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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAR 11 2005

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IN RE: Petitioner:
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:

[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 employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The director granted a subsequent motion to reopen, and affirmed his original decision. The petition is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner 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 youth evangelist. The director determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization.

On appeal, 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 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.

With its initial filing, the petitioner failed to submit any evidence that it was a nonprofit tax-exempt religious organization as required by the statute and regulation. The petitioner stated that it was "affiliated to, and working within, the Roman Catholic Church." In a request for evidence (RFE) dated March 31, 2003, the director informed the petitioner that, if it was listed in the Official Catholic Directory, Citizenship and Immigration Services (CIS) recognized that it was exempt from taxation under a group tax exemption granted to the church. The director therefore instructed the petitioner to submit evidence that it was included in the Official Catholic Directory, and if it was not, to submit other evidence of its tax-exempt status.

In response, the petitioner stated that it is "a certified and independent religious organization, though affiliated with the national and international Roman Catholic Church." It submitted a September 12, 2001 letter from the Internal Revenue Service (IRS) granting it tax-exempt status under section 501(c)(3) of the Internal Revenue Code (IRC) as an organization described in section 509(a)(2). The petitioner also submitted a copy of a letter from the Illinois Department of Revenue exempting the petitioner from the retailers' and service occupation tax, use tax and service use tax. The letter indicated that the Illinois Department of Revenue recognized the petitioner as an organization "organized and operated exclusively for religious purposes."

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the IRS is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the IRC of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement, if applicable, and a copy of the organizing instrument of the organization which contains a proper dissolution clause and which specifies the purposes of the organization.

In its motion to reopen, the petitioner emphasized its relationship with the Catholic Church and submitted a letter from the bishop of the Diocese of Joliet, the Most Reverend [redacted] The bishop stated that the petitioner "is a Catholic organization, . . . which [o]ver the course of several years, . . . [has] served in a number of Catholic dioceses in the United States." The petitioner provided no evidence that it was a recognized subordinate unit of the Roman Catholic Church and covered under the group exemption granted to that organization.

The petitioner submitted a copy of its bylaws, which describes the purpose of the organization and which contains the dissolution clause required by the IRS to grant tax-exempt status. The petitioner also submitted a copy of the IRS Form 1023 dated March 22, 2001 that it apparently filed with the IRS, and a copy of a May 15, 2003 letter from the IRS, informing the petitioner that as an exempt organization under section 501(c)(3) of the IRC, it was exempt from paying federal unemployment tax.

In his decision on the motion to reopen, the director determined that the Form 1023 failed to contain a Schedule A supplement and that the organizing instrument did not contain a proper dissolution clause

As the petitioner is not a church, the Schedule A was not required as part of the IRS Form 1023. Further, the required dissolution clause is contained in Section II, Article VII, section 16 of the petitioner's bylaws.

On appeal, the petitioner argues strenuously that its relationship to the Catholic Church, together with the other documentation it submitted, establishes it as a bona fide nonprofit tax-exempt religious organization. Nonetheless, the petitioner fails to establish that it is covered under the Catholic Church's group tax-exemption.

However, the evidence submitted by the petitioner is sufficient to establish that the petitioner is a bona fide nonprofit tax-exempt religious organization as required by the regulation at 8 C.F.R. § 204.5(m)(3)(i)(B).

Nevertheless, the case may not be approved as the record now stands, and it will be remanded to the director to request further evidence and to enter a new decision.

On remand, the director should address whether the petitioner has established that the beneficiary has been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition. The petition was filed on December 11, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as a youth evangelist throughout the two-year period immediately preceding that date.

In response to the RFE, the petitioner submitted a list of the activities it stated the beneficiary had performed during the two years preceding the filing of the visa petition. The record also contains letters from organizations regarding performances or services the beneficiary had provided to their organizations. However, the petitioner submitted no documentary evidence to corroborate these statements. 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).

The petitioner also stated that it paid the beneficiary $33,000 per year and that he also subsisted off royalties from a prior professional career and had assets in the United Kingdom valued at over $600,000. However, it submitted no evidence to support these statements. *See Matter of Treasure Craft of California, id.*

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.

On remand, the petitioner should be given an opportunity to provide evidence that the beneficiary was continuously employed as a youth evangelist for two full years immediately preceding the filing of the visa petition.

Further, the petitioner has not established that it has 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.

The petitioner stated that it pays and will pay the beneficiary a salary of $33,000 annually. However, the petitioner provided no evidence of any compensation that it has paid the beneficiary. Additionally, 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 evidence.

On remand, the petitioner should be given an opportunity to establish that it has the ability to pay the proffered wage.

This matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.