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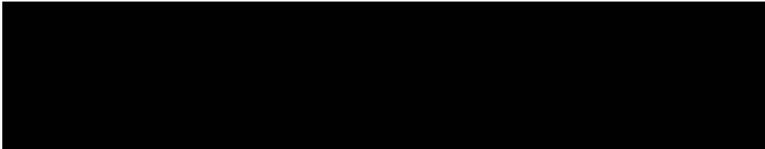


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: SEP 04 2008
WAC 07 079 52551

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

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:



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
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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

Although Filipino International Fellowship (FIF) purports to be the petitioner, the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, and the Form G-28, Notice of Entry of Appearance as Attorney or Representative, are signed by the beneficiary. Therefore, the beneficiary will be considered as the self-petitioner. The petitioner 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 an associate pastor. The director determined that the petitioner had not established that he had the required two years of membership in the denomination.

On appeal, counsel asserts that the director “may not understand the organizational structure of what is commonly referred to as ‘born again’ Christians.” The petitioner submits additional documentation in support of the 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 issue presented on appeal is whether the petitioner established that he had been a member of the same religious denomination as his prospective employer for at least two years immediately preceding 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 at 8 C.F.R. § 204.5(m)(2) defines religious denomination as:

[A] religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship and religious congregations, or comparable indicia of a bona fide religious denomination. For the purposes of this definition, an inter-denominational religious organization which is exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 will be treated as a religious denomination.

The articles of incorporation for FIF, the beneficiary’s prospective employer, indicate that it is affiliated with the Missionary Church. In a November 10, 2006 letter accompanying the petition, officers of FIF, stated that the beneficiary “is an ordained minister with the Alliance of Bible Christian Communities of the Philippines (ABCCOP) with the same theological and doctrinal beliefs” of the prospective employer. The petitioner submitted a copy of an October 20, 2008 “certification” from the ABCCOP, certifying that he was a pastor of Bauan Bible Christian Church (BBCC), and was an ordained minister of the ABCCOP, a member of the Philippine Council of Evangelical Churches, Inc. (Council) The certification indicated that the petitioner had been ordained on November 29, 1997.

In response to a request for additional evidence (RFE), the petitioner submitted an April 12, 2007 letter from Missionary Church certifying that FIF is a member of the Western District of Missionary Church, Inc., which is a “not-for-profit Bible based evangelical denomination.” In an April 4, 2007 letter, the president and district superintendent of the Western District of Missionary Church stated that the Missionary Church “is a Bible based denomination whose doctrine is founded in Evangelical Theology.”

The petitioner also submitted an undated certification from the Council, signed by its national director, which certified that BBCC “is a Bible-based church, and evangelical in its theology, beliefs and practice.” The national director also stated that the BBCC is an active member in good standing with the Council and that the petitioner had been its pastor for the past 16 years. The national director further stated that the petitioner “can freely fellowship and minister to any evangelical church in the United States as part of the reciprocity of member bodies.” On appeal, the petitioner submits documentation indicating that one of the founders of the FIF was also a founder of the BBCC.

The evidence of record establishes that the petitioner, his current employer and his prospective employer share the same theological and doctrinal beliefs and are members of the same religious denomination. The record therefore sufficiently establishes that the petitioner has the required two years of membership in the religious denomination, and we withdraw the director’s decision to the contrary.

Nonetheless, the petition may not be approved as the record now stands.

The record does not establish that the petitioner 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) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on January 25, 2007. Therefore, the petitioner must establish that he was continuously working as a pastor throughout the two-year period immediately preceding that date.

A November 8, 2006 certification from BBCC indicates that the petitioner had served as pastor of the church from 1990 to the “present” and received a monthly salary of P21,000. Documentation submitted in response to the RFE indicated that FIF was unable to provide a work history for the petitioner in the United States, as he had not been employed by the organization. In further response to the RFE, the petitioner resubmitted a copy of the certification from BBCC. The petitioner submitted no documentation to corroborate that he was paid for his services at BBCC. Further, the record reflects that the petitioner arrived in the United States on September 7, 2006. The petitioner submitted no evidence of any employment in the United States subsequent to his entry.

On remand, the director shall address the petitioner’s continuous employment during the qualifying period.

Additionally, the record does not establish that the petitioner has established that his prospective employer has the ability to pay the proffered wage.

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.

In their January 17, 2007 letter accompanying the petition, officers of the prospective employer stated that the petitioner would be paid \$24,000 annually, provided a housing allowance of \$14,000, health and medical insurance of \$6,500 and a one-time start up allowance of \$4,000.

The petitioner submitted copies of Internal Revenue (IRS) Form 941, Employer's Quarterly Federal Tax Return, for all quarters in 2006, a copy of IRS Form 1096, Annual Summary and Transmittal of U.S. Information Tax Returns, and a copy of IRS Form W-3, Transmittal of Wage and Tax Statements, for the year 2006. The petitioner also submitted copies of the prospective employer's State of California form DE 6, Quarterly Wage and Withholding Report, for all quarters of 2006 and State of California form DE 7, Annual Reconciliation Statement, for 2006. These forms report wages or nonemployee compensation paid by the prospective employer in 2006. However, as the petitioner was not on the prospective employer's payroll or otherwise paid by the employer, these tax returns do not provide evidence of the prospective employer's financial position and therefore are not evidence of its ability to pay the proffered wage. The petitioner also submitted copies of the prospective employer's unaudited financial statements for 2006, including a year end statement, copies of the prospective employer's monthly bank statements for all of 2006, and a May 9, 2007 letter from the prospective employer's bank, certifying that the employer had a total balance of \$119,084.25 in various bank accounts.

The petitioner submitted no documentation to establish his prospective employer's continuing ability to pay the proffered wage as of January 25, 2007, the date the petition was filed.

On remand, the director shall address the ability of the prospective employer to pay the proffered wage.

This matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.