



U.S. Citizenship
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FILE:

WAC 07 003 54006

Office: CALIFORNIA SERVICE CENTER

Date:

AUG 28 2007

IN RE:

Petitioner:

Beneficiary:

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.

for 
Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner is a United States branch of a Christian denomination. 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 an elder of the petitioner's Southeast Region. The director determined that the petitioner had not established that it had made a *qualifying job offer to the beneficiary*.

On appeal, the petitioner argues that the director's decision violates the petitioner's and the beneficiary's freedom of religion.

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).

8 C.F.R. § 204.5(m)(4) requires the intending employer to state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration).

In a letter submitted with the initial filing, [REDACTED] Presiding Elder of the petitioner's Ministerial Jurisdictional Assembly, stated that the beneficiary "is an ordained minister" who "occupies what is the highest ecclesiastical position in the Church." Elder Scoccia did not discuss any terms of remuneration.

An unsigned "Statement of Financial Support" reads, in part:

[The beneficiary], at his own request, and in accordance with customary practices of the Christian Congregation worldwide community, will not receive a salary for the services he performs as an Elder. . . .

[The beneficiary] is a retired accountant, with a continuing partnership interest in an accounting practice in Brazil. He receives a government pension, as well as income from the accounting practice, and an annuity established by his daughter. These sources, together with his own accumulated assets, will continue to form the basis of his support in the United States.

Various supporting documents offer additional information about these sources of income, but except for an affidavit from the beneficiary's daughter, the documents are in Portuguese with no English translation. 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).

The affidavit from the beneficiary's daughter, [REDACTED], states that she gives her father "\$1,300 per month." From the context, it is not clear whether this amount is in United States dollars or Brazilian reais.

On December 11, 2006, the director requested evidence of the beneficiary's material support, as well as a description of the terms of payment for services or other remuneration as required by 8 C.F.R. § 204.5(m)(4). In response, the petitioner repeated its previous claim that the beneficiary will receive no salary, instead deriving income from investments, pensions and family. Church officials in Brazil and the United States quoted the denomination's "Principles of Organization and Administration," which state: "Persons holding any spiritual or administrative positions must make their own living through their own jobs or by their own means, since any type of remuneration or compensation for performing such activities is prohibited."

The petitioner submitted copies of previously submitted documents, as well as a translated letter from accountant [REDACTED] indicating that the beneficiary owns a farm worth 35,000 Brazilian reais and an apartment worth 120,000 reais. [REDACTED] does not indicate whether these holdings represent a continuing source of income (for instance, through rental), or else simply represent assets that the beneficiary could liquidate for cash in the future. The passive act of owning property in Brazil does not pay for the beneficiary's material needs (such as food and housing) in the United States.

Brazilian tax returns show that the beneficiary reported income of 18,551.70 reais in 2003, 20,750.90 reais in 2004 and 21,914.94 reais in 2005. The tax returns do not identify the source of the income, and therefore it is not clear whether these numbers include the monthly contributions from the petitioner's daughter. According to <http://www.xe.com/ucc/>, as of August 8, 2007, the exchange rate between Brazilian and United States currency was 1.88454 reais to the dollar. Thus, the beneficiary's reported 2005 income of 21,914.94 reais equals roughly \$11,629.04 in United States currency, and his property holdings are worth about \$82,249.86.

The director denied the petition on February 21, 2007, stating that the petitioner had failed to document a qualifying job offer, and that the beneficiary will be entirely dependent on other means of support.

On appeal, in an unsigned statement, the petitioner cites various scriptural justifications to support the denomination's policy of not paying its clergy. The petitioner states:

If this petition is denied, solely because the church will not pay the beneficiary a salary, then we must conclude that it is virtually impossible for any member of our clergy to ever qualify as a "Special Immigrant Religious Worker" under this Act. *As a practical matter, the [petitioner] is denied equal access under this law.*

This raises two very serious questions: (1) whether we do, in fact, have freedom of religion . . . and (2) whether the U.S. government can require payment of a salary (contrary to the above-mentioned scripture) as a requisite for our churches to receive equal treatment under the law.

(Emphasis in original.) The AAO lacks jurisdiction to resolve constitutional questions, but we will note that the free exercise of one's religious beliefs does not automatically translate into unfettered access to immigration benefits. While the determination of an individual's status or duties within a religious organization is not under the purview of Citizenship and Immigration Services (CIS), the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203, 207 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607, 608 n.2 (BIA 1978).

Immigration is not a right to which aliens are entitled, or duty owed to religious organizations and their adherents, but a benefit for which one must qualify. Congress has the authority to set the terms for eligibility for this benefit, and in doing so, Congress required that special immigrant ministers must be engaged "solely" as ministers. This law applies equally, as it should, across denominational lines. There would be nothing "equal" about a special exception for those few denominations that provide no financial or material support for their clergy. Congress having legislated that special immigrant ministers must be engaged solely as ministers, the AAO can only enforce that provision; we lack discretion to create unequal, arbitrary exceptions to the statutory requirements.

Furthermore, if a worker in a given denomination receives no income from his or her church work, then he or she must receive support from some other source. If that other source is secular employment, then the secular employer can petition for the worker under a non-religious classification. The unavailability of special immigrant religious worker benefits for such a worker is not a permanent bar against the worker's admission by other means.

The petitioner cites a 1991 petition filed on behalf of another individual, "under circumstances that are precisely identical to the current petition." The petitioner states that the 1991 petition was approved, which "**establishes a clear precedent for the present matter.**" 8 C.F.R. § 103.3(c) establishes a procedure by which appellate decisions can be designated and published, at which time they constitute binding precedent. The petitioner has not shown that the 1991 decision was designated and published in this manner, and therefore the petitioner has not established that the 1991 decision "establishes a clear precedent." Also, the

record of proceeding now before the AAO does not include the documentation from the 1991 petition, and therefore we cannot determine whether or not the two petitions are “precisely identical” as claimed.

With regard to the beneficiary’s resources, the petitioner states:

[The beneficiary] is a retired accountant. He receives a government pension of about \$1,200 per month as well as a \$1,500 monthly annuity established by his daughter for his benefit. Other assets include property in Brazil.

We have previously submitted deposit slips showing direct deposit of the monthly government pension into his account in Brazil. We also submitted tax returns showing the taxable portion of this pension. In addition, we submitted a sworn affidavit by his daughter to verify the annuity she has established in his favor. And finally, we submitted notarized documentary evidence of the property [the beneficiary] owns in Brazil.

While a monthly income of \$2,700 is not excessive, [the beneficiary’s] expenses are well within these limits. . . . In the event of some extraordinary expense, he would be able to tap into his savings and assets in Brazil, as well as the resources of a large and dedicated family.

The record does not establish “a \$1,500 monthly annuity established by [the beneficiary’s] daughter.” Rather, [REDACTED] stated that she gives the beneficiary “a monthly allowance of \$15,600 a year (\$1,300 per month).” Apart from being less than the amount claimed on appeal, there is no indication that [REDACTED] “established” an annuity with principal dedicated to producing fixed monthly payments. Furthermore, as we have already discussed, the reference to “\$1,300 per month” does not necessarily mean 1,300 United States dollars per month. The symbol “\$” does not refer exclusively to the United States dollar. The standard symbol for the Brazilian real is “R\$,” as shown on Brazilian documentation in the record. We therefore cannot determine conclusively that [REDACTED] figures were in dollars rather than reais. If [REDACTED] provides her father R\$1,300 a month, then this amount is about \$689.82 in United States currency. The record contains no documentary evidence of these payments, such as (for instance) bank documents showing regular transfers or deposits in the amount described.

With respect to the “previously submitted deposit slips,” the petitioner has submitted copies of untranslated Brazilian bank documents. A “*Detalhamento de Crédito*” from July 2006, which the petitioner has identified as a “bank statement showing July, 2006 deposit of government pension payment,” cites a “*Valor Liquido*” of 1,943.30. Because this is a Brazilian document, this amount is presumably in reais. The sum of 1,943.30 reais is worth approximately \$1,031.18 at the previously cited exchange rate. Even if this document does, in fact, reflect a fixed monthly pension payment (which the petitioner has not proven, having failed to submit a certified translation), it does not show regular income of \$1,200 per month from that source.

Another untranslated document refers to “*REMUNERAÇÃO*” in the amount of “*R\$ 1.600,00 . . . reais mensais*.” R\$1,600 is roughly \$849.01 in United States currency. If “*mensais*” means “monthly,” then the document refers to substantially less than \$1,200 per month. The document dates from 2000, and it is possible that the amount has since increased; the phrase “*reajuste anualmente*” appears near the

aforementioned passages. Nevertheless, the petitioner has not documented the current amount of the payments, nor has he shown that these payments are to continue indefinitely rather than cease at the expiration of some fixed term.

For the above reasons, the petitioner's documentation does not establish "a monthly income of \$2,700." Ambiguous and untranslated evidence makes an exact figure impossible, but the figures cited on appeal are clearly exaggerated. Doubt cast on any aspect of the petitioner's proof may 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). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92.

Beyond the doubt cast on the petitioner's claims regarding the beneficiary's total income, the record contains no evidence at all that the beneficiary would be able to rely on "the resources of a large and dedicated family." The record likewise offers no insight into the extent of the beneficiary's own savings, or the amount of the beneficiary's typical monthly expenses in the United States.

Case law relating to religious workers indicates 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, 713-14 (Regl. Commr. 1963) and *Matter of Sinha*, 10 I&N Dec. 758, 760 (Regl. Commr. 1963). Because the petitioner has not submitted persuasive evidence to show that the beneficiary is able to rely entirely on his pension and support from his family, the petitioner has not overcome the assumption inherent in the cited case law. In situations involving compensated employment, 8 C.F.R. § 204.5(g)(2) requires the intending employer to provide copies of annual reports, federal tax returns, or audited financial statements in order to establish its ability to pay the beneficiary. If the petitioner claims that the beneficiary is to be supported by other means, then evidence of these alternative means should meet the same rigorous standards as those set forth in 8 C.F.R. § 204.5(g)(2).

When considering the petitioner's assertion that the denomination refuses, as a matter of principle, to compensate its workers, another relevant issue surfaces. 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 regulation at 8 C.F.R. § 204.5(m)(1) 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." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on October 4, 2006.

While the petitioner's governing documents, as quoted, forbid payment of church workers, the petitioner has quoted no provision that requires all church workers to be retired (like the beneficiary) or otherwise unemployed. Absent such evidence, we are justified in assuming, pursuant to *Matter of Bisulca* and *Matter of Sinha*, that many, perhaps most, of the workers in the petitioner's denomination are gainfully employed in secular jobs. This would necessarily limit the amount of time that these workers would be available to perform religious tasks. The Board of Immigration Appeals determined that an alien's religious work could not be held to be "continuous" when that work was part-time and uncompensated. See *Matter of Varughese*, 17 I&N Dec. 399, 402 (BIA 1980). Furthermore, the record does not clarify whether the beneficiary has worked for the church at all since he departed Brazil in May 2006, more than four months before the filing date. The evidence, in the present proceeding, is insufficient to permit the conclusion that the beneficiary was continuously engaged in the vocation of a minister throughout the two years immediately preceding the filing of the petition. This, by itself, would justify denial of the petition, independent of the grounds cited by the director.

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.