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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

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FILE: [REDACTED]
WAC 03 179 53658

Office: CALIFORNIA SERVICE CENTER

Date: JUL 12 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California 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 minister. 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 or that it had the ability to pay the beneficiary the proffered wage.

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 first issue on appeal is whether the petitioner established that the beneficiary had been continuously employed in a qualifying religious vocation or occupation for two full years prior to 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 June 5, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister throughout the two-year period immediately preceding that date.

With the petition, the petitioner submitted a copy of an e-mail from the beneficiary outlining his work experience. It is unclear from the e-mail as to when the beneficiary began practicing his "ministry." He indicates e-mail that in 2000, besides being elected as a church elder, he "also served as full time Sunday school teacher and preacher every Sunday worship at Suysuyan Church of Christ," and sometimes preached monthly sermons at various congregations "within the 2nd district of Ilocos Sur." The beneficiary indicated that in the year 2002, "[h]aving a License and Authority to solemnize[] Marriage . . . effective February 8, 2001 to Dec. 31, 2003, I have been officiating or solemnizing Church marriages," and that he continued to minister in the church in 2003. The petitioner submitted no corroborative evidence of any work performed by the beneficiary during the two-year period immediately preceding the filing of the visa petition. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In a request for evidence (RFE) dated June 8, 2004, the director instructed the petitioner to:

Provide evidence of the beneficiary's work history beginning June 5, 2001 and ending June 5, 2003 only. Provide a breakdown of duties performed in the religious occupation for an average week. Include the employer's name, specific job duties, the number of hours worked, [and] remuneration . . . Ideally, this evidence should come in the way that shows monetary payment, such as W-2 forms, pay stubs, or other items showing the beneficiary received payment . . . If any work was on a volunteer basis, provide evidence to show how the beneficiary supported him or herself . . . during the two-year period or what other activity the beneficiary was involved in that would show support.

In response, the petitioner submitted a letter from the beneficiary, again outlining his religious work experience. In the letter, dated July 22, 2004, the beneficiary stated:

In all these years, I've been faithfully preaching the Words of God every Sunday worship and many times I preside over Sunday school lessons, been religiously conducting Bible Study every Wednesday evening in our chapter. Up to the present I continue teaching and baptizing believers through immersion in the water.

As coordinator our church conventions, I conduct promotion fellowships and, [sic] or visiting other congregations, soliciting support and encouraging brethren to attend such conventions.

In another document entitled "Duties Performed/Proffered Position," the duties listed include preaching, lecturing, leading Sunday worship services, teaching Sunday school, conducting prayer meetings, devotions, Bible studies, mid-week services, visiting the sick or depressed, and working "on call." The beneficiary also submitted an affidavit in which he stated that his wife is a nurse assigned to a hospital in Saudi Arabia, and that her salary of approximately \$800.00 (U.S. equivalent) supports the family. The beneficiary also stated that beginning in February 2002, his church began giving him a monthly "love gift in the amount of Php. 3,000.00 plus an additional Php. 1,000.00 of Christmas bonus." The petitioner submitted no evidence to substantiate any financial support or remuneration received by the beneficiary. *See id.*

The petitioner submitted "certifications" from the beneficiary's church in the Philippines and the Association of Evangelists of the Gospel of the Church of Christ, Inc. in Manila. According to the Association of Evangelists of the Gospel of the Church of Christ, Inc., the beneficiary is a "preacher and Minister of the CHURCH of CHRIST in Suysuyan, Lidlidda, Ilocos Sur[,] and . . . was given the license to Solemnize marriages for the CHURCH of CHRIST members since February, 2001." The certification from the church indicates:

[The beneficiary] is an elected Elder and the resident minister/pastor of the Church of Christ . . . Being the minister, he teaches Sunday school, delivers sermons, conducts mid-week Bible studies, devotions and prayer meetings. Lectures Biblically based teachings and sound doctrines . . . He had and is ministering to birthdays, thanksgiving, memorial or burial services. Uplift the sick, the olds, or depressed brethren. He likewise works on an "on call" duty whenever the need arises.

We further certify that [the petitioner] had been invited to deliver sermons or lectures on numerous Church of Christ conventions, seminars, fellowships and other church fellowships in different places of the Philippines; and likewise been a coordinator of our conventions . . . He also acquired from the government a license to solemnize marriage and that he had been solemnizing marriages in different congregations . . .

Furthermore, the Church of Christ at Suysusyan [sic] is extending to him a monthly allowance or love gift in the amount of Php. 3,000.00 effective February 2002 which is given every last Sunday of the month and an additional Christmas bonus of Php. 1,000.00.

The petitioner also submitted an "attestation" from the mayor of the Municipality of Lidlidda, who states that he knows the beneficiary as a pastor of the Church of Christ at Barangay Suysuyan and that the mayor had seen him preach "many times in churches and in the neighborhood."

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 generally 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.

On appeal, the petitioner submitted a copy of a letter from the beneficiary dated December 15, 2004, which included a copy of his bank passbook reflecting balances from October 2002 to November 2003. The beneficiary stated that, because of the merger of his bank with another, he could not retrieve bank records of the period preceding October 2002.

The petitioner also submitted a copy of a letter from the beneficiary's church in the Philippines, which stated that the beneficiary served as the minister of the church without remuneration from June 9, 2001 until February 2002, and that in February 2002, the church was able to provide him with a monthly compensation of 3,000.00 pesos, which is equivalent of approximately \$50.00 U.S. According to the church, the beneficiary was paid in cash and no pay receipt, pay stubs or other documentation was generated to reflect the transfer. The church stated that this is the "conventional" method of payment and, as the beneficiary does not receive the minimum annual taxable income, he does not have to file an individual income tax return.

The petitioner also submitted copies of letters from four churches, whose officers stated that the beneficiary served as minister with the Suysuyan Church of Christ from June 2001 to "the present."

None of the evidence provided by the petitioner, however, establishes that the beneficiary was engaged full time in the ministry for the two years immediately preceding the filing of the visa petition. Although instructed to do so

by the director in his RFE, the petitioner did not submit an itemization of the beneficiary's workweek. The duties as outlined by the Suysuyan Church of Christ and the beneficiary do not indicate that they constitute full-time employment. Many of the duties, such as coordinating and lecturing at conventions and conferences, reflect periodic responsibilities. Further, none of the attestations or certifications by members of other churches indicates that the beneficiary served full time as a minister with the Suysuyan Church of Christ.

The evidence is insufficient to establish that the beneficiary worked continuously as a minister for two full years prior to the filing of the visa petition.

The second issue on appeal is whether the petitioner established that it has the ability to pay the beneficiary a 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 response to the RFE, the petitioner submitted a copy of its financial report for the period January 2003 to August 1, 2004. On appeal, the petitioner submits a copy of a statement from its financial institution, indicating that, as of December 8, 2004, the petitioner had approximately \$20,076 in a savings account, \$6,013 in a checking account, and \$2,000 in a certificate of deposit.

The above-cited 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 primary evidence.

The petitioner also submitted evidence that individual members of the congregation are willing to provide financial support for the beneficiary. The personal funds of church members, however, even if determined sufficient to pay the beneficiary a wage, cannot be legally obligated to satisfy the liabilities incurred by the petitioning organization.

The evidence does not establish that the petitioner has the ability to pay the beneficiary a wage.

Beyond the decision of the director, the petitioner has not established that it has 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.

In this case, the petitioner has not identified the terms of remuneration or shown that the alien would not be dependent on supplemental employment. Therefore, it has not tendered a qualifying job offer. This deficiency constitutes an additional ground for which the petition may not be approved.

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.