

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



C1

FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

AUG 21 2008

WAC 07 080 53203

IN RE:

Petitioner:

Beneficiary:



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:

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.

2 Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The alien beneficiary seeks classification 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 senior pastor of Iglesia Triunfante de Jesucristo. The director determined that the petitioner had failed to provide requested evidence and therefore had not established that it has made a qualifying job offer to the beneficiary, that it has the ability to pay the beneficiary the proffered wage and 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.

On appeal, the petitioner submits additional documentation in support of the appeal. However, because the petitioner failed to submit this evidence in response to the Request for Evidence, the AAO is precluded from considering it on appeal.

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 is whether the petitioner established that the beneficiary had been continuously employed in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who

(either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States.” The regulation 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.”

The regulation at 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 January 23, 2007. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a pastor throughout the two years immediately preceding that date. The petitioner, however, did not state the nature of proffered position or its religious denomination, nor did it provide any evidence with the Form I-360 petition.

On February 22, 2007, the director issued a Request for Evidence (RFE), and instructed the petitioner to submit all initial required evidence, including a detailed description of the beneficiary’s work experience and evidence of her having been compensated for her services, accompanied by appropriate corroborative documentation and copies of the beneficiary’s Internal Revenue Service (IRS) wage and tax statements for the two years prior to the filing date of the petition.

The petitioner, however, failed to submit any of the requested documentation and accordingly, the director denied the application on April 25, 2007. On that basis alone, the petition may not be approved. 8 C.F.R. § 103.2(b)(14).

On appeal, [REDACTED], a member of the board of directors of the petitioning organization, finally responds to the RFE and asserts that the beneficiary will be employed as a pastor. The petitioner submits documentation which describes its denomination as Evangelical. The petitioner asserts that the specific duties of the pastor include church administration, banking, baby dedications, water baptisms, communion services, marriage counseling, visitations in home, hospitals, jail and prisons, ordination of pastors and deacons, selection of leaders and funeral services. The petitioner summarizes some of the information requested in the RFE and submits some of the requested evidence, including copies of its Articles of the Church, financial documentation and lease agreement dated December 10, 2006. The petitioner also submits the beneficiary’s pay stubs for 2005 and 2006, wage and tax statement for 2005, Certificate of Ordination, and letters from individuals describing the beneficiary’s work history.

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence in response to the RFE and now submits it on appeal. The AAO will not consider this untimely submission for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

The petitioner failed to establish that it has made a qualifying job offer to the beneficiary, that it has the ability to pay the beneficiary the proffered wage and 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 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.