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Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

FEB 02 2007

WAC 03 097 51323

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:



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, 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 on appeal. The appeal will be dismissed.

The alien beneficiary seeks classification 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 the associate pastor of Corona International Christian Fellowship (CICF). The director determined that the petitioner had not established: (1) CICF's qualifying status as a tax-exempt religious organization; (2) that the beneficiary had the requisite two years of continuous work experience as an associate pastor immediately preceding the filing date of the petition; (3) CICF's ability to compensate the beneficiary; or (4) that CICF had made a qualifying job offer to the beneficiary.

We note that Part 1 of the Form I-360 petition identifies CICF as the petitioner. Review of the petition form, however, indicates that the alien beneficiary is the petitioner. An applicant or petitioner must sign his or her application or petition. 8 C.F.R. § 103.2(a)(2). In this instance, Part 9 of the Form I-360, "Signature," has been signed not by any official of CICF, but by the alien beneficiary himself. Thus, the alien, and not CICF, has taken responsibility for the content of the petition. At the same time, we acknowledge that the attorney who filed the appeal represents the self-petitioning alien beneficiary. Thus, the appeal has been properly filed.

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).

We shall first consider the issue of CICF's tax status. 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 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 section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

The petitioner's initial submission included no evidence of its qualifying tax-exempt status. Accordingly, on June 30, 2003, the director issued a request for evidence (RFE) requesting, among other things, evidence that the Internal Revenue Service (IRS) has recognized CICF as a tax-exempt religious organization, or, in the alternative, the evidence that the IRS would require in order to issue a recognition letter (including, but not limited to, a completed IRS Form 1023 application for recognition of exemption).

In response, the petitioner has submitted documentation showing that CICF is "exempt from state franchise or income tax" in California. This document pertains to state tax, rather than federal tax, and it is not evidence of federal tax-exempt status. The petitioner has also submitted an IRS letter from 1987, recognizing the tax-exempt status of the Southwest Baptist Conference. [REDACTED] Business Manager of the Southwest Baptist Conference, states in a letter that CICF "is associated with and in good standing with the Southwest Baptist Conference." Pages (numbered 10 and 34) reproduced from an untitled document list CICF in an "Alphabetical Listing of SWBC Churches."

CICF's organizing instruments do not mention the conference, but its 2002 *Yearbook and Directory* includes a historical sketch of the church, beginning with its founding by "the director of Church Planting for Filipino churches of the Southwest District of the Baptist General Conference."

On December 6, 2003, the director issued a second RFE, instructing the petitioner to establish CICF's federal (rather than state) tax-exempt status. The director also instructed the petitioner to submit "the corresponding registry, directory or association showing the connection between" CICF and the Southwest Baptist Conference. The director did not mention the photocopied pages that the petitioner had previously submitted. In response, the petitioner submits copies of previously submitted documents and a new letter from [REDACTED] District Executive Minister of the Southwest Baptist Conference, affirming the affiliation.

The director denied the petition on February 18, 2004, stating that the letters from conference officials are not sufficient to establish that CICF falls under the umbrella of the conference's group exemption, and that the petitioner failed to submit "the corresponding registry, directory or association showing the connection between the churches." On appeal, the petitioner submits a complete copy of the *Southwest Baptist Conference 2003 Directory*, a 115-page, spiral-bound book. Pages 10 and 34 of this book match the photocopied pages that the petitioner had previously submitted on two separate occasions. Thus, the record already contained the relevant extracts from the *Directory*, refuting the director's conclusion that the record lacked such evidence. We note that the director, in the second RFE, did not even acknowledge these copied

pages, let alone question their origin or otherwise cite any perceived deficiencies. Between the *Directory* and the letters from conference officials, we find that the petitioner has adequately established that CICF is a constituent of the Southwest Baptist Conference and is covered by that organization's group tax exemption. We withdraw the director's contrary finding. There remain, however, other grounds for denial, not so easily overcome.

Two grounds for denial are somewhat interrelated. 8 C.F.R. § 204.5(m)(4) requires the intending employer to establish a valid job offer by showing "how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration)." 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 a letter dated January 6, 2003, jointly signed by three church officials, CICF sets forth its terms of employment. CICF offered the petitioner "monthly support of \$1,000.00" plus free housing and reimbursement of expenses. The petitioner's initial submission includes a copy of CICF's "Proposed Budget for FY 2003," including \$12,000 for "Assoc. Pastor Allowance" and \$3,600 for "Housing."

The director, in the June 2003 RFE, requested further information about the means by which CICF intended to compensate the petitioner. The director also requested "evidence of the petitioner's ability to pay the beneficiary's wage . . . in the form of copies of annual reports, federal tax returns, or audited financial statements." In response, the petitioner submits another copy of the "Proposed Budget for FY 2003," as well as three of CICF's "Income and Expense Summaries," each for four-month periods of 2001. The most recent such document indicates that the church carried a fund balance of \$18,297.42 as of December 2001, \$10,000 of which was in the form of a certificate of deposit with an unspecified maturity date.

The petitioner has also submitted "Profit and Loss Statements" for 2002 and the first quarter of 2003. Even if these statements were sufficient as evidence under 8 C.F.R. § 204.5(g)(2), which they are not, the statements on their face show insufficient funds.

The statement for calendar year 2002 indicates that CICF ended the year with a net income of \$4,400.82, after having paid \$1,025.00 in "Assoc. Pastor Allowance." Thus, in 2002, less than \$5,500 was either paid to the petitioner, or available for such payments. The statement for January-March 2003 shows net income of \$2,878.52 after paying \$300.00 in "Assoc. Pastor Allowance." These amounts fall short of the proffered compensation of \$1,000 per month plus expenses. The statements show no line item for the petitioner's housing, another considerable expense that CICF has promised to cover. The majority of CICF's current

assets are earmarked for the church's building fund, and therefore presumably unavailable for payments to the petitioner.

[REDACTED], who identifies herself as the petitioner's 78-year-old godmother, states that she has been providing the petitioner with "free board and lodging and pocket money allowance of \$250/month in recognition of overseeing and providing care for me and my cerebral palsy son, and at the same time doing service to our Lord God at the Corona International Christian Fellowship." Ms. [REDACTED] has executed a Form I-134 Affidavit of Support, pledging to support the petitioner from her savings if CICF is unable to meet its obligations toward the petitioner.

The director's second RFE again instructed the petitioner to submit evidence that conforms to the regulatory requirements listed above. In response, the petitioner resubmits copies of previously submitted documents, and counsel observes that [REDACTED] is "a millionaire."

The director denied the petition, stating that the petitioner's unaudited financial documents do not establish CICF's ability to compensate the petitioner. The director further concluded that the petitioner "does not derive support from [CICF, but] rather he derives monthly support from his Godmother. Therefore, [CICF] has not tendered a valid job offer."

On appeal, counsel states that CICF's "financial statements . . . were duly signed by the leaders of the church and certified by the church treasurer. . . . [T]hese signatures more than satisfy the audit requirements of [CICF's] constitution and by-laws." The standard for an audit, however, is not what CICF states in its own governing documents, but rather generally accepted accounting standards. CICF cannot, by fiat, announce that the claims of management are the same thing as an audit. The term "audited financial statements" derives from government regulations; CICF is not in a position to define what the government meant by that phrase. Furthermore, even setting aside the evidentiary shortcomings of the documents in the record, these documents (as we have already discussed) on their face do not show that CICF has sufficient income or assets to pay the petitioner \$1,000 a month plus housing and other expenses.

Counsel states: "to satisfy the requirement imposed by the Hon. Director that the financial statements must be audited, petitioner is hereby submitting along with this appeal financial statements prepared and compiled by Mr. [REDACTED] a California C.P.A." These statements, however, do not "satisfy the requirement"; Mr. [REDACTED] specifically states that the report is "compiled" as opposed to "audited." Furthermore, the director had twice advised the petitioner, via RFE, of the regulatory requirements regarding evidence of ability to pay. Even if the petitioner had submitted an audited financial statement on appeal, which the petitioner has not done, it would have been too late. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

We note that counsel's wording implies that it is the director who "imposed" the requirement regarding audited financial statements. This requirement, however, derives directly from the regulation at 8 C.F.R. § 204.5(g)(2). The director is bound by such regulations and has no discretion to modify or disregard them.

The petitioner submits further information regarding [REDACTED] support of the petitioner. 8 C.F.R. § 204.5(g)(2) requires “evidence that the prospective United States employer has the ability to pay the proffered wage.” Evidence that a third party is willing to cover such expenses cannot fulfill this requirement. Ms. [REDACTED] does not claim to be an official of CICF, or of any affiliated or parent organization, and her name does not appear in the member list in CICF’s 2002 *Yearbook and Directory*. She has no evident connection to the church at all, other than her long-standing relationship to the petitioner as his godmother, which predates the petitioner’s membership in CICF’s denomination. (As recently as 1997, the petitioner belonged to a United Methodist church.) Thus, Ms. [REDACTED] willingness to support the petitioner neither establishes CICF’s ability to pay the petitioner’s salary, nor relieves CICF of its responsibility to establish that ability. We affirm the director’s finding that the petitioner has failed to establish that CICF has been able to remunerate the petitioner from the filing date onward. Counsel’s assertion on appeal that the petitioner does not wish to be paid for his work (more on which later) is immaterial to the question of whether the petitioner has persuasively and adequately demonstrated CICF’s ability to pay him.

With regard to the validity of the job offer, 8 C.F.R. § 204.5(m)(4) requires the prospective employer to set forth the terms of compensation. CICF did not indicate that the petitioner would continue to be dependent on his godmother. Rather, CICF indicated that it would pay the petitioner \$1,000 per month plus housing and expenses. Therefore, we cannot agree with the director’s finding that there exists no valid job offer with regard to intended future employment. While the director was correct in finding that the petitioner has not shown that CICF is able to *meet* these terms, there is nothing inherently disqualifying in the terms themselves. We therefore withdraw the director’s finding that no valid job offer exists (such a finding being distinct and separate from the finding regarding CICF’s ability to remunerate the petitioner, or from counsel’s protestation that the petitioner does not require remuneration).

The remaining issue concerns the continuity of the petitioner’s ministerial work. 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 February 6, 2003. Therefore, the petitioner must establish that he was continuously performing the duties of an assistant pastor throughout the two years immediately prior to that date.

In a letter dated September 21, 2000, CICF Senior Pastor [REDACTED] formally offered the petitioner a position as associate pastor. The letter does not indicate when the petitioner actually began performing the duties of that position. The director’s June 2003 RFE included a request for “a listing of the beneficiary’s employment history from the time he . . . became a member of” CICF.

The petitioner’s response to this notice include a copy of CICF’s *Yearbook and Directory* for 2002, which includes a photograph of the petitioner, who is identified with the title of “Pastor.” A letter, jointly signed by six church officials, indicates that the petitioner has worked at CICF “since February 6, 2001.” In a separate letter, Pastor [REDACTED] states: “**Remuneration:** Gas Allowance is \$100 per month, plus reimbursable expenses

connected with the job assigned as church worker on a voluntary/missionary worker basis.” The petitioner submits copies of canceled \$100 checks issued monthly by CICF in early 2003, payable to the petitioner and labeled “stipend.”

An unsigned list of positions that the petitioner has held indicates that the petitioner was a “Member/Missionary Worker” at CICF from September 2000 to 2002, and an “Associate/Missionary Pastor” at CICF from 2002 onward, indicating that the nature of the petitioner’s position changed during the two-year qualifying period.

In the second RFE, in December 2003, the director requested copies of the petitioner’s federal income tax returns for 2001 and 2002. In response, counsel states that the petitioner “was working as an unpaid volunteer religious missionary from the start. As such, he is not paid any regular salary. The money he receives are [sic] only reimbursement for his gasoline and other expenses. Therefore, he has no income to declare and file.”

In denying the petition, the director stated: “voluntary service to one’s church is insufficient to satisfy the requirement of having been solely and continuously engaged in a religious occupation or vocation for the two-year period immediately prior to the filing of the petition.” On appeal, counsel asserts that the voluntary nature of the petitioner’s past work should not disqualify him. In *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980), the Board of Immigration Appeals found that an alien who performed “religious duties . . . of a voluntary nature” did not qualify as a special immigrant minister.

Furthermore, the statute and regulations are quite clear on the point that an alien seeking classification as a minister must be “solely” engaged in that activity. See also *Matter of Faith Assembly Church*, 19 I&N Dec. 391, 393 (BIA 1986). If an alien 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).

Counsel asserts that the petitioner does not need to accept payment from CICF or any other employer, because the petitioner “is financially independent in his own right.” The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 2, 4 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Apart from counsel’s assertions (which contradict counsel’s prior claim that the petitioner “has no income to declare”), the only appellate submission relating to the petitioner’s finances is a signed statement by the petitioner himself, indicating that the petitioner derives income from a pension and from “properties and investments” in the Philippines, including rental properties and an “Auto Mechanical Shop.” The petitioner states that his monthly income from these investments is \$157,600 Philippine pesos (about \$3,200 US). This list is not evidence of the petitioner’s financial status; it is an uncorroborated claim regarding that status. 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).

Whatever the petitioner's assets in the Philippines, he does not assert that these assets have been his sole means of support. Rather, he has taken room, board, and \$250 per month from [REDACTED]. Regarding Mrs. [REDACTED] support of the petitioner, counsel states:

Petitioner believes that the [REDACTED] Director may have again erroneously assumed that because the letter from Mrs. [REDACTED] states "in recognition of overseeing and providing care for me and my cerebral palsy son, and at the same time doing services to our Lord God at the Corona International Christian Fellowship..." that [the petitioner] is employed by Mrs. [REDACTED] as a caregiver to take care of her and her son. This assumption if made, is very far from the truth. . . . [c]ommon sense dictates that no party will knowingly submit a piece of evidence that will harm its own interests. This assumption on the part of the Hon. Director is equivalent to saying that the petitioner submitted this letter from Mrs. [REDACTED] to harm Petitioner's own case. Obviously, that is not the intent of Petitioner here. [The petitioner] chose to serve Mrs. [REDACTED] not for the free board and lodging and the \$250.00 pocket money but because by doing this humanitarian activity to his Godmother, he believes that he is serving God. Again, it is worth mentioning here that [the petitioner] initially [did] not want to accept this benefit from Mrs. [REDACTED] and accepts it now only with a great degree of hesitation, so as not to hurt the feelings of this generous lady.

Counsel thus asserts that it would be a mistake for the director to conclude that, simply because Mrs. [REDACTED] provided material support to the petitioner "in recognition of overseeing and providing care" for her and her son, Mrs. [REDACTED] therefore "employed" the petitioner. Counsel provides no persuasive argument against such a conclusion. For immigration purposes, an alien who receives room, board and spending money for services performed is considered to be "employed." See *Matter of Hall*, 18 I&N Dec. 203, 205 (BIA 1982). The alien's motivation for accepting such compensation is immaterial.

Counsel, anticipating the above conclusion, asserts that, if Mrs. [REDACTED] truly employed the petitioner, then "common sense dictates that" the petitioner would have (dishonestly) concealed evidence of that employment rather than "knowingly submit" it. Counsel essentially claims that because no reasonable petitioner would intentionally submit disqualifying evidence, therefore the petitioner did not submit disqualifying evidence. This argument fails to take into account the inadvertent submission of evidence which, unbeknownst to the petitioner, turns out to be disqualifying. We therefore reject outright counsel's self-serving attempt to explain away unfavorable or disqualifying evidence.

The petitioner submits a new affidavit from Mrs. [REDACTED] who states: "I am the appointed caregiver of my son, [REDACTED] as evidence[d] by the Attached Statement of Earnings and Deduction, the money I received from the In-Home, Supportive Services, Social Services Department, dated March 8, 2004." The petitioner submits a faxed copy of a payment stub identifying [REDACTED] as the "Provider" and [REDACTED] as the "Recipient." The stub refers to the "IHSS PROGRAM" but contains nothing from IHSS to provide additional information about the terms of payment. At most, the stub shows that Mrs. [REDACTED] receives some kind of stipend or subsidy from a social services organization. It remains that Mrs. [REDACTED] herself had previously stated that she provided the petitioner with food, housing, and money, partially "in recognition of overseeing and providing care for me and my cerebral palsy son." Mrs. [REDACTED], in her new

affidavit, never explicitly retracts that earlier statement. Further corroboration of the earlier statement is found in the petitioner's own immigration file. On December 28, 1997, the petitioner filed a Form I-485 adjustment application, based on the approval of an earlier petition. (That application has since been administratively closed.) In conjunction with that application, the petitioner gave a sworn statement on August 29, 2000, in which he stated: "I received minimal allowance from my Godmother for taking care of her and my cerebral palsy Godbrother." Thus, the petitioner himself has gone on record before immigration authorities, tying the allowance to his work "taking care of" Mrs. [REDACTED] and her son.

The available evidence indicates that Mrs. [REDACTED] for all practical purposes, employed the petitioner, and therefore the petitioner was not engaged solely in the vocation of a minister throughout the two-year qualifying period. Considering all the available evidence, we affirm the director's decision that the petitioner has failed to satisfy the two-year continuous experience requirement.

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.