U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

PUBLIC COPY

U.S. Citizenship and Immigration Services

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

C1

JAN 26 2005

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:
EAC 01 178 52582

IN RE: Petitioner: [redacted]
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:

[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, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted. The AAO's decision will be withdrawn, and the petition will be approved.

The petitioner is a 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 a minister. The director determined that the petitioner had not established (1) that the beneficiary had the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition; (2) that the position offered to the beneficiary constitutes a qualifying religious occupation; or (3) the petitioner's ability to pay the beneficiary's proffered wage. In dismissing the appeal, the AAO withdrew the director's finding regarding that the beneficiary's position is not a religious occupation, but found that the beneficiary had not credibly established the existence of a full-time position. The AAO affirmed the director's other grounds for denial.

On motion, counsel states "I will be submitting newly requested additional evidence as soon as it can be obtained." The regulations contain no provision for a petitioner to supplement an already-filed motion. Consideration will be limited to the motion as it was filed in October 2003. We note that the record contains no subsequent submission from counsel or the petitioner.

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 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 first issue addressed by the AAO concerned the director's finding that the beneficiary's position did not amount to a qualifying religious occupation. The AAO noted that the beneficiary's duties fall under the regulatory definition of a "minister," rather than that of a "religious occupation," as both terms are defined at 8 C.F.R. § 204.5(m)(2). Referring to the size of the petitioner's congregation, however, the AAO determined that "[t]he petitioner failed to establish that ministering to a 95-member congregation is a full-time position."

Counsel, on motion, observes that the petitioner had previously submitted "statements [that] set forth in detail the beneficiary's duties and the full-time commitment spent by the beneficiary in performing said duties in his occupation as minister." The AAO's initial decision reproduces a weekly schedule, showing in excess of 40 hours of duties, with no discussion of the credibility of that schedule. The petitioner has documented payments to the beneficiary, discussed below in greater detail, which are not inconsistent with full-time employment. The AAO offered no explanation behind its conclusory, and seemingly arbitrary, finding that a 95-member church cannot require the full-time services of a minister.

The next issue concerns the beneficiary'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 membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on April 26, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a minister throughout the two years immediately prior to that date.

The AAO, in its earlier decision, asserted that the petitioner had never claimed that the beneficiary worked *exclusively* as a minister during the qualifying period, but the record contains no indication that the beneficiary pursued other employment during that time.[1]

The petitioner had submitted copies of canceled checks, showing that the petitioner paid the beneficiary $1,200 per month from October 1997 to September 1999, and $1,500 per month from October 1999 to January 2001. The AAO stated that these checks were insufficient to establish the beneficiary's continuous employment, and noted the absence of Form W-2 Wage and Tax Statements from the record. The checks certainly serve to prove that the petitioner paid the beneficiary. Given these checks, it is not clear what other information Forms W-2 would provide. The director had not previously requested Forms W-2. On motion, the petitioner submits copies of the beneficiary's Form W-2 from 2001, showing $21,000 in compensation.

The AAO noted that, according to documents in the record, the beneficiary was a graduate student until May 2001. Counsel, on motion, notes that the AAO cited no source that would indicate that graduate studies inevitably interrupt the continuity of an alien's ministerial work. Counsel maintains that the beneficiary "only pursued master's degree studies to enrich his base of knowledge in the field of religion." The beneficiary's salary, documented by canceled checks in the record, did not diminish after he began his studies, as one might expect if his hours of service had been curtailed. The evidence, therefore, is consistent with the assertion that the beneficiary's graduate studies represent "continuing education," rather than full-time studies that left the beneficiary unable to fulfill his ministerial duties.

---

[1] If, during the adjustment process, evidence surfaces to show disqualifying outside employment, then mechanisms are in place (such as revocation of the approval of the petition and denial of adjustment) to deal with such evidence at that time. At present, absent such evidence, we see no impediment to the approval of the petition. We note that the petitioner has submitted Forms W-2 showing the beneficiary's 2001 compensation. These documents imply that the beneficiary filed an income tax return in 2001. The director never requested copies of the beneficiary's tax returns, but if there is concern about the beneficiary's earnings during the 1999-2001 qualifying period, such returns, if they exist, would be one possible source of further information. The beneficiary also uses a Social Security number, providing another avenue of inquiry regarding the beneficiary's past compensation.

Turning to the next issue, the AAO determined that the petitioner had not established its ability to pay the beneficiary's proffered wage, as required by 8 C.F.R. § 204.5(g)(2). Counsel, on motion, states "[a]t the time of filing of the petition, the Church had offered to pay [the beneficiary] an annual salary of $18,700, plus a housing allowance. . . . The Church has always had the ability to pay [the beneficiary] the designated compensation." As noted above, the record contains canceled checks and Forms W-2 to show that the petitioner has paid the beneficiary from 1998 through 2001. Given that the petitioner has, in fact, paid the beneficiary, we cannot conclude that the petitioner was unable to do so. "CIS adjudicators should make a positive ability to pay determination . . . [when t]he record contains credible verifiable evidence that the petitioner . . . has paid or currently is paying the proffered wage." Memorandum from William R. Yates, Associate Director of Operations, *Determination of Ability to Pay under 8 CFR 204.5(g)(2)* (May 4, 2004).

Beyond the decision of the director, The AAO noted that, according to the petitioner's bylaws, "ministers in Deeper Life Bible Church are not ordained as in other churches. Rather they undergo a period of intensive religious training . . . [that] usually lasts 2-3 years." The AAO concluded that there is no evidence that the beneficiary has completed this training, and therefore that the petitioner has not shown that the beneficiary qualifies for the position offered. While 8 C.F.R. § 204.5(m)(3)(ii)(D) requires evidence that an alien religious worker "is qualified in the religious vocation or occupation," this regulation refers only to aliens in non-ministerial vocations and occupations. The parallel regulation for ministers, at 8 C.F.R. § 204(m)(3)(ii)(B), requires only that the alien "has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy." The petitioner has indicated that the beneficiary is so authorized. Evidence in the alien's file indicates that the beneficiary has held leadership positions within the denomination since the early 1980s. Given the totality of information in the record, the fact that the petitioner has not provided specific details about the beneficiary's past training does not compel the inference that the beneficiary has not received that training.

For the reasons cited above, we find that the petitioner has overcome the grounds for dismissal cited in the AAO's prior decision, and that the AAO's decision contained significant adjudicative errors. The preponderance of available evidence indicates that the petitioner considers the beneficiary to be a qualified member of the clergy, and has been paying the beneficiary for qualifying ministerial services throughout the two-year qualifying period.

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 sustained that burden. Accordingly, the previous decision of the AAO will be withdrawn, and the petition will be approved.

ORDER: The AAO's decision of September 30, 2003 is withdrawn, and the petition is approved.