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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

[Redacted]

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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: FEB 15 2005
WAC 02 278 51540

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:
[Redacted]

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

S 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 seeks classification of 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 be employed as an "Associate Pastor."

The director denied the petition on January 9, 2004, finding that the petitioner failed to establish that the beneficiary was continuously employed during the two years preceding the filing of the petition in the same position as being offered by the petitioner.

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 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 regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file an 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."

8 C.F.R. § 204.5(m)(4) states that each petition for a religious worker must be accompanied by a job offer from an authorized official of the religious organization at which the alien will be employed in the United States. The official must describe the terms of payment for services or other remuneration.

The issue to be examined is whether the petitioner has demonstrated that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for at least the two years preceding the filing of the petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that “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 petition was filed on September 12, 2002. Therefore, the petitioner must establish that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation from at least September 12, 2000.

The Form I-94, Arrival and Departure Record, indicates that the beneficiary initially entered the United States on February 2, 2001 as a B-2 nonimmigrant with authorization to remain in the United States until August 1, 2001. The beneficiary subsequently received approval to change his nonimmigrant status to that of an R-1 nonimmigrant with authorization to remain in the United States from October 15, 2001 to July 31, 2004. Thus, the beneficiary’s experience in the United States, by itself, is not sufficient to meet the requirements of the regulation.

In support of the petition, the Reverend Chul Hoon Chang, Senior Pastor of the petitioning church, submits a letter detailing the beneficiary’s offered position and his qualifying experience. Rev. Chang states:

The Assistant Pastor will perform traditional religious activities such as presiding over worship services, preaching sermons, and offering prayers and spiritual counseling to the members of our congregation, especially in the absence of the Senior Pastor of the church. In addition, the Associate Pastor will make home visitations to the members of our church and preside over home Bible studies. The Associate Pastor will also preside over the Sunday School Department and minister to the young members of the church.

Pastor [REDACTED] is an ideal candidate for this position. Pastor [REDACTED] has completed over 4 years of seminary studies and has received a Bachelor of Theology degree from Capital Baptist Theological Seminary in Kyunggido, Korea. He received his pastoral ordination from the Korea Baptist Convention in Seoul, Korea. He has over 3 years of experience as a pastor from Seoul Dae Heung Baptist Church in Korea. Since his entry into the U.S. in February of 2001, he has attended our church. Since November of 2001, Pastor [REDACTED] has begun his full-time paid employment at our church in R-1 status as the temporary Associate Pastor. We are very pleased with [REDACTED] thus far, and therefore we submit this letter in support of our petition.

[REDACTED] is currently compensated at a monthly salary of \$1600.

The director requested further evidence of the beneficiary’s work experience during the requisite two-year period, including “a breakdown of duties performed . . . the employer’s name, specific job duties, the number of hours worked, remuneration, level of responsibility and who supervised the work.” The director also requested evidence that the beneficiary was compensated for work performed, either through “W-2 forms, pay stubs, or . . . other forms of remuneration.”

In response, counsel for the petitioner asserts that the beneficiary “was employed as a pastor for Seoul Daeheung Baptist Church from April 1994 to January 2001.” The only evidence submitted to support this

assertion is a copy of a document entitled, "Certificate of Experience," signed by [REDACTED] President of the Korea Baptist Convention. There is no indication of [REDACTED] connection to the Seoul Daeheung Baptist Church or an explanation for how he is responsible for documenting the beneficiary's work experience in Korea. Though counsel indicates the beneficiary worked for the Seoul Daeheung Baptist Church for more than six years, not a single piece of evidence has been submitted to show the beneficiary's paid services during this time. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

As evidence of the beneficiary's work for the petitioner after the beneficiary's entry into the United States, the petitioner submits copies of the beneficiary's 2001 and 2002 Form W-2 Wage and Tax Statements and several checks. The W-2 forms reflect that the petitioner paid the beneficiary \$3,200 and \$19,200, respectively. The checks issued by the petitioner to the beneficiary cover the period from January 26, 2003 through May 27, 2003 for \$1477.60. Rather than stating the checks are remuneration for services or salary checks, the checks state "Honorarium."

The director afforded the petitioner a second opportunity to establish the beneficiary's continuous, full-time work during the two-year period immediately prior to the filing of the petition, as well as evidence of the petitioner's ability to pay. The director noted that evidence of ability to pay "shall be either in the form of copies of annual reports, federal tax returns (with appropriate signature(s)), or audited financial statements."

In response, the petitioner submitted copies of checks issued to the beneficiary in the amount \$1477.60, covering the period from November 2001 through September 2003.

As it relates to the petitioner's ability to pay, counsel states "the [p]etitioner is able to afford the salary given by the fact that the church maintains approximately \$20,000 in average balance in its checking account, as well as approximately \$12,000 in savings." Additionally, the petitioner submitted a copy of its "2002 Final Financial Report" and three copies of bank statements for August, September, and October of 2003.

The director denied the petition finding there was not sufficient evidence to establish the beneficiary's continuous, full-time work during the requisite two-year period.

On appeal, counsel acknowledges that the beneficiary was not continuously employed during the requisite period but cites two Board of Immigration Appeals precedent decisions and one Citizenship and Immigration Services memo to support his assertion that the reason the beneficiary was not employed was beyond his control, that he did not intend to abandon his "vocation," and that his absence was not due to involvement in activities inconsistent with his attempt to continue his vocation. Counsel states:

During the eight-month period of February of 2001 to October 2001, the [b]eneficiary could not be employed since he was in B-2 status. He had no intention of abandoning his ministry. In fact, in July of 2002, he submitted an application for change of status to religious worker (R-1) visa. During the eight-month unemployment period, the [b]eneficiary waited for his R-1 visa to be approved. He did not engage in any activities or employment that is inconsistent with his calling as a minister. In fact documents submitted previously should show that the [b]eneficiary was engaged in activities consistent with his calling to ministry ever since he entered seminary in Korea in March of 1993.

Counsel's reliance on the precedent decisions and the supporting memo is without merit. The cases cited by counsel, *Matter of M-*, 1 I&N Dec. 147 (BIA 1941) and *Matter of B-*, 3 I&N Dec. 162 (BIA 1948), involve Polish rabbis who were in an involuntary exile from their country and forced to abandon their vocation due to the Nazis' invasion of Poland. Such circumstances, where one of the applicants was actually forced into a concentration camp in Germany, are wholly inapplicable to the facts of the instant case where the beneficiary voluntarily left his home for a vacation in the United States and chose to remain in the United States under his own volition. There were no circumstances which prevented the beneficiary from returning to his country to continue his work as an associate pastor while awaiting approval of his nonimmigrant visa. Thus, we do not find the facts support counsel's assertion that the beneficiary's lack of employment was caused by "circumstances beyond his control" at it was his choice to remain in the United States and await approval of his R-1 nonimmigrant visa rather than return home.

Even if we were persuaded by counsel's argument, the record continues to lack sufficient evidence regarding the beneficiary's employment in Korea from September 12, 2000 up to the time he entered the United States in February 2001. As noted previously, the sole piece of evidence to document the beneficiary's claimed six years of experience is the unsubstantiated "Certificate of Experience." No further evidence of the beneficiary's work experience in Korea has been submitted on appeal.

Beyond the decision of the director, the petitioner has not established its ability to pay the beneficiary. Though the director asked for specific documents to demonstrate the petitioner's ability to pay, the petitioner failed to submit such documents.

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.*

[Emphasis added].

As noted previously, as evidence of ability to pay, the petitioner submits a copy of its "2002 Final Financial Report" and three copies of bank statements for August, September, and October of 2003. As the financial report is signed by Reverend Chul Hoon Chang, it is based upon the petitioner's own assertions and is not considered an "audited" financial statement. Further, bank statements are not listed among the types of evidence required by the regulation. Even if acceptable, the statements cover only a three-month period from August 2003 to October 2003. As such, they do not sufficiently establish the petitioner's ability to pay the beneficiary from the time of filing in September 2002, continuing to the time the beneficiary obtains lawful permanent residence.

Though the petitioner is free to submit other kinds of documentation, such submissions must only be *in addition to*, rather than *in place of*, the type of documentation required by regulation. In this instance, the petitioner has not submitted any of the required types of evidence. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

For this additional reason, the petition could not be approved.

While the determination of an individual's status or duties within a religious organization is not under the purview of CIS, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.