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FILE: WAC 06 271 53073 Office: CALIFORNIA SERVICE CENTER Date: **JAN 15 2008**

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, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will sustain the appeal and approve the petition.

The petitioner 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 a minister at Hillside Church International, Highlands Ranch, Colorado. The director determined that the petitioner had not established that he had the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that he is a fully qualified, ordained minister.

On appeal, the petitioner submits a brief from counsel and voluminous exhibits.

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 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 September 11, 2006. Therefore, the petitioner must establish that he was continuously performing the duties of a minister throughout the two years immediately prior to that date.

In separate letters, both dated July 26, 2006, [REDACTED] Secretary of the Board of New Covenant Ministries International, and [REDACTED], Senior Pastor and President of River Church International, Norwalk, California, stated that the petitioner began working for River Church International in March 2002, and since May 2005 has served as the pastor of Hillside Church International, a subsidiary church "planted" by River Church International.

Copies of pay stubs and bank documents accompanying the initial submission show semimonthly \$1,600 payments, an amount consistent with full-time employment, to the petitioner from River Church International during the first half of 2006.

On December 11, 2006, the director issued a request for evidence (RFE), requesting specific evidence regarding the petitioner's work history. In response, the petitioner submitted copies of Internal Revenue Service (IRS) Form W-2 Wage and Tax Statements showing payments from River Church International to the petitioner. The 2004 Form W-2 shows \$17,667 in salary plus \$1,900 for "PARSON," evidently an abbreviation of "parsonage." The 2005 Form W-2 shows \$10,462.00 in salary plus \$24,300 for "PARSON." The 2006 Form W-2 shows \$4,600 in salary plus \$35,600 for "HOUSE." The petitioner's total compensation is consistent with full-time employment. Copies of pay stubs are by and large consistent with the tax information.

On April 4, 2007, the director issued a second RFE, again requesting evidence of the petitioner's prior work history. The wording of this portion of the second RFE is similar to that in the first RFE. In response, the petitioner submitted letters and printouts from <http://www.hsci.net>, the web site of Hillside Church International.

The director denied the petition on October 30, 2007, stating:

As evidence of employment, the petitioner provided a schedule of services, bank statements, pay stubs, and purported copies of IRS Forms W-2 with income tax filings. The petitioner failed to provide a detailed schedule as required. The combined evidence suggests a total of 6 hours of scheduled services . . . along with group meetings. . . . The fact that the congregation consists of only 20 or so families casts doubt as to the position being full time. This has been corroborated by a compliance review conducted by an Immigration Officer. The [church] failed the compliance review because they did not provide sufficient evidence to the officer of the petitioner working fulltime. . . .

The evidence suggests that the beneficiary has not worked full-time as a Pastor during the requisite period.

On appeal, the petitioner submits numerous letters from witnesses who identify themselves as members of Hillside Church International, and who attest to the petitioner's extensive activities with the church. The petitioner also submits voluminous documentation regarding his week-by-week activities and the church's month-by-month finances.

The compliance review confirmed the operation of Hillside Church International, but the reviewing officer found some of the petitioner's claims to be unsubstantiated or lacking in detail. The petitioner's submission on appeal has addressed these concerns.

In the compliance review documentation, the immigration officer reported that "the status of [River Church International] has been suspended. [The petitioner] also reported that in 2005, River Church International sold their property." Publicly available information from the California Secretary of State's office¹ confirms the suspension of River Church International's corporate status, but as of January 14, 2008, that status is once again listed as "active." There is no evidence of problems with the tax status or corporate standing of Hillside Church International, which is where the petitioner intends to work and which will, according to the record, become his official employer.

For the above reasons, the AAO withdraws the director's finding that the petitioner has not established the required two years of continuous experience immediately preceding the petition's filing date.

The remaining issue in the director's decision concerns the petitioner's ordination. 8 C.F.R. § 204.5(m)(3)(ii)(B) requires the petitioner to submit a letter from an authorized official of the religious organization in the United States which states that, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested.

Letters and a certificate reproduced in the petitioner's initial submission indicate that New Covenant Ministries International ordained the petitioner as a minister in Johannesburg, South Africa on January 25, 1998. In his letter accompanying the initial filing, _____ stated:

New Covenant Ministries International is an ordaining body. . . . [The petitioner] met the necessary criteria for Ordination required by New Covenant Ministries International found in the Bible in 1 Timothy 3:1-7, Titus 1:6-9 and 1 Peter 5:1-4. He has also taken extensive course training with New Covenant Ministries International in Biblical Studies.

_____ stated:

[The petitioner's] job duties include performing all the duties usually performed by authorized members of the clergy while leading a local congregation. . . . He leads services, prepares and delivers sermons and teachings, interprets doctrine, and instructs people who seek conversion to the Christian faith. He conducts weddings and funerals, visits the sick and shut-ins and helps with the needs of the poor. . . .

¹ Available online at <http://kepler.sos.ca.gov/corpdata/ShowAllList?QueryCorpNumber=C0289193>.

[The petitioner] is ideally suited to perform these job duties as he has completed courses in ministry training offered by New Covenant Ministries International, International Theological Correspondence Course as well as ongoing training. . . .

[The petitioner] has more than satisfied the standard for ordination by New Covenant Ministries International and River Church International.

In the December 11, 2006 RFE, the director requested evidence relating to the petitioner's ordination and his duties. The petitioner's response to the 2006 RFE included a letter from [REDACTED] including a description of the petitioner's duties that is identical to the description included in [REDACTED]'s earlier letter. Nothing else newly submitted in the response to the first RFE directly addressed the issue of the beneficiary's duties and ordination.

The director's second RFE, issued in April 2007, did not directly touch on the issue of the petitioner's ordination. The director did, however, request "documentary evidence that the church's governing body, recognizes the beneficiary's position as directly related to the religious creed of the denomination. Also submit documents showing how the governing body defines the position." In response, counsel noted that the petitioner had already provided a list of ordination requirements as well as a copy of the petitioner's ordination certificate.

In denying the petition, the director stated: "The petitioner failed to provide sufficient evidence to establish the qualifications of the proffered position within the denomination [and] a detailed description of how the beneficiary meets the qualifications." The director also discussed regulatory requirements that apply only to religious occupations (as opposed to the vocation of a minister), for instance quoting the regulatory definition of "religious occupation" at 8 C.F.R. § 204.5(m)(2) and then discussing "activities that relate to traditional religious functions" (a phrase appearing in that definition).

On appeal, counsel correctly asserts that the director cited inapplicable regulatory requirements in the denial notice. We disagree with counsel's assertion that the director "has no authority to request objective ordination standards from a religious organization and then to determine whether that minister in fact meets those standards." The Board of Immigration Appeals has addressed this issue in *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978):

The respondent argues that the fact that she is recognized as an ordained minister by a recognized religious organization should be the end of the inquiry and cannot be challenged. We do not agree that the issuance of a piece of paper entitled "certification of ordination" by a religious organization should be conclusive as to who qualifies as a minister for immigration purposes. Otherwise, Congressional policy in the field of immigration could be readily circumvented by accommodating religious organizations.

Id. at 610. The legitimacy of an alien's occupational credentials is a valid area of inquiry, whether the alien purports to be a physician, an engineer, or a minister. Any religious denomination that utilizes clergy will have some standards (however lax or stringent) to separate those qualified to serve as clergy from those not so

qualified. It is entirely legitimate and proper to inquire as to what those standards are, and the extent to which a given alien has met those standards.

Counsel argues that “analysis [of ordination requirements] encroaches on the separation between church and state, in so much as the religious organization is the sole arbiter of its own standards.” The director did not propose that Citizenship and Immigration Services (CIS) should have the authority to *set* a religious organization’s ordination standards. It is no violation of the constitutional principle of separation of church and state to ask a religious organization to *explain* its existing standards, and to demonstrate that a given alien has met them. A religious organization cannot simply declare its employees eligible for immigration benefits, in a manner that CIS cannot review, question, or verify. While the determination of an individual’s status or duties within a religious organization is not under the purview of 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 (BIA 1982); *Matter of Rhee* at 608 n.2.

That being said, we find that the instant record of proceeding contains credible and consistent evidence of the petitioner’s *bona fide* ordination as a minister. The AAO withdraws the director’s finding regarding the petitioner’s qualifications and ordination as a minister. The record as it now stands supports a finding that the petitioner is a duly ordained minister of a *bona fide* religious denomination.

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 met that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.