

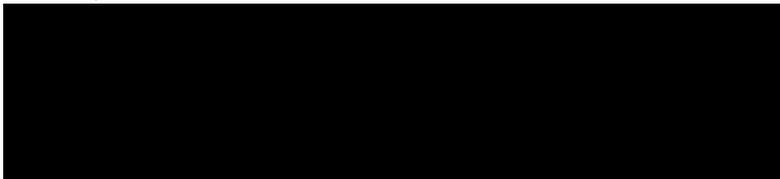
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



CA

FILE: [REDACTED]
SRC 01 101 53751

Office: TEXAS SERVICE CENTER Date: FEB 17 2005

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

SELF-REPRESENTED.

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.

Mari Johnson

R Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 missionary. 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, that the position qualified as that of a religious worker, or that the petitioner had extended a qualifying job offer.

On appeal, the petitioner submits a letter 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 regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and 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 February 7, 2001.¹ Therefore, the petitioner must establish that the beneficiary was continuously working as a missionary throughout the two-year period immediately preceding that date.

In a letter dated May 29, 2000, Reverend [REDACTED] the petitioner's vice-president, stated that the beneficiary has never been employed by the petitioner but has volunteered his time to the church since November 1999. Reverend [REDACTED] also stated that prior to joining the petitioning organization, the beneficiary was a member of the Iglesia Pentecostal Unida de Colombia where he volunteered his services as president of the youth department, director of the Sunday school department, and preacher.

In response to the director's request for evidence (RFE) dated May 1, 2002 (resent on July 3, 2003), the petitioner submitted a statement signed by Reverend [REDACTED] who stated that the beneficiary had been working as a missionary in its church in Philadelphia since May 27, 2000, and that his duties included conducting church services, counseling, in-home Bible teaching, preaching, hospital visitations and officiating at funerals and "dedication of children." Reverend [REDACTED] did not indicate whether or not the beneficiary was compensated for his services.

A letter from Reverend [REDACTED] of the United Pentecostal Church of Colombia, indicated that the beneficiary had been a member of the Iglesia Pentecostal Unida de Colombia in Barranquilla until November 22, 1999. According to Reverend [REDACTED] the beneficiary served as "gospel preacher in the neighborhoods" from 1992 to 1999, spending twelve hours weekly, visiting and encouraging people to listen to the gospel of Jesus Christ, picking up people and bringing them to Sunday night church services, and introducing people to the senior pastor. Reverend [REDACTED] also stated that, beginning in 1998, the beneficiary also served as Sunday school assistant director, spending 20 hours a week in that job, including preaching Sunday night services when requested by the pastor. According to the petitioner, the beneficiary volunteered for the jobs with the Iglesia Pentecostal Unida de Colombia, and there is no evidence that the duties performed by the beneficiary were those of more than a dedicated member of the church's congregation. No evidence of record indicates that these positions were full-time positions within the church.

In an August 13, 2003 letter, Herman Castellanos, pastor of the petitioner's local church in New York, states that the beneficiary came to the Queens, New York church on December 5, 1999, and worked as a leader in their youth department and conducted youth church services on Saturdays. Reverend [REDACTED] stated that the church

¹ On appeal, the petitioner states that the filing date of the petition is May 16, 2000. While this is the date that the petitioner signed the appeal, a petition is not considered filed with Citizenship and Immigration Services until it is received by the service center with the proper fee. The petition was received by the service center with the appropriate fee on February 7, 2001.

paid the beneficiary's housing and expenses during this time. In May 2000, the beneficiary was appointed pastor of the church in Philadelphia, and according to Reverend [REDACTED] receives financial support from the Philadelphia and New York churches as well as the Iglesia Pentecostal Unida Latinoamericano, Inc. headquarters. The petitioner submitted no documentary evidence, such as pay vouchers or canceled checks, to substantiate the beneficiary's financial support by the churches. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

A letter signed by members of the local board of the Philadelphia church stated that the beneficiary "has been involved with our congregation as a volunteer since May 2000 . . . We have been supplying a part of [the beneficiary's] expenses as a compensation for his volunteer service in our Community, and his other expenses have been supplied by the national fund of our church." The petitioner submitted copies of canceled checks made payable to the beneficiary in varying amounts and written between January 13, 2003 and June 30, 2003.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and salaried. To hold otherwise would be contrary to the intent of Congress.

In the rare case where volunteer work might constitute prior qualifying experience, the petitioner must establish that the beneficiary, while continuously and primarily engaged in the traditional religious occupation, was self-sufficient or that his or her financial well being was clearly maintained by means other than secular employment.

The petitioner submitted no evidence of how the beneficiary supported himself financially in Colombia. The record does not establish that the beneficiary was not dependent upon secular employment for his financial support in Colombia. Further, the petitioner submitted no corroborating evidence of the financial support provided to the beneficiary by the petitioner or its subordinate units prior to 2003.

The evidence is insufficient to establish that the beneficiary was continuously employed as in a religious occupation or vocation for two full years prior to the filing of the visa petition.

The director determined that the petitioner had not established that the position qualified as that of a religious worker. According to 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work in a religious occupation.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions would reasonably be expected to perform services directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

Citizenship and Immigration Services (CIS) therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

The proffered position is that of pastor of the petitioner's subordinate church in Philadelphia. The petitioner lists the duties of the position as "conducting church service, counseling, Bible teaching at home, teaching and preaching the Gospel of our lord Jesus Christ, hospital, visitation, officiating at funeral[s] and dedication [sic] of children." The petitioner stated that it would pay the beneficiary \$6.00 per hour, plus housing and transportation expenses.

The evidence is sufficient to establish that the position is a religious occupation within the meaning of the statute and regulation.

The director also determined that the petitioner had not established that it had tendered 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.

The petitioner indicates that it will pay the beneficiary \$6.00 an hour for his services plus housing and transportation expenses, and that the beneficiary is expected to work at least 40 hours per week. The proffered position is that of pastor of the petitioner's Philadelphia church.

The director noted that the beneficiary's financial support came not only from the church for which he has been appointed pastor, but also from the Queens church and the national headquarters. The director determined that the petitioner did not establish that the beneficiary would not be dependent upon supplemental employment or the solicitation of funds for support. However, these facts evidence an inability of the prospective U.S. employer to pay the beneficiary the proffered wage. This regulatory criterion is discussed below. The evidence does not reflect that the beneficiary will be engaged in supplemental employment or that he will need to solicit funds for his support.

The evidence is sufficient to establish that the petitioner has extended a qualifying job offer to the beneficiary.

Beyond the decision of the director, the petitioner has not established that the beneficiary's prospective employer is a bona fide nonprofit religious organization. This deficiency constitutes an additional ground for dismissal of the appeal.

The regulation at 8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

(3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

The petitioner submitted a copy of an April 24, 2000 letter from the Internal Revenue Service (IRS) to the United Latin American Pentecostal Church, Inc. in Fort Lauderdale, Florida, informing that organization that it had been granted tax-exempt status in 1992 under section 501(c)(3). The IRS letter does not indicate that the petitioner had been granted group tax-exempt status for its subordinate units. The evidence is clear that the proffered employment is at the petitioner's Philadelphia church, which has a unique employer identification number.

The petitioner submitted a copy of its December 1997 "Application for Certificate of Authority" filed with the state of Pennsylvania, a copy of the IRS letter granting the Philadelphia church an employer identification number, and a March 6, 2003 letter from the Pennsylvania Department of Revenue, granting the organization exemption from Pennsylvania sales tax.

The petitioner must either provide verification of the Philadelphia church's individual exemption from the IRS, proof of coverage under a group exemption granted by the IRS to the denomination, or such documentation as is required by the IRS to establish eligibility as a tax-exempt nonprofit religious organization. Such documentation to establish eligibility for exemption under section 501(c)(3) includes: a completed Form 1023, a completed Schedule A attachment, if applicable, and a copy of the articles of organization showing, *inter alia*, the disposition of assets in the event of dissolution.

The petitioner has not established that the Philadelphia church is a bona fide nonprofit religious organization as required by the statute and regulation.

The petitioner has also failed to establish that the employing organization has the ability to pay the beneficiary the proffered wage. As discussed above, the evidence indicates that the beneficiary will receive financial support from the local church in Philadelphia, the church in Queens and the national headquarters.

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.

Regardless of the support received by the beneficiary from other organizations within the church structure, the regulation requires the prospective U.S. employer to demonstrate its ability to pay the proffered wage as of the date the petition is filed.

The petitioner submitted a copy of the Philadelphia church's "statement of revenues & expenses" for 2000, 2001, and 2002. The petitioner also submitted a copy of the church's balance sheet as of June 30, 2003, a copy of its statement of receipts and expenses for the quarter ending June 30, 2003, a copy of its bank reconciliation report for June 30, 2003, and copies of its monthly checking account statements for January through June 2003. While the petitioner submitted copies of checks indicating that it compensated the beneficiary for his services in 2003, it submitted no similar evidence for the 2001 and 2002.

The regulation states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of evidence.

The evidence is insufficient to establish that the Philadelphia church had the ability to pay the beneficiary the proffered wage as of the date the petition was filed.

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 not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.