



U.S. Citizenship
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FILE:

Office: TEXAS SERVICE CENTER

Date:

MAR 22 2007

SRC 05 185 51318

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:

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, 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 sustained and the petition will be approved.

The petitioner is a Roman Catholic religious organization. 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 religious instructor. The director determined that the petitioner had not established (1) that the petitioning entity is a qualifying tax-exempt non-profit religious organization; (2) that the position offered to the beneficiary qualifies as a religious occupation; or (3) that the beneficiary had the requisite two years of continuous work experience as a religious instructor immediately preceding the filing date of the petition.

On appeal, counsel lists several previous evidentiary submissions and asserts that these materials refute the director's findings.

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).

We shall first consider the issue of the petitioner's tax-exempt status, before moving on to issues relating to the beneficiary's individual qualifications.

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.

In a determination letter dated June 14, 2005, the Internal Revenue Service (IRS) ruled that the petitioner is "exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code" (the Code). Under "Public Charity Status," the IRS letter states "509(a)(2)," meaning that the petitioner is described in section 509(a)(2) of the Code.

In denying the petition, the director stated: "the petitioner is classified as a charitable organization under section 501(a)(2), and not as a non-profit religious organization. The petitioner failed to submit evidence of qualifying 501(c)(3) certification as a religious organization." The petitioner's IRS determination letter, however, clearly states that the petitioner *does* qualify under section 501(c)(3) of the Code. The director's reference to "section 501(a)(2)" appears to be a typographical error in reference to the petitioner's classification under section 509(a)(2) of the Code.

IRS Publication 557, *Tax-Exempt Status for Your Organization*, indicates that churches are among the organizations classified under section 509(a)(1) of the Code, along with "publicly supported organizations" that may or may not be religious in character. That publication also states:

Generally, an organization described in section 509(a)(2) may also fit the description of a publicly-supported organization under section 509(a)(1). There are, however, two basic differences.

1. For section 509(a)(2) organization, the term support includes . . . income from activities directly related to their exempt function. This income is not included in meeting the support test for a publicly-supported organization under section 509(a)(1).
2. Section 509(a)(2) places a limit on the total gross investment income and unrelated business taxable income . . . an organization may have, while section 509(a)(1) does not.

IRS Publication 557 also indicates that an organization described in section 509(a)(2) of the Code can qualify as an "integrated auxiliary of a church" if it meets certain other conditions. Thus, there is nothing inherently disqualifying about the IRS' finding that the petitioner is described in section 509(a)(2) of the Code. Section 509(a)(2) of the Code relates to the organization's sources of support, rather than the purpose(s) of the organization.

Because the IRS determination letter does not specify the purpose of the petitioning organization, we must turn to other materials in the record to establish that the petitioner's tax-exempt status derives from religious activities rather than from other activities that can qualify an organization for tax-exempt status. The documentation required under 8 C.F.R. § 204.5(m)(3)(i)(B) is described 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 petitioner's initial submission includes a copy of IRS Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, executed by the petitioner in 2004. In a note submitted with the application, the petitioner is described as "a non-profit support organization created with the main purpose of assisting the Apostolic Catholic Church in the process of evangelism through Latin America, particularly Spanish speaking individuals." The note indicates that the petitioner supports and assists the United Bible Society, which in turn distributes Bibles. Other activities include missions and "courses, workshops, seminars and conferences about biblical themes, teaching of personal values, pedagogy, leadership and spirituality."

Subsequently, the petitioner has submitted a copy of IRS Form 990, Return of Organization Exempt From Income Tax, in which the petitioner indicated that its "primary exempt purpose" was to "Dictate Seminars Promoting the Word of God and Equip[p]ing Ministers." The Forms 990 also indicate that the beneficiary was the petitioner's only salaried employee in 2002-2004, because the total salaries reported equal the beneficiary's salary. [REDACTED] is the petitioner's sole compensated officer, and the petitioner also paid a small amount for "Contract Labor.")

The English translation of a Spanish-language brochure in the record indicates that the petitioner is "an INTERNATIONAL FOUNDATION with main office in the ARCHDIOCESE OF TEGUCIGALPA . . . dedicated to the Formation of Catechists and Students in Latin America through Workshops, Courses and Graduates given by Internet [sic]." Under the heading "Purpose," the translation reads: "To cooperate with the Catholic Church who peregrines [sic] in Latin America with programs of FORMATION OF CATECHISTS, STUDENT AND OTHER EVANGELIZATION AGENTS, specially using the modern technology of Internet."

Counsel, on appeal, argues that the petitioner's main tasks involve "Biblical training" and related educational functions within the Catholic Church. IRS documentation proves, contrary to the director's finding, that the petitioner is in fact a 501(c)(3) non-profit organization. The materials in the record are consistent with a finding that the petitioner's primary purposes, such as conducting Biblical seminars and the dissemination of

religious educational materials, are inherently religious in nature. Therefore, we withdraw the director's finding, based on persuasive evidence that the petitioner's tax-exempt status under section 501(c)(3) of the Code derives predominantly from its religious functions, as well as educational functions clearly tied to religious subject matter.

The next issue is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. 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.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

[REDACTED], President of the petitioning entity, states that the beneficiary "has been performing activities relating to a religious instructor." The letter offers no substantive details about the nature of the beneficiary's work. [REDACTED], Archbishop of Tegucigalpa, Honduras, states that the beneficiary "is the Treasurer and Manager of Computer Education Information" for the petitioning entity.

The description of activities submitted with the petitioner's IRS Form 1023 contains the following passage:

To assist the American Bible Society with the need to provide Bibles for the Catholic Hispanics in the United States.

- Assist the biblical projects for Catholic-Hispanics in the United States.
- Travel to Different Dioceses in the United States and provide contacts with the local Catholic Hierarchy.
- Do frequent meetings with many Catholic employees in the United States. . . .
- The person responsible for this activity is the Engineer [the beneficiary].¹

The Form 1023 also identifies the beneficiary as one of several individuals responsible for "[o]rganization of courses, workshops, seminars and conferences about biblical themes, teaching of personal values, pedagogy, leadership, and spirituality." The beneficiary is also listed as being responsible for maintaining the petitioner's web page and preparing "materials regarding Information Technology, notes, books, Interactive CDs, and other materials used for other activities the [petitioner] might need." The same document, and the petitioner's Articles of Incorporation, both identify the beneficiary as Treasurer of the petitioning entity.

¹ The title "Engineer" preceding the beneficiary's name refers to his 1995 computer engineering degree.

On July 9, 2005, the director issued a request for evidence (RFE), instructing the petitioner to submit further evidence regarding the beneficiary's job duties. In response, [REDACTED] states that the beneficiary's 40-hour week consists of the following duties:

15 hours dedicated to religious encounters at the various dioceses of the United States.

15 hours giving work shop of biblical prayers, lectio divina, education in the values of the Gospel and in the formation of biblical students for the parishes and Dioceses of the United States, who required it.

10 hours of investigation and preparation of new materials.

[REDACTED] Director of the American Bible Society's Office for Latin Affairs, states in a translated letter that the beneficiary "has been supporting the American Bible Society in the interconfessional programs, assisting to the Training and Implementation of the method [REDACTED] at the Parishes and Religious Congregations and Pastoral Groups and of Evangelization." Letters from various members of the clergy discuss the beneficiary's work. Some of these letters discuss the beneficiary's work using religious terms, such as "mission"; others are more prosaic, such as [REDACTED] in Paraguay, who acknowledges the beneficiary's "technical assistance" and "development of programs of assistance through the computers." Father [REDACTED], in Mexico, states that the beneficiary "gives his services to the community by the elaboration of teaching materials and technical assistance and in computers, as well as support to the different activities and missions of the Catholic Church in the State."

The director denied the petition, stating: "It cannot be determined that the beneficiary's prospective occupation is a religious one." Elsewhere in the decision, the director concluded: "the proffered job is more of an administrative and secular occupation," and noted that the beneficiary is the treasurer of the petitioning corporation.

On appeal, counsel asserts that the petitioner "has presented evidence as to [the beneficiary's] religious work performed," "assist[ing] the Archdiocese mainly in the biblical training of people attending [t]he various churches of the Archdiocese and giving conferences and instructions to other members of the Catholic community."

While there are some aspects of the beneficiary's work that appear, in isolation, to be secular in nature (such as functions relating to the beneficiary's training in computer engineering), it is clear that the beneficiary's duties, in general, are in furtherance of clearly religious goals relating to the furtherance of Catholic education. The record establishes the religious nature of the petitioning entity, of which the beneficiary has been, at times, the sole salaried employee. The duties of a corporate treasurer are, arguably, also secular, but the petitioner's documentation does not indicate that the beneficiary receives any compensation as an officer of the petitioning corporation. There is, therefore, no evidence that the beneficiary's work as treasurer constitutes employment or his occupation. It appears, instead, given the small size of the petitioning entity, that the beneficiary has been named treasurer, at least in part, because few others are available to perform that

function. As counsel puts it, the beneficiary “has been the treasurer of the corporation, because they need one.” We withdraw the director’s finding that the beneficiary’s position is not a religious occupation.

We turn, finally, to the issue of 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 June 17, 2005. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of the proffered position throughout the two years immediately prior to that date.

states that the beneficiary “began to work for our religious organization in Mexico, in the year 2000,” and has worked for the petitioner in the United States “for over two (2) years . . . with a Non Immigrant Visa. . . . We are offering a salary of \$1,000.00 monthly plus room and board.” Tax documents show that the petitioner paid the beneficiary \$2,400 in 2002 and \$9,600 per year in 2003 and 2004. This amount does not reflect a full year’s pay at \$1,000 per month, although we note that did not indicate that the beneficiary’s past pay matched the proffered future salary. The amounts reported are consistent with monthly payments of \$800 beginning in October 2002 and continuing throughout the two following calendar years.

The tax forms show the petitioner’s address as the beneficiary’s residential address. This, however, is not persuasive evidence of the beneficiary’s actual address. As noted above, the petitioner’s articles of incorporation identify the beneficiary as treasurer of the petitioning entity, and provide the petitioner’s address as the beneficiary’s address. The articles of incorporation, however, are dated September 27, 2000. Other documents in the record place the beneficiary in Mexico at the time. acknowledges, elsewhere in the record, that the beneficiary first entered the United States in early 2002.

In the RFE issued July 9, 2005, the director instructed the petitioner to submit evidence that the beneficiary receives room and board as claimed, as well as evidence to show all the jobs the beneficiary has held and the locations where the beneficiary has worked since he entered the United States. In response, states that the beneficiary has worked only for the petitioner since his 2002 arrival in the United States, and that the beneficiary “resides in our principal place [of] our organization . . . In our house, we give him ‘room and board’ which represents a place to live and to receive food.”

In the denial notice, the director acknowledged the petitioner’s submission of the beneficiary’s tax documents, but noted that the petitioner produced no evidence to show that the petitioner had provided the beneficiary’s room and board as claimed. The director stated: “The petitioner failed to clearly demonstrate that the beneficiary has been fully supported by the petitioner and has not been dependent on supplemental employment for support.”

On appeal, counsel repeats the assertion that the petitioner is wholly responsible for the petitioner’s financial and material support.

We do not dismiss the director's concern about the lack of evidence to show that the beneficiary has been residing at the petitioning entity. The petitioner's articles of incorporation, from 2000, is proof enough that the petitioner has been capable of listing its own address as the beneficiary's address even when the beneficiary was not really there. At the same time, the record shows no general pattern of deception or concealment of material evidence. The 2000 articles of incorporation show the petitioner's address not only as the beneficiary's address, but as that of every officer of the corporation. It therefore appears that this address was provided simply as a convenience.

The record amply demonstrates that the petitioner has consistently paid the beneficiary since late 2002. There is no evidence that the beneficiary has earned income from any other source; the beneficiary's own income tax returns report no income beyond his earnings from the petitioning entity. Similarly, there is no affirmative evidence that the beneficiary resided anywhere other than the petitioning entity during the 2003-2005 qualifying period. Ideally, the more concrete evidence the petitioner can provide, the better, but the evidence that the petitioner has managed to provide has been internally consistent and compatible with a finding of eligibility. The record, on balance, shows that the petitioner has been supporting the beneficiary. Because the petitioner has submitted tax records and other materials, the assertion that the petitioner has employed the beneficiary does not rest solely on the petitioner's unsupported claims. We find that the petitioner has established, by a preponderance of evidence, that the beneficiary continuously worked for the petitioner throughout the two-year qualifying period, and we withdraw the director's finding to the contrary.

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 met that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.