinate of the church in Sacramento, and therefore the tax exemption granted to the California church is equally applicable to the petitioning organization. The petitioner submits a September 6, 2005 statement from the pastor of the God's Embassy Church in Sacramento, confirming that the petitioning organization is a "daughter church" of the Sacramento church.

Nonetheless, the petitioner has not submitted evidence to establish that it is exempt from federal taxation as a bona fide nonprofit religious organization. The petitioner must either provide verification of individual exemption from the IRS, proof of coverage under a group exemption granted by the IRS to the denomination, or such documentation as is required by the IRS to establish eligibility as a tax-exempt nonprofit religious organization. Such documentation to establish eligibility for exemption under section 501(c)(3) includes: a completed Form 1023, a completed Schedule A attachment, if applicable, and a copy of the articles of organization showing, *inter alia*, the disposition of assets in the event of dissolution.

If the petitioner does not have a letter from IRS specifically granting it tax-exempt status under 501(c)(3) of the IRC, it can establish its eligibility for the exemption pursuant to the provisions of 8 C.F.R. § 204.5(m)(3)(i)(B). The organization can establish this by submitting documentation that establishes the religious nature and purpose

of the organization, such as brochures or other literature describing the religious purpose and nature of the activities of the organization. The necessary documentation is described in a memorandum from William R. Yates, Associate Director of Operation for CIS, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003):

- (1) A properly completed IRS Form 1023,
- (2) A properly completed Schedule A supplement, if applicable,
- (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization, and
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The above list is consistent with the regulatory requirement at 8 C.F.R. § 204.5(m)(3)(i)(B), cited above. The memorandum specifically states that the above materials are, collectively, the “minimum” documentation that can establish “the religious nature and purpose of the organization.” Thus, for example, a petitioner cannot meet this burden by submitting only its articles of incorporation. Also, obviously, it is not enough merely for the petitioner to *submit* the documents listed above. The *content* of those documents must establish the religious purpose of the organization.

The petitioner submitted copies of church flyers and copies of newspaper excerpts; however, as noted earlier, most of this documentation provided is in Russian and is not accompanied by English translations. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. Further, the petitioner submitted no other documentation, such as an IRS Form 1023 or a copy of its organizing instrument containing the IRS-required dissolution clause, to establish its eligibility as a tax-exempt organization pursuant to 8 C.F.R. § 204.5(m)(3)(i)(B).

Accordingly, the petitioner has not established that it is a bona fide nonprofit tax-exempt organization in accordance with the regulation.

The second 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 14, 2004. Therefore, the petitioner must establish that the beneficiary was continuously working as a pastor throughout the two-year period immediately preceding that date.

In response to the RFE, the petitioner submitted a copy of a May 12, 2005 statement from the Embassy of the Blessed Kingdom of God for All Nations, "certifying" that the beneficiary had worked as a missionary with that organization through April 2002, and that in October 2002, "he went to the United States of America to plant an Embassy of God satellite church there." An undated letter signed by the petitioner's board of directors indicated that the beneficiary had worked for the petitioning organization for over two years, and that for the two-year period preceding October 15, 2004, had been financially supported by the "main church" in Kiev in the Ukraine. The petitioner also submitted a copy of a June 20, 2005 IRS Letter No. 3354 SC/CG, responding to the beneficiary's request for a transcript of his 2004 tax return. The letter indicates that the beneficiary reported gross income from self-employment of \$2,900, but did not indicate the source of that income. The petitioner submitted no other documentary evidence to corroborate the beneficiary's employment during the qualifying 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 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).

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.

On appeal, the petitioner submits a copy of an August 19, 2005 letter from The Embassy of the Blessed Kingdom of God for All Nations, "certifying" that, from October 14, 2002 to October 14, 2004, the beneficiary received a weekly salary equivalent to \$500 USD "for pastoring one of our daughter churches in Miami, Florida." The letter does not indicate which organization paid the beneficiary and the petitioner submits no evidence of this payment. *Matter of Soffici*, 22 I&N Dec. at 165. The petitioner challenges the director's observation that the beneficiary's 2004 tax return reflects income of only \$2,900 for the year. According to the petitioner, the \$2,900 was only for two months of the year. If that is true, it begs the question as to what work, if any, the beneficiary performed during the remainder of the year and the qualifying two-year period. The petitioner submitted no other evidence, such as authenticated work schedules or other documentation to confirm the beneficiary's religious employment during the qualifying period. *Id.*

Therefore, the evidence submitted by the petitioner is insufficient to establish that the beneficiary worked continuously as a pastor throughout the two years immediately preceding the filing of the visa petition.

The third issue is whether the petitioner established that the position qualifies as that of a religious worker.

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

The proffered position is that of a minister. The regulation at 8 C.F.R. § 204.5(m)(2) defines minister as:

[A]n individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

The petitioner submitted a document entitled "Hours of operation of" the beneficiary. Duties indicated include "course for new believers," office hours, "Spanish service," "leadership," "prayer meeting," and "service." The petitioner submitted no other evidence of the nature of the position offered or the duties that the beneficiary is expected to perform. A document entitled "bylaws" and "employee qualifications" does not address the specific job that is offered. While the petitioner indicated that the proffered position is that of "pastor," it provided no evidence that the position is a minister within the regulatory definition.

Therefore, the petitioner has failed to establish that the proffered position qualifies as that of a religious worker within the meaning of the statute and regulation.

The fourth issue on appeal is whether the petitioner established that it has extended a qualifying job offer to the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

In response to the RFE, the petitioner stated that the beneficiary was expected to work 40 hours per week but did not specify any of the other terms of the beneficiary's expected employment. On appeal, the petitioner submits an October 14, 2004 "employment contract" signed by its board of directors and the beneficiary, indicating that the beneficiary would receive 30% of the monthly income donated by the "people," or a minimum of \$800 per month plus guaranteed rent, utilities and living expenses. While we find that the petitioner has provided sufficient details concerning the terms of the prospective employment of the beneficiary, it has not established that the proffered position qualifies as that of a religious worker within the meaning of these proceedings.

Therefore, as the petitioner has not established that the position qualifies as that of a religious worker, it has not established that it has extended a qualifying job offer to the beneficiary.

The fifth issue on appeal is whether the petitioner 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 stated that it would pay the beneficiary a "minimum" of \$800 per month, guaranteeing that the beneficiary's rent, utilities and living expenses would be covered. As evidence of its ability to pay this wage, the petitioner submitted a copy of an April 2003 monthly checking account statement for [REDACTED] in Aventura, Florida. The petitioner submitted no evidence that the Aventura church is the petitioning entity or a parent organization of the petitioner. The petitioner also submitted copies of an unaudited profit and loss statement and an unaudited balance sheet as of April 30, 2005. A copy of the minutes of the petitioner's board of directors' meeting dated October 14, 2004 indicates that, effective as of October 15, 2004, the petitioner "will taking [sic] care about [the beneficiary] and his family. We held corporate resolution that all expenses of him and his family we count as our own."

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.

On appeal, the petitioner submits an unaudited copy of its financial documents for the period ending July 31, 2005 and undated letters from six individuals stating that they are members of the petitioner's congregation, and stating that they plan to donate from \$500 to \$1,000 per month to the petitioner. The record does not reflect if those pledging these sums have contributed to the petitioner in the past or their capability of meeting

their pledges in the future. Further, none of the evidence establishes the petitioner's ability to pay the proffered wage as of October 2004, the date the petition was filed.

As the petitioner has not established that it has paid the beneficiary the proffered wage in the past and has not submitted any of the required types of primary evidence, it has not established that it had the continuing ability to pay the beneficiary the proffered wage as of the date the petition was filed.

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.

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.