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U.S. Citizenship and Immigration Services

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[redacted]

JAN 0 8 2007

FILE: [redacted] Office: TEXAS SERVICE CENTER Date:
SRC 04 183 52252

IN RE: Petitioner:
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:

[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.

Marie Johnson

Robert P. Wiemann, Chief
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 Pentecostal 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 youth minister at the petitioner's church in Palm Coast, Florida. The director determined that the petitioner had not established: (1) that the beneficiary had the requisite two years of continuous work experience as a youth minister immediately preceding the filing date of the petition; (2) its ability to compensate the beneficiary; (3) its status as a qualifying tax-exempt religious organization; or (4) that the beneficiary possesses the necessary qualifications for the position.

On appeal, counsel argues that the beneficiary is eligible for the benefit sought.

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).

[redacted] Pastor and Chairman of the petitioning church, states in an introductory letter:

> For the past thirty-five years, [the beneficiary's family] have spent most of their lives as missionaries. [The beneficiary and her family] are ordained ministers and have been performing religious work and duties and have been preaching and spreading the gospel of our Lord in many countries and to many people around the world. . . .

> [The beneficiary] will serve as a Youth pastor at our Palm Coast [Florida] church where she will be training our youth in missionary work and will also perform religious duties as a pastor.

First we shall consider the question of the beneficiary's 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 June 17, 2004. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a youth minister throughout the two years immediately prior to that date. We note that the beneficiary entered the United States on December 23, 2003 as a B-2 nonimmigrant visitor. This indicates that the beneficiary was outside the United States for most of the two-year qualifying period, and that the beneficiary lacked employment authorization following her entry into the United States.

Counsel states that the beneficiary "has been working with [redacted] for a period of more than two years." [redacted] Chairman o[redacted] attests to the beneficiary's work there, but does not specify the duration of that work:

> [The beneficiary], like her father . . . has been involved in religious work. . . .
>
> From her childhood, she has been exposed to Christian theology. She has obtained a Diploma through a Mailbox Bible Club. She has two years of university education with a major in Economics from Anton De Kom Universiteit Van Suriname.
>
> She accompanied her father in Ghana, Africa, where her father did missionary work. She also joined her father in doing religious work. She has been ordained and has been performing baptismal services, marriages and burials in Suriname.

In a request for evidence (RFE) dated March 11, 2005, the director instructed the petitioner to "[s]ubmit a detailed description of the beneficiary's prior work experience," along with payroll and tax documentation, covering the two-year qualifying period. The director specifically requested evidence to show how the beneficiary has supported herself during the qualifying period. Because of the nature of the petitioner's response to the RFE, we shall consider the response further below rather than discussing elements of that response in the context of the various stated grounds for denial.

The next issue concerns the petitioner's ability to compensate the beneficiary. The regulation at 8 C.F.R. § 204.5(g)(2) states:

> *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 a case where the prospective employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by the Service.

In the initial submission, counsel asserts that the petitioner "has developed sufficient financial support and systems of donation to meet its financial obligations." Counsel is not a financial officer of the petitioning organization, and there is no evidence that the petitioner employs 100 or more workers. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 2, 4 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Therefore, counsel's assertion that the petitioner can "meet its financial obligations" can never suffice to meet the petitioner's burden of proof.

We note that, pursuant to 8 C.F.R. § 204.5(m)(4), the petitioner must specify the terms of employment offered to the beneficiary. Here, the petitioner has not even specified the amount of the beneficiary's prospective compensation. Without this information, the petitioner cannot possibly show that its resources are sufficient to pay the beneficiary's salary, because there is no basis for comparison.

[redacted], of Bank of America, states:

> [The petitioner has] maintained a successful Bank relationship with us since May 1981.
>
> During the 4 months ending April 30, 2004 [the petitioner] has made approximately 10 deposits and avg. 100 other transactions.
>
> Average yearly activity has been about a 1,000 [*sic*] transactions.

Mr. [redacted] letter does not contain any quantitative information about the petitioner's financial status; it does not even specify the amount of the petitioner's bank balance. This letter confirms little except that the petitioner holds an active bank account.

In the RFE, the director requested detailed evidence of the petitioner's ability to pay the beneficiary and its other employees. The director repeated the specific evidentiary requirements from 8 C.F.R. § 204.5(g)(2). We shall return to this issue after discussion of the remaining grounds for denial.

8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit organization in the form of either:

> (A) Documentation showing that it is exempt from taxation in accordance with section 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 [IRS] to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 [the Code] as it relates to religious organizations.

The organization can meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B) by submitting documentation listed in a memorandum from William R. Yates, Associate Director of Operations, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003):

> (1) A properly completed IRS Form 1023;
> (2) A properly completed Schedule A supplement, if applicable;
> (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization;
> (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The memorandum specifically states that the above materials are, collectively, the "minimum" documentation that can establish "the religious nature and purpose of the organization." Thus, for example, a petitioner cannot meet this burden by submitting only its articles of incorporation.

The petitioner's initial submission includes a copy of its articles of incorporation and a copy of a Consumer's Certificate of Exemption from the Florida Department of Revenue, showing that the petitioner "is exempt from the payment of Florida sales and use tax." This certificate does not establish federal tax exemption under section 501(c)(3) of the Code.

The director, in the RFE, quoted the evidentiary requirements from the 2003 memorandum cited above, and instructed the petitioner to submit evidence that conforms to those requirements.

We move now to the issue of the position offered to the beneficiary, and the beneficiary's qualifications for that position. 8 C.F.R. § 204.5(m)(3)(ii)(B) requires the prospective employer to establish that the alien has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy. That same regulation specifies that, in appropriate cases, the certificate of ordination or authorization may be requested.

Counsel describes the position offered to the beneficiary:

> [The petitioner] is now in need of a Youth Minister who will be Coordinating Church Services; Co-ordinating missionary activities overseas. Help establishing church schools;

> Training new Ministers; Organizing holding religious missionary conference; Holding Seminar and conferences; organizing and holding Youth camps and organizing Carribean [*sic*] leader conferences.

Counsel quotes [redacted] statement that the beneficiary "joined her father in doing religious work. She has been ordained and has been performing baptismal services, marriages and burials in Suriname." The record contains copies of various educational certificates, but there is no documentation to confirm that the beneficiary was ordained at all, much less when the ordination occurred.

The director, in the RFE, requested information about the basic requirements for the position offered to the beneficiary and evidence that the beneficiary meets those requirements. The director specifically requested a "copy of [the beneficiary's] qualifying credentials for the proffered job."

Counsel, in responding to the RFE, admits that the beneficiary "has not yet received her certification of ordination as yet as she still undergo further training education [*sic*] although she now carries out functions of ordained Minister as an assistant." We cannot ignore that the petitioner originally claimed that the beneficiary has already been ordained, only to retreat from that claim once the director instructed the petitioner to produce proof of that claim. When a petitioner makes a specific claim, and then modifies that claim when challenged to produce supporting evidence, such modification is not conducive to the petitioner's overall credibility. Doubt cast on any aspect of the petitioner's proof may 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, 586 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 592.

Counsel also states: "The petitioner, in reviewing [the beneficiary's] qualifications now would like to convert her I-360 Petition for Special Immigrant Minister application into I-129, Petition for Nonimmigrant Worker – R-1 Religious Worker." The petitioner offers no substantive response to any of the director's specific evidentiary requests. Counsel's request for a change based on review of the beneficiary's qualifications suggests that the petitioner has stipulated that the beneficiary does not meet the more stringent qualifications for a special immigrant religious worker.

The director denied the petition, stating an immigrant petition cannot be converted to a nonimmigrant petition, and that the petitioner must therefore file a new nonimmigrant petition on the beneficiary's behalf if it seeks to classify the beneficiary as an R-1 nonimmigrant religious worker. Even if such a conversion were permissible, which it is not, this would not relieve the petitioner of numerous evidentiary burdens that it had failed to meet. The director concluded that the petitioner has submitted no evidence to meet numerous requirements. The director also noted the petitioner's contradictory claims regarding whether or not the beneficiary is an ordained minister.

The petitioner's appeal consists of a two-page brief from counsel, in which counsel repeats several claims such as the assertion that the beneficiary "has been fully employed as a youth missionary worker for more than two (2) years." As we have already noted, counsel's unsubstantiated statements have no evidentiary

weight. Counsel does not even address the petitioner's failure to offer any substantive response to the RFE, much less explain that failure. The appeal brief contains no reference, let alone any rebuttal, to the director's finding that the petitioner has not established its qualifying status as a 501(c)(3) tax-exempt organization.

Regarding the petitioner's ability to pay the proffered wage, counsel states: "The Church is a long established organization. It has branches in New York, Palm Coast and Port Charlotte. The church has completed extension of the church building spending in excess of $150,000.00, yet the USCIS has ruled that it has no ability to pay." The director did not rule that the petitioner "has no ability to pay." Rather, the director found that the petitioner, upon whom the burden of proof rests, failed to show that it *does* have that ability. There is no initial presumption of eligibility that the director is required to overcome.

The above-cited regulation at 8 C.F.R. § 204.5(g)(2) states that evidence of ability to pay "shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements." 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 non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Given the opportunity to address this deficiency via the RFE, the petitioner took no constructive action. The petitioner had previously submitted copies of floor plans and photographs of a building under construction, but even if the petitioner had documented that it spent $150,000 expanding the building, this would in no way prove or imply that the petitioner had sufficient remaining resources to compensate the beneficiary. It would show only that a significant sum of money that could have been used to pay the beneficiary was instead irrevocably dedicated to other expenses.

Counsel devotes much of the appellate brief to the proposition that the director "erred holding that the remuneration can be paid to the Beneficiary only by way of currency. Remuneration can also be paid in other kind such as free accommodations, boarding and lodging." This argument is correct. The Board of Immigration Appeals ruled that an alien who "receives compensation in return for his efforts on behalf of the Church" is "employed" for immigration purposes, even if that compensation takes the form of material support rather than a cash wage. *See Matter of Hall*, 18 I&N Dec. 203, 205 (BIA 1982).

While counsel is correct in the assertion that compensation can be non-monetary, this was not the crux of the director's decision. The director had requested evidence to show how the beneficiary supported herself during the qualifying period; evidence that the beneficiary was ordained as the petitioner had very specifically claimed; and evidence relating to several other crucial elements of the petition. In response to the RFE, the petitioner did not submit any new evidence, and did not account for its failure to produce such evidence. Instead, the petitioner, through counsel, expressed a desire to change the category of the petition and admitted that the beneficiary is not ordained as the petitioner had specifically claimed in the initial filing. In short, the petitioner's response to the RFE amounts to little more than a concession of ineligibility, and the appeal does nothing to remedy this fatal defect. After the director made it clear that counsel's uncorroborated statements cannot meet the petitioner's burden of proof, the petitioner responded with more uncorroborated statements from counsel.

We find that the director was justified in citing each of the stated grounds for denial, and we affirm each of those findings.

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

ORDER: The appeal is dismissed.