



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



01

FILE: LIN 06 063 50579 Office: NEBRASKA SERVICE CENTER Date: JUL 20 2007

IN RE: Petitioner:
Beneficiary:



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:

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.

Maura Oeadnek
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska 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 Baptist 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 failed to meet virtually all of the evidentiary requirements outlined in the regulations.

On appeal, the petitioner submits various letters and 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 federal regulation at 8 C.F.R. § 204.5(m)(4) states:

Job offer. The letter from the authorized official of the religious organization in the United States must also state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration), or how the alien will be paid or remunerated if the alien will work in a professional religious capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support. In doubtful cases, additional evidence such as bank letters, recent audits, church membership figures, and/or the number of individuals currently receiving compensation may be requested.

The regulation at 8 C.F.R. § 204.5(m)(2) defines “religious occupation” as an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

8 C.F.R. § 204.5(m)(3)(ii)(D) requires the petitioner to show that the beneficiary is qualified in the religious vocation or occupation in which the petitioner seeks to employ the beneficiary. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the type of work to be done relates to a traditional religious function.

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 December 23, 2005. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a missionary throughout the two years immediately prior to that date.

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.

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 to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

The petitioner's initial submission contained only a handful of exhibits, including a letter from [REDACTED] Pastor of the petitioning church. The letter reads, in part:

[The beneficiary] transferred his Church membership to us on October 26th, 2003. . . .

He came to America at the request of our Church, to serve in our missionary outreach to the Polish community in Chicago. . . .

During his time with us at the [petitioning] Church, [the beneficiary] has helped, not only in our outreach to the Polish community, but also in our total outreach in the city, helping in Sunday Worship services, in outreach ministry and evangelism, in literature distribution, in Bible studies and in technical services.

The initial submission contained no information about the terms of proposed employment and no specifics regarding the beneficiary's qualifications or past experience.

The petitioner also submitted a letter from the Illinois Department of Revenue, indicating that the petitioner is exempt from certain state taxes because "we believe [the petitioner] is organized and operated exclusively for religious purposes." The petitioner submitted no comparable documentation of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986.

On March 29, 2006, the director issued a request for evidence (RFE), instructing the petitioner to submit additional information and evidence regarding the nature of the position offered to the beneficiary; the terms of the job offer; the beneficiary's employment experience during the two-year qualifying period; the petitioner's federal tax-exempt status; and the petitioner's ability to compensate the beneficiary.

The petitioner's response to the RFE consisted of a letter jointly signed by four church officials and a copy of the previously submitted letter from the Illinois Department of Revenue. The letter was mostly devoted to "a partial list of duties to be performed by" the beneficiary, such as "Outreach to the Community" and "assist in the computer and internet needs of the Church." A number of the listed duties deal with secular functions such as maintenance of electronic equipment and care of infants too young to comprehend religious instruction.

The director denied the petition on August 1, 2006, stating that the petitioner had failed to address most of the issues raised in the RFE. The director made the following findings:

First of all, the record does not contain acceptable evidence of the job offer. . . . [The petitioner] did not explain why only a partial list of duties was provided (instead of full disclosure), did not explain how much time would be spent on these, whether the position itself is full-time or part-time, and did not specify how the beneficiary would be paid or remunerated.

Secondly the description of the duties provided is general and vague. The petitioner . . . has not explained how the duties relate to any traditional religious functions.

Third, the petitioner has not provided an explanation and supporting evidence of the beneficiary's qualifications for a religious position.

Fourth, aside from stating that the beneficiary came to America at their request to serve in their missionary outreach, the petitioner has not provided specific information about the beneficiary's employment. . . . [The petitioner has failed] to establish that the beneficiary has been continuously performing the religious vocation or occupation for the two years immediately prior to the filing of this petition. . . .

Fifth, the petitioner has not provided any evidence of its financial ability to remunerate the beneficiary so that he will not be solely dependent on supplemental employment or solicitation of funds for support.

And finally, the petitioner has not provided acceptable evidence that it is a bona-fide non-profit religious organization.

The director explained that the letter from the Illinois Department of Revenue does not conform to 8 C.F.R. § 204.5(m)(3)(i) and does not establish *federal* tax-exempt status.

On appeal, the petitioner submits a letter from an official of the Conservative Baptist Association of America, stating that the petitioning church is covered by a group federal tax exemption granted to that association. A letter from the Internal Revenue Service confirms the exemption. The petitioner also submits a letter attributed to [REDACTED], listing the beneficiary's duties and stating that the beneficiary earns \$400 per week (which is roughly equal to \$20,800 per year). Finally, the petitioner submits a copy of its 2004-2005 annual report, which contradicts the claimed salary figure by showing that the church spent a total of \$17,371.63 on all salaries that year, with no one person earning more than \$7,916.66.

The regulations state that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. The petitioner did

not make this evidence available to the director when the director requested it, and the director acted properly in finding that the petitioner had failed to comply with the RFE.

We note that there are significant irregularities in the new letter attributed to [REDACTED]. The signature on the new letter appears quite different from the signatures in the petitioner's initial submission. Also, the grammar and spelling skills exhibited in the new letter do not appear to match what is seen in the earlier letter. Here is a representative paragraph from [REDACTED]'s original letter:

[REDACTED] transferred his Church membership to us on October 26th, 2003, from London, England, where he was baptized on September 7th, 1997 at the Bethesda Baptist Church, and where he actively worshiped and served the Lord for six years (See enclosed certificate of baptism and declaration by the Bethesda Baptist Church of London).

Compare the above with a passage from the new letter, submitted on appeal (capitalization, grammar and spelling reproduced from original):

HIS DUTIES ARE:

MAINTAN THE COMPUTERS, MAINTAIN CHURCH MEMBERSHIP LISTS, DEVELOP A WEBSITE, ALSO HE IS RESPONSIBLE FOR THE CORRECT FUNCTIONING OF THE CHURCH'S AUDIO-VISUAL NEEDS, THE AUDIO AND VIDEO SYSTEMS, ALSO ASSIST IN THE NURSERY PROGRAM OF THE CHURCH, PASSING OUT POLISH LITERATURE, INTERPRETING WHEN NECESSARY FOR POLISH PEOPLE WHO DO NOT SPEAK ENGLISH, ALSO HE PARTICIPATE IN GROUP BIBLE STUDIES AS A MEANS OF MEATING THE NEEDS OF YOUNG FAMILIES.

The discrepancies between the two letters raise questions about the origin of the new letter submitted on appeal. 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). Even without such doubts, however, the petitioner has failed, on appeal, to demonstrate that the director made an incorrect decision based on the evidence that the petitioner chose to make available to the director in response to the RFE. Furthermore, even on appeal, the petitioner has not addressed all the issues raised by the director, any one of which would be sufficient by itself to warrant denial of the petition.

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.