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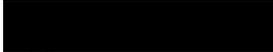


U.S. Citizenship
and Immigration
Services

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FILE:  Office: CALIFORNIA SERVICE CENTER Date: DEC 16 2005
WAC 03 006 55120

IN RE: Petitioner: 

Beneficiary:

PETITION: 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.

Marj Johnson

2 Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is an association of churches. 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 pastor. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition. The director further determined that the petitioner had failed to establish that it has the ability to pay the beneficiary the proffered wage or that it had extended a qualifying job offer to the beneficiary.

On motion, counsel submits a brief and additional 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,

(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 first issue is whether the petitioner established that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years preceding the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United

States.” The regulation 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.”

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) 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 October 23, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister throughout the two-year period immediately preceding that date.

In support of the petition, the petitioner submitted an August 15, 2002 letter from the district superintendent of the Southern Tagalog District Council of the [REDACTED] Reverend [REDACTED] o, who stated that the beneficiary “is serving actively as the full-time Minister of the Word of Hope Assembly of God . . . Quezon City, Philippines since 1988 up to the present.” As evidence of the beneficiary’s work and in response to the director’s two requests for evidence, the petitioner submitted a copy of a “Religious Occupation/Employment History,” purporting to document the beneficiary’s work at the Word of Hope Ministries Foundation and Word of Hope Accelerated Christian School from 1989 through May 2002. The document is not dated or signed, and therefore provides no evidence as to the identity of the preparer, the date the document was prepared, the source of the information used to prepare this “history,” or the person responsible for compiling the data.

The petitioner also submitted copies of the Republic of the Philippines BIR Forms 2316, Employer’s Certificates of Compensation Payment/Tax Withheld, filed by the Word of Hope Ministries for the years 2000 and 2001. These forms reflected that the Word of Hope Christian Ministries paid the beneficiary approximately 66,689 pesos in 2000 and 77,500 pesos in 2001. The petitioner also submitted a copy of the beneficiary’s Filipino tax return dated October 25, 2001, on which he reported taxable income of 77,500 pesos.¹ A copy of a “pay slip/guide” from the Word of Hope indicated that the beneficiary received a bi-monthly gross pay of 11,000 pesos, which was composed of basic pay of 7,500 pesos and a “love gift” of 3,500 pesos and that his pay for the week of March 26, 2002 to April 10, 2002 was 4,620.85 pesos. During the proceedings before the director, the petitioner submitted no other documentary evidence to corroborate the beneficiary’s employment with the Word of Hope Ministries in 2002.

On appeal, the petitioner submitted an expanded “history” of the beneficiary’s work with the Word of Hope Accelerated Christian Training School. The document, which also does not indicate when it was prepared, who prepared it and the information relied upon in preparing it, now indicates that the beneficiary worked at the school teaching the bible through May 2003.

¹ The petitioner also submitted copies of the church’s BIR Forms 2316 for the years 1997 and 1998, as well as copies of the beneficiary’s 1997 and 1998 Filipino tax returns. As these documents precede the filing date of the petition, however, they are not relevant in establishing the beneficiary’s work experience during the two-year qualifying period.

A "Work History" from the Full Gospel Assembly of God in San Jose, California, signed by its senior pastor, indicated that the beneficiary worked with that organization from May 2002 to "present," where his duties included training and equipping college groups for the ministry, leading the worship teams, conducting seminars and music training, training leaders for small groups ministry, conducting cell leaders meeting, and preparing cell group materials for the small group ministry. In his letter dated December 1, 2003, the pastor stated that the beneficiary was not compensated for his "involvement" with the church pending the "issuance of his work permit" by Citizenship and Immigration Services (CIS).

In response to the director's first request for evidence dated May 13, 2003, the petitioner stated that while in the United States, the beneficiary, in addition to using personal savings, received financial support from his brother and sister. The petitioner submitted statements from Raymond Silverio and Ruth Marquinez attesting that they financially supported the beneficiary during his stay in the United States.

On motion, counsel asserts that, although the beneficiary was in the United States from May 2002, he was compensated for his "ministerial work" by the church in the Philippines. The petitioner submits on motion a copy of a BIR Form 2316 reflecting that the beneficiary received a salary from the Word of Hope Christian Ministries of 88,312 pesos during 2002. The document indicates that it was filed with the "BIR" on April 11, 2003. The petitioner submits no evidence or explanation as to why this document is submitted for the first time on motion. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Further, the submission of this document does not explain the following inconsistencies in the record:

1. The work history from the Word of Hope Ministries initially indicated that the beneficiary worked at the Word of Hope Accelerated Christian Training School from June 1995 to May 2002. On appeal, this document was modified to indicate that the beneficiary worked at the school through May 2003.
2. The record reflects that from May 2002, during which he was allegedly working 15 hours per week at the Word of Hope Accelerated Christian Training School in the Philippines, the beneficiary was also in the United States allegedly working 21 hours per week at the San Jose Full Gospel Church.
3. The petitioner alleges that the beneficiary relied upon his savings and financial support from his family during his stay in the United States. The petitioner submitted statements from these family members stating that they supported the beneficiary. On motion, the petitioner alleges, and submits financial documentation, that the beneficiary received a salary from the Word of Hope Ministries in excess of 88,000 pesos in 2002. At no time during the initial stages of these proceedings did the petitioner allege or submit evidence that the beneficiary was compensated for his services by his employer in the Philippines. In fact, the pastor of the San Jose Full Gospel Church specifically stated that the beneficiary was "not compensated" for his "involvement" with his church.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Further, a visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to Citizenship and Immigration Services (CIS) requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

The evidence submitted on motion does not resolve the inconsistencies in the record, and, in fact, generates more questions. Therefore, the evidence submitted by the petitioner does not establish that the beneficiary was continuously employed as a minister for two full years preceding the filing of the visa petition.

The second issue is whether the petitioner established that it had the ability to pay the beneficiary the proffered wage.

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 its letter of August 30, 2002, the petitioner stated that the beneficiary would serve as pastor of the Full Gospel Assembly of God Church in San Jose, and that the petitioner would “guarantee the [beneficiary’s] remuneration and/or living expenses.” In its previous decision, the AAO stated that the evidence submitted by the petitioner did not establish that the beneficiary’s prospective U.S. employer, the Full Gospel Assembly of God Church in San Jose, had the continuing ability to pay the beneficiary the proffered wage. We withdraw this statement by the AAO, as the Full Gospel Assembly of God Church in San Jose is a subordinate unit to the petitioner and the petitioner stated that it would assume financial responsibility for the beneficiary’s support.

Nonetheless, the petitioner failed to submit evidence of its ability to pay the proffered wage with the petition or in response to the director’s two requests for evidence.

With the petition, the petitioner submitted financial information regarding the San Jose church that failed to include copies of annual reports, federal tax returns, or audited financial statements for the period including the date that the petition was filed. In a request for evidence dated May 13, 2003, the director requested the petitioner to submit evidence as to how the beneficiary would be paid for his services, and to submit “bank letters [and] recent audits.” In response, the petitioner resubmitted the documentation submitted with the petition. In a second request for evidence dated September 30, 2003, the director instructed the petitioner to:

Provide evidence of the petitioner's ability to pay the beneficiary's 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. The petitioner is requested to provide this evidence for the fiscal years 2002 to the present.

In response, the petitioner submitted a copy of an unaudited financial report for the Full Gospel Assembly of God Church in San Jose for the year 2002 and for the period of January through August 2003. On appeal, the petitioner submitted a copy of its audited financial report for 2002.

The petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and submitted for the first time on appeal and resubmitted on motion. Accordingly, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The motion will be adjudicated based on the record of proceeding before the director.

The record before the director does not establish that the petitioner had the continuing ability to pay the beneficiary the proffered wage as of the date the petition was filed.

The third issue is whether the petitioner has extended a qualifying job offer to the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

On appeal, counsel stated that the proffered position would encompass 40 hours work per week. The AAO noted in its decision, however, that the petitioner's response to the director's May 13, 2003 request for evidence indicated a 32-hour workweek.

On motion, counsel asserts that the AAO's decision failed to account for preparation time for the beneficiary's sermons and bible study. Upon further review of the details of the job description submitted by the petitioner, we withdraw this portion of the AAO's decision. We find that the evidence is sufficient to establish that the petitioner has extended a qualifying job offer to the beneficiary.

Nonetheless, as the petitioner has failed to establish that the beneficiary was continuously employed as a minister for two full years preceding the filing of the visa petition and that the record before the director failed to establish that the petitioner had the continuing ability to pay the beneficiary the proffered wage, the petition may not be approved.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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. Accordingly, the decisions of the director and the previous decision of the AAO will be affirmed. The petition is denied.

ORDER: The AAO's decision of April 6, 2005 is affirmed. The petition is denied.