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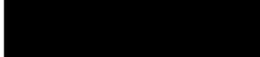
U.S. Citizenship  
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Services

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FILE:



EAC 05 028 52021

Office: VERMONT SERVICE CENTER

Date: MAR 20 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:



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 Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is a Presbyterian 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 its religious education minister. The director determined that the petitioner had not established that the petitioner had extended a *bona fide* offer of full-time employment to the beneficiary.

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).

In a letter accompanying the petitioner's initial filing, [REDACTED] Senior Pastor of the petitioning church, states that the beneficiary has provided "full-time services in our Church from September 2001 to present," and that the beneficiary's "total working hours will be at least 35 hours every week." [REDACTED] asserts that the beneficiary "will receive a full salary of \$14,400.00 per year." The petitioner also submitted a list of church members, showing that, as of the filing date, 53 individuals, in 17 households, were members of the petitioning church.

On June 17, 2005, the director issued a request for evidence, instructing the petitioner to "[s]ubmit a list of the religious organizations salaried religious employees, including their occupations and salary paid." The director also requested "a breakdown of the number of hours devoted to each of the beneficiary's proposed job duties on a weekly basis."

The petitioner's response includes a weekly breakdown, showing 37 hours of enumerated weekly duties such as Bible teaching and organizing youth events. The petitioner indicates that it employs three religious employees: the senior pastor, earning \$1,600 per month plus housing and benefits; the beneficiary, earning \$1,200 per month; and a part-time music director earning \$400 per month.

The director denied the petition on December 28, 2005, stating: "Documentation submitted in the record does not sufficiently establish that the position being offered would, in fact, be a full-time position. The number of members of the congregation, along with the number of salaried religious employees does not establish that a Minister of Education would be a full-time position."

We note that, on appeal, [REDACTED] states that, at the time it filed the petition, the church had only 53 members, but it has since grown, in the space of just over a year, to over 120 members. The growth of the church subsequent to the filing date is immaterial to the issue of whether or not the church was, at the time of filing, in a position to make a *bona fide* offer of full-time employment to the beneficiary. 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, and indicate that material changes after the filing date cannot establish eligibility when the petition was not already approvable. If no valid job offer existed at the time of filing, then the church's subsequent growth cannot remedy that deficiency.

The above being said, the director, in denying the petition, did not find that any of the petitioner's claims are facially disqualifying, nor did the director refute or contradict any of the petitioner's factual claims. The director simply concluded that the petitioning church is so small that it is unlikely to require the full-time services of a religious education director. While the director's concerns may be justified, it is not clear that misgivings of this kind can be sufficient grounds for denial of the petition. The petitioner claims to have been employing the beneficiary on a full-time basis since 2001, and therefore the director must demonstrate that the petitioner's claim is not credible. It cannot suffice for the director merely to be of the opinion that a church with 53 members does not require two full-time employees. Therefore, we withdraw the director's finding. Because this finding constituted the sole stated basis for denial, we withdraw the director's decision.

At the same time, review of the record reveals other issues that may preclude approval of the petition. 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 November 8, 2004. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a religious education minister throughout the two years immediately prior to that date.

Furthermore, 8 C.F.R. § 204.5(g)(2) requires the petitioner to establish the prospective employer's ability to pay the beneficiary's proffered wage, and requires that this evidence must take the form of annual reports, federal tax returns, or audited financial statements. The petitioner's initial submission includes copies of two

paychecks issued to the beneficiary. Each check is in the amount of \$1,200, which is a month's salary at the stated rate. To this extent, the checks are consistent with the petitioner's claims. [REDACTED] is dated September 20, 2004. [REDACTED] is dated October 18, 2004. The consecutive numbers indicate that the petitioner wrote no other checks during the intervening month. The two checks do not constitute evidence of two years' continuous employment. If the petitioner cannot provide such checks for the remainder of the two-year period, or other evidence of payment such as tax records, the petitioner should provide alternative evidence and account for the absence of such evidence.

As noted above, the petitioner claims to have three paid employees, earning a combined total of \$3,200 per month (\$38,400 per year), not including the pastor's housing and benefits. The petitioner has submitted a financial statement for calendar year 2004, in which the petitioner claims to have paid \$18,000 in "Wage and salaries" and \$13,200 in "Pastor housing and ministry support." Each of the petitioner's remaining claimed expenses is \$2,400 or less. These figures are not consistent with the petitioner's claim to pay \$38,400 per year in salaries.

Also, the financial statement is not the product of an audit, although 8 C.F.R. § 204.5(g)(2) specifically requires audited financial statements. The financial documents submitted thus far by the petitioner (including bank statements that show a parishioner's home address<sup>1</sup>) do not establish the petitioner's ability to pay the beneficiary's proffered wage from the filing date onward. The director's request for evidence did not touch on the regulatory requirements at 8 C.F.R. § 204.5(g)(2). Instead, the director requested "a current financial statement that has been reviewed or audited by a Certified Public Accountant," although the regulations do not indicate that a reviewed financial statement can stand in place of an audited statement.

If the director is correct that the petitioner cannot justify the full-time employment of a religious education minister, then it is unlikely that the petitioner did, in fact, employ the beneficiary in that capacity throughout the qualifying period. Conversely, if the petitioner is able to submit evidence of such employment, and can demonstrate its ability to pay the beneficiary a full-time wage in the future, then such evidence would tend to rebut the director's finding that the job offer is unrealistic. The director must instruct the petitioner to submit further evidence along the lines described above, in order to shed further light on whether or not the petitioner presented a realistic offer of full-time employment at the time the petition was filed in November 2004.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.

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<sup>1</sup> It is not clear why these bank statements were sent to a parishioner's home address in Madison rather than to the address of the church itself in Windsor.