



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: JUL 02 2008

SRC 06 213 53757

IN RE:

Petitioner:

Beneficiary:

[REDACTED]

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:

[REDACTED]

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 on appeal. The appeal will be dismissed.

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 of the United Methodist Church. 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 the existence of a qualifying job offer.

On appeal, the petitioner submits new letters and 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 . . . ; 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 concerns the petitioner's past experience. 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 July 6, 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.

The petitioner entered the United States on April 5, 2006, having spent most of the two-year qualifying period in his native Poland. The petitioner's B-1/B-2 visitor's visa did not permit employment in the United States.

The petitioner's initial submission included documentation of his ordination and letters from witnesses in the United States, but no first-hand evidence attesting to his continuous employment as a minister during the 2004-2006 qualifying period.

██████████ Pastor of First and Trinity United Methodist Churches, stated that the two churches he oversees and the petitioner's "church in Elk, Poland, have worked together under a formal covenant" since May 18, 2002, during which time "members from the Elk church and the Henderson churches have traveled back and forth and members of this church reported on the very effective work that [the petitioner] has done for his congregation in Elk."

On December 11, 2006, the director issued a request for evidence (RFE), instructing the petitioner to submit "experience letters written by the [petitioner's] previous and current employers" along with "evidence that shows monetary payment" and copies of the petitioner's federal income tax returns. The director also requested evidence to show how the petitioner supported himself and his family during the qualifying period.

The petitioner submitted a translated copy of a May 16, 1995 letter from the Main Office of the Evangelical Methodist Church in Poland, appointing the petitioner "as the pastor and administrator of the parishes in Elk, Stare Juchy and Piętki." A translated letter from the Head of the Tax Office in Elk, dated January 27, 2005, reads in part: "[The petitioner] since January 1, 1996 has been the parish priest of the God's Love Evangelical Methodist Parish in Elk. On January 11, 2005 he submitted a request to lower his tax rate due to the small number of parishioners." The record contains similar letters from previous years, which fell outside the two-year qualifying period. The only other dated evidence that refers to the petitioner's ministerial work in Elk during the qualifying period is a humanitarian award from October 11, 2004.

The petitioner submitted copies of untranslated documents that appear to be tax returns or related financial documents. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language 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. 8 C.F.R. § 103.2(b)(3). Without certified translations, we can glean little from these documents except to note that they are dated on the first of the month from January 2004 through July 2005 (not all months are included). The last of the documents, missing the dated first page, appears to pertain to August 2005; the last page is stamped with the date "2005-09-07."

Regarding the petitioner's work in the United States, the petitioner submitted an unsigned letter on the letterhead of First United Methodist Church, indicating that the petitioner and his spouse "have been working for the church as volunteers" because the petitioner has not yet received "permission to work legally." The letter did not describe the petitioner's duties or work schedule. The petitioner also submitted a January 17, 2007 letter from ██████████, indicating that the petitioner and his spouse have been working "as volunteers at Trinity and FUMC," performing such functions as "assisting at both churches during communion service" and "teaching Sunday School . . . [to] 4<sup>th</sup> grade children" and that the petitioner has served "as substitute pastor in the Jackson District when church pastors have to be away." ██████████ did not indicate the time that the petitioner devoted to these activities. Given ██████████'s earlier indication that the petitioner had not yet "mastered the [English] language," it is not clear to what extent the petitioner was able to teach Sunday School to "4<sup>th</sup> grade children" in Tennessee.

Regarding the petitioner's material support in the United States, ██████████, Coordinator of The Gleaners' House ("an Outreach Ministry of the First United Methodist Church"), stated: "Since April 2005

[sic] we have provided [the petitioner and his spouse] with the clothing they have needed and with groceries on a regular basis. They have not asked for any assistance, but we encouraged them to allow us to help them, in order for them to stretch their savings.”

owner of the property where the petitioner resides, stated that he intends to develop the property commercially at some future point, but “[i]n the meantime, for the next several months and possibly years, I award residence and utilities to [the petitioner and his spouse] in order to facilitate their religious work” and because “the property would not be insurable” if unoccupied.

The director denied the petition on June 19, 2007, stating:

The USCIS has interpreted the two-year experience provision to require full-time work, which is defined as thirty-five to forty hours per week.

After a review of the evidence it is clear that the beneficiary has not been a full time paid employee for the petitioner [sic]. . . .

Although the beneficiary possibly has been involved with the aforementioned ministry, in what capacity is not clear. . . . It is presumed that any work the beneficiary has performed has been done so [sic] on a volunteer basis.

Therefore, the evidence is insufficient to establish that the beneficiary has been performing full-time work as a religious worker for the two-year period immediately preceding the filing of the petition.

On appeal, states: “From the period of July 6, 2004 to September 7, 2005, [the petitioner] was fully employed serving three churches (see Appointment, dated May 16, 1995). From September 7, 2005, through July 6, 2005, and until today (July 17, 2007), [the petitioner] is still provided with benefits available ONLY to full-time clergy” (emphasis in original). A certificate from 1995, regardless of its source, cannot serve to establish the petitioner’s activities a decade after that certificate was issued. The claim that the beneficiary continues to receive “benefits available ONLY to full-time clergy” is not evidence that the petitioner was, in fact, engaged as full-time clergy during that period. The aforementioned “benefits” consist of an insurance policy with the Farmers’ Social Security Fund, which claims, without proof, is available only to clergy. Documentation submitted on appeal indicates that the petitioner “has been subject to the duty to pay farmers’ social insurance premiums” because a relative (either his daughter or another relative sharing her name) purchased a farm in 2002. The petitioner submits a copy of Polish legislation relating to “Farm Ownership Guarantees for Parish Priests,” but the existence of this legislation does not show that the petitioner has continuously served as a parish priest. As we have already noted, the insurance documents identify not the petitioner, but a member of his household, as the farm purchaser. The petitioner’s spouse was also obligated to purchase the same insurance, yet the petitioner does not claim that his spouse is, or has ever been, a parish priest. (An employment certificate in the record indicates that the petitioner’s spouse worked as the manager of the Elk branch of the Methodist English Language College from 1997 to 2005.)

adds: "Between September 7, 2005, and April 4, 2006, [the petitioner] continued to perform almost all of his same ministerial duties that he had previously performed, but was without a central parish. He worked about a 50 to 60 hour week." [REDACTED] does not explain how the petitioner was able to perform the duties of clergy without a church, nor does he provide any documentary evidence or a statement from a church official in Poland who, unlike [REDACTED], would be in a position to verify first-hand the petitioner's activities in Poland.

[REDACTED] observes that the petitioner successfully claimed tax benefits as a member of the clergy in Poland. We note, however, that while the petitioner submitted letters to that effect dated in the early months of 2003 through 2005, the record contains no comparable letter from early 2006. Therefore, there is no evidence that Polish tax authorities considered the beneficiary to be in the same circumstances in 2005 that he was in 2004 and earlier years. We reiterate, here, that the petitioner submitted what appear to be monthly tax documents, but only into the summer of 2005, consistent with the petitioner's employment ending outright in September 2005.

The evidence submitted in support of the petition indicates that the petitioner worked as a minister for at least part of the 2004-2006 qualifying period, but there is minimal documentation of the beneficiary's purported work after September 2005, and [REDACTED]'s unsupported claims about such work are not persuasive. The AAO affirms the director's finding that the petitioner has failed to establish that he worked continuously as a minister throughout the two-year qualifying period.

The remaining issue concerns the job offer. 8 C.F.R. § 204.5(m)(4) requires the prospective employer to set forth the terms of employment. This indicates that, as of the date filing, there must be a specific job offer with a specific church or religious organization. A vaguely stated intent to work for a particular religious denomination is not a qualifying job offer.

The petitioner's initial submission contained no evidence of a job offer. In his initial letter of May 23, 2006, [REDACTED] identified the two churches under his care but did not indicate that either of his two churches would employ the petitioner. Rather, he stated: "When [the petitioner] has fully mastered the language, I am certain that he will be employed by a United Methodist Church in west Tennessee." This wording indicates that, as of the date [REDACTED] wrote this letter, no specific job offer existed.

In the December 2006 RFE, the director instructed the petitioner to "[s]ubmit a job offer in the form of a letter from [an] authorized official of the religious organization in the United States." In response, the petitioner submitted a January 31, 2007 job offer letter in which [REDACTED] offered the petitioner the position of "Pastoral Assistant," the duties of which "will require an average of 30 hours per week," paying \$6.00 per hour.

We note that, in response to the RFE, [REDACTED] referred to his two churches, jointly, as "The Petitioner." Review of the I-360 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 First United Methodist Church or Trinity United Methodist Church, but by the alien beneficiary himself. Thus, the alien, and not the church, has taken

responsibility for the content of the petition. [REDACTED], in his initial letter, did not indicate that his own churches planned to employ the petitioner; he stated only that the churches “look forward to our continued association with” the petitioner, and (as noted previously) predicted that the petitioner “will be employed by a United Methodist Church in west Tennessee.” Only after the director requested **evidence of a job offer** did Dr. [REDACTED] indicate that his own churches sought to employ the petitioner, and only then did [REDACTED] claim that those churches are, collectively, the petitioner.

In denying the petition, the director stated: “The petitioner has provided no evidence of a legitimate job offer.” On appeal, [REDACTED] states that the petitioner “has been offered full-time employment both at our churches (see attached offer [dated] 17 July 2007) and for the Jackson Tennessee Methodist District (see attached letter from the Jackson District of the Memphis Conference of the United Methodist Church).” In his July 17, 2007 job offer letter, [REDACTED] offered the petitioner the position of “Second Pastor” at his two churches, and stated that his duties “will require an average of 40 hours per week” with “an annual salary of \$32,821.00 plus parsonage.” The terms of this offer differ significantly from those that [REDACTED] had set forth six months earlier, when the position of “Pastoral Assistant” required only 30 hours per week, paying \$6.00 per hour (about \$9,360 per year).

In a separate letter dated August 8, 2007, [REDACTED] claims: “[The petitioner] arrived here in Henderson on April 5, 2006. Even before he got here, I had informed him by email that he would begin his ministerial duties on April 10, 2006.” In his initial correspondence, [REDACTED] indicated that the petitioner had performed some functions for Trinity and First United Methodist Churches, but he effectively denied that there was any standing job offer at that time.

A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Therefore, a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Commr. 1998). At the time of filing, there was no job offer, only a general expectation that the petitioner “will be employed by a United Methodist Church in west Tennessee.” The response to the RFE included a previously unmentioned job offer, which, in turn, differed significantly from the heavily revised job offer submitted on appeal. These job offers, created well after the filing date specifically to address the director’s concerns, cannot qualify under *Katigbak* or *Izummi*.

For the reasons stated above, the AAO affirms the director’s finding that the petitioner had not demonstrated that a qualifying job offer existed at the time the petition was filed.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal. 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.

**ORDER:** The appeal is dismissed.