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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: MAY 02 2005
SRC 03 196 53355

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

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:

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.

sn Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office 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 prayer minister. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a prayer minister immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established its ability to pay the beneficiary's proffered compensation.

On appeal, the petitioner submits letters and additional financial documents.

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 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 experience in the religious vocation, professional religious work, or other religious work. The petition was filed on July 8, 2003. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a prayer minister throughout the two years immediately prior to that date.

Documents in the record indicate that the beneficiary served as an associate pastor at the Chapel of Light at Lagos State University, Nigeria, from July 1999 until August 1, 2002. The beneficiary arrived in the United States ten days later. The initial submission says little about the beneficiary's work in the United States.

The director instructed the petitioner to provide "a detailed description of the beneficiary's prior work experience" during the two-year qualifying period, including the hours the beneficiary worked. In response, the petitioner submits copies of payment vouchers showing that the [REDACTED] paid the beneficiary a monthly salary through July 2002, consistent with the assertion that he left the Chapel on August 1 of that year.

The petitioner also submits copies of work schedules from the [REDACTED]. The schedules do not account for any duties at the Chapel apart from preaching at Sunday services. These schedules were apparently prepared in advance, because they show the beneficiary working there as late as December 2002, several months after his departure for the United States. The schedules indicate that several preachers were on a rotating schedule. Disregarding the schedules from before the qualifying period and from after the beneficiary's departure from Nigeria, the beneficiary was scheduled to preach on only ten specified dates between July 2001 and July 2002.

Regarding the beneficiary's work in the United States, Pastor [REDACTED] of Blessed Assurance Gospel Church states that the beneficiary "started doing volunteer work for us in December of 2002." He continues:

1. He is the coordinator of Operation Push Prayer.
2. He is the coordinator of the Visitation\Evangelism department.
3. Preaching and teaching the word.

Operation Push Prayer is every Tuesday from 10pm to 1 am.

Visitation\Evangelism is every other Saturday of the month between 1pm and 6pm.

Preaching is on Sunday service once a month from 10am to 1 pm. Teaching the word once every month on Wednesday mid week Bible study from 6pm to 8pm.

The abrupt change of font between "3." and "Preaching and teaching the word" is reproduced from the original document. The above letter indicates that the beneficiary worked only part time for Blessed Assurance Gospel Church, roughly 27 hours per month. The letter is dated October 3, 2003, and refers to the beneficiary's activities in the present tense.

An official (whose signature is only partly legible) of World Healing & Miracle Outreach Ministries states that the beneficiary "started doing volunteer work for us in October of 2002." The beneficiary's only described duty for that church is "Leading members to hospitals and old people's homes to pray with these people every Monday and Thursday from 1pm to 6pm." Counsel states that the petitioner has also volunteered for the petitioning church, but there is no indication as to the extent of this work, or when the beneficiary commenced such work.

The director denied the petition, stating that part-time volunteer work is not qualifying experience. On appeal, Pastor [REDACTED] of the petitioning church states: "Since October 2002, [the beneficiary] has assumed several duties within our ministry." Pastor [REDACTED] states that the beneficiary has performed the following duties:

Prayer Coordinator	1.5 hours per week
Nursing Home Ministry Asst. Coordinator	2.5 hours every two weeks
Outreach Evangelism Ministry	hours unspecified

Sunday School Teacher	1 hour per week
Men's Meeting	monthly, hours unspecified
Corporate Prayer	hours unspecified
Out Of Kindness (newspaper distribution)	3.5 hours twice a month

The beneficiary's tasks at the three different churches, taken together, do not appear to add up to full-time work. Also, the petitioner has consistently indicated that the beneficiary has worked as an unpaid volunteer. Pursuant to *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980), part-time volunteer work is not qualifying experience as a minister.

Furthermore, the evidence does not show any work performed by the beneficiary between August 1 and October of 2002. Thus, there is a gap of at least two months in which the beneficiary does not appear to have been working for any church. This gap is not merely a paid vacation, but a considerable span of time in which the beneficiary apparently had no employment or working arrangement with any church at all. This gap appears to amount, therefore, to a disqualifying interruption in the continuity of the beneficiary's religious work.

The other issue in this proceeding concerns the petitioner's ability to pay the beneficiary's salary. 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 indicates that the beneficiary will receive a salary of \$500 per week; a housing allowance of \$200 per week; and additional funds as necessary for various pastoral functions. The beneficiary's proffered compensation is, therefore, at least \$36,400 per year.

The petitioner's initial submission includes an unaudited "Income and Expenses Statement," showing \$118,473.77 in net income remaining after expenses during the first six months of 2003. The director instructed the petitioner to submit "evidence such as copy [sic] of bank letters, recent audits, church membership figures, payroll tax return copies, and other appropriate evidence." In response, the petitioner has submitted copies of bank statements from 2003, showing that the petitioner carried a bank balance of \$8,574.01 on July 1, \$9,910.37 on July 31, and \$13,758.62 on August 31.

The director, in denying the petition, quoted the relevant passage from 8 C.F.R. § 204.5(g)(2), which states that evidence of ability to pay "shall be" in the form of tax returns, *audited* financial statements, or annual reports. The director observed that the petitioner had not submitted any of these required forms of evidence.

Prior to the denial, the director had not spelled out this requirement, and therefore the petitioner's failure to submit qualifying evidence is due in part to this error by the director. By the time the appeal was filed, the director had apprised the petitioner of the above regulatory requirements.

On appeal, the petitioner submits a letter from Republic National Bank, stating that the petitioner “has several accounts with us holding combined average balances in the amount of \$141,000 for the current quarter.” The petitioner also submits further unaudited statements and payroll records. The available evidence points toward the conclusion that the petitioner is financially viable and maintains a significant number of employees, but the evidence does not conform to the regulatory requirements spelled out in the denial notice. Also, as discussed above, the petitioner’s ability to pay was not the sole or primary basis for the denial of the petition, and therefore, even if the petitioner had submitted qualifying documentation, this would not have changed the outcome of the appellate decision.

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.