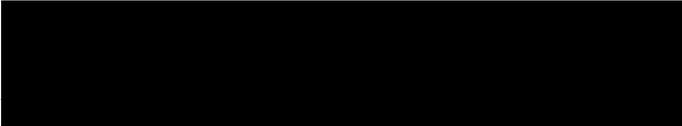


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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: AUG 09 2005
WAC 03 103 50256

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:

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.

Mari Johnson

Robert P. Wiemann, Director
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 petitioner is a 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 minister. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition, that the beneficiary was qualified for the position within the organization, or that the petitioner had the ability to pay the beneficiary the proffered wage.

On appeal, the petitioner submits a brief and additional documentation.

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 on appeal 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) 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 February 12, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister throughout the two-year period immediately preceding that date.

In its February 1, 2003 letter accompanying the petition, the petitioner stated that the beneficiary had worked as a pastor since 1992, and had served as senior pastor with the petitioning organization since 2000. The petitioner stated that the senior pastor's responsibilities include developing objectives and strategies for the church; conducting religious worship and performing other spiritual functions associated with beliefs and practices of the church's faith; providing spiritual and moral guidance; preparing and delivering sermons and other Bible studies; celebrating the Lord's Supper; performing baptisms, weddings, and funerals; writing policies and procedures; and coordinating activities with other churches. The petitioner did not state the specific compensation provided to the beneficiary, but indicated that with the beneficiary's full-time employment, he would "receive the usual compensation for pastor in the amount of \$1516.00 dollars per month and housing allowance."

In response to the director's request for evidence (RFE) dated November 12, 2003, the petitioner submitted copies of Forms W-2, Wage and Tax Statements, that it issued to the beneficiary in 2002 and 2003, reflecting wages of \$4,548 and \$15,160, respectively. In response to a second RFE dated April 29, 2004, the petitioner also submitted copies of the beneficiary's tax returns filed with the Internal Revenue Service (IRS) for the years 2001, 2002, and 2003. The returns reflect that the beneficiary reported adjusted gross income of \$11,059 in 2001, \$8,795 in 2002, and \$15,160 in 2003. The 2001 and 2002 returns indicate that the beneficiary reported his income as deriving from self-employment, and did not report any wages paid by the petitioner in 2002.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore, that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

In the rare case where volunteer work might constitute prior qualifying experience, the petitioner must establish that the beneficiary, while continuously and primarily engaged in the traditional religious occupation, was self-sufficient or that his or her financial well being was clearly maintained by means other than secular employment.

On appeal, the petitioner reiterated its claim that the beneficiary had worked for the petitioning organization in a full-time capacity for the two years immediately preceding the filing of the visa petition, stating that although the salary was not high, the beneficiary was paid for his services. The petitioner further stated that it did not issue the beneficiary a Form W-2 in 2001, as the beneficiary was paid in cash and the "payroll paycheck" only started in 2002. The petitioner submitted a copy of the beneficiary's 2001 Form 1040, on which he listed his occupation as minister and reported income of \$14,400.

The documentation of the beneficiary's financial compensation from the petitioner does not reflect that he was paid for full-time employment with the petitioner. Although the beneficiary reported income of \$14,400 from self-employment in 2001, the petitioner submitted no documentary evidence, such as pay vouchers, receipts or any other evidence that it compensated the beneficiary for services performed in 2001. The petitioner issued a Form W-2 in 2002 reflecting that it paid the beneficiary \$4,548 in wages; however, the beneficiary reported adjusted gross income of \$8,795. The petitioner submitted no evidence to explain this inconsistency. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Further, the evidence reflects that the beneficiary's income from the petitioner was well below the federal poverty guidelines of \$23,644 in 2001 and \$24,038 in 2002. The evidence is insufficient to establish that the beneficiary was not dependent upon secular employment for support.

The petitioner submitted no other documentary evidence to substantiate the beneficiary's employment with the petitioning organization during the two years preceding the filing of the visa petition. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The evidence is insufficient to establish that the beneficiary was not dependent upon secular employment for his financial support during the two-year period preceding the filing of the visa petition. The evidence is insufficient to establish that the beneficiary was continuously employed as a minister for two full years prior to the filing of the visa petition.

The second issue is whether the petitioner established that the beneficiary was qualified for the position within the organization.

The proffered position is that of a minister. The regulation at 8 C.F.R. § 204.5(m)(2) defines minister as:

[A]n individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

With the petition, the petitioner submitted a copy of a January 12, 2003 certificate indicating that the beneficiary received a Master of Divinity in Pastoral Ministry from the California Christian University. The petitioner also submitted copies of several documents in Spanish that are not accompanied by English translations. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. We note, however, that one of these documents appears to be a certificate of ordination issued to the beneficiary by the [REDACTED] "La Nueva Jerusalem [sic]." A previous petition filed on behalf of the beneficiary by the Iglesia Misionera La Nueva Jerusalem (WAC 96 107 51440), contained within the alien's A-file, includes a copy of a 1998 identification card certifying that the beneficiary was an ordained minister with that organization.

In response to the director's second RFE, the petitioner submitted a copy of a June 2004 certificate from the Latin University of Theology, reflecting that the beneficiary had received a Doctor of Theology in Pastoral Ministry. As this degree was awarded after the filing of the visa petition, it also has no evidentiary value in these proceedings. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971); 8 C.F.R. § 103.2(b)(12).

Nonetheless, based on the ordination certificate and the 1998 identification card, the record establishes that the beneficiary is an ordained minister and that he has been a member of the petitioning organization since 2000. Further, the record establishes that the beneficiary has served, at least on a part-time basis, as a pastor with the petitioning organization. The record sufficiently establishes that the beneficiary is qualified for the position within the organization.

The third issue to be discussed is whether the petitioner established that it had the ability to pay the beneficiary 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.

The petitioner stated that it would pay the beneficiary \$1,516 per month plus housing. As evidence of its ability to pay this salary, the petitioner submitted a copy of its 2003 Form 990-EZ, Return of Organization Exempt from Income Tax, which reflects net assets of \$57,903. We note that this return, submitted in response to the director's RFE of November 12, 2003, contains the original signatures of the preparer and the church's treasurer. On appeal, the petitioner submitted evidence that the return was filed with the Internal Revenue Service in May 2004. The petitioner also submitted copies of its 2003 profit and loss statement and balance sheet.

The evidence sufficiently establishes that the petitioner has the ability to pay the beneficiary the proffered wage. Nonetheless, as the petitioner has not established that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years preceding the filing of the visa petition, the petition may not be approved.

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.