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U.S. Citizenship
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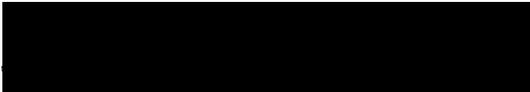
Office: CALIFORNIA SERVICE CENTER

Date: FEB 24 2005

WAC 02 288 51816

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:

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The alien beneficiary is the founder, pastor, and CEO of the petitioning entity. The exact nature of the entity is not entirely clear from the record. One company official states the petitioner offers “a religious worship service” at the same address as a “housing programs facility of 13 rooms with 26 beds. We offer food programs combined with supportive services to Domestic Violence victims and Substance Abuse counseling services.” The petitioner 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). The director determined that the petitioner had not established (1) that it holds qualifying tax-exempt status as a religious organization; (2) that the beneficiary had the requisite two years of membership in the petitioner’s religious denomination or continuous work experience in the position immediately preceding the filing date of the petition; or (3) that a bona fide job offer existed, such that the beneficiary would not be solely dependent on outside employment.

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 concerns the petitioner’s tax-exempt status. 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.

The beneficiary, the founder, pastor, and CEO of the petitioning entity, originally stated that the petitioner had applied for recognition of tax-exempt status, and that documentation of such recognition would be forthcoming “as soon as all original documents are received by me from IRS.” The petitioner applied for recognition of tax-exempt status a few weeks before filing the petition.

Subsequently, the petitioner submitted documentation from the Internal Revenue Service indicating that the petitioner’s tax-exempt status derives from classification not under section 170(b)(1)(A)(i) of the Internal Revenue Code of 1986 (the Code), which pertains to churches, but rather under section 170(b)(1)(A)(vi) of the Code, which pertains to publicly-supported organizations as described in section 170(c)(2) of the Code, “organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes,” or for other specified purposes.

The director, in denying the petition, stated that, because the petitioner is not classified as a “church” under section 170(b)(1)(A)(i) of the Code, the petitioner therefore cannot be considered a qualifying religious organization. We reject this overly restrictive reading of the regulations. The Code and its implementing regulations do not specifically define “religious organization,” but we note that Internal Revenue Service Publication 1828, *Tax Guide for Churches and Religious Organizations*, specifically states that the term “religious organizations” is *not* strictly limited to churches: “Religious organizations that are not churches typically include nondenominational ministries, interdenominational and ecumenical organizations, and other entities whose principal purpose is the study or advancement of religion.” *Id.* at 2. The proper test, therefore, is not whether the intending employer is a church *per se*, but rather an entity whose principal purpose is the study or advancement of religion.

If there were no other grounds for denial, it would be appropriate to remand the matter to the director, in order to allow a proper determination regarding the nature of the petitioner’s tax-exempt status. Because we are dismissing this appeal for other, unrelated reasons, however, such a remand would serve no useful purpose here.

We note that the petitioner has submitted documentation indicating that the State of California recognizes the petitioner as a religious organization, but the statutory and regulatory standard is *federal* recognition, and therefore the state documentation is not *prima facie* evidence of qualifying status.

The next issue regards the beneficiary’s activities during the two years prior to the petition’s filing date. 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.” During that same period, the beneficiary must have “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)(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 membership in the denomination and experience in the religious vocation, professional religious work, or other religious work. The petition was filed on September 26, 2002. Therefore, the petitioner must establish that the beneficiary was a member of the same denomination and continuously performing the duties of the proffered position throughout the two years immediately prior to that date.

The petitioner's articles of incorporation were filed on July 11, 2002, eleven weeks before the petition was filed. The beneficiary discusses his past work:

[S]ince Feb. 2000, [I provided] 30 months of my services as minister with Worldwide Gospel Ministries Inc. The Church did not make any payment or provide any other form of remuneration to me. . . .

I was used for months with no pay because of my immigration status. . . . [T]he church did not provide for my food, no provision for my housing and clothing. . . . I finally left Worldwide Gospel Ministries on July 28, 2002 to organize and begin the operations of [the petitioning entity], now a bona fide Christian Religious Corporation. . . . [At] Worldwide Gospel Ministries, all my full time activities were considered as Volunteer without pay.

The petitioner claims that, at Worldwide Gospel Ministries, collections were undertaken on his behalf but were intercepted and kept by an official of that organization. The petitioner also asserts that he has spent the "last 4 years . . . continuously study[ing]" to qualify as a "Doctor of Divinity and Master of Divinity with Licenses and ordination certifications." The beneficiary's certificate of ordination was issued by First Congregational Church of Lawndale (California) on July 28, 1999. A transcript shows that the beneficiary studied for his master's degree at International Theological University until September 3, 2001. The beneficiary received his Doctor of Divinity degree from Progressive Universal Life Church on April 28, 2002, five months before the filing date.

In order to qualify for immigration benefits as a special immigrant religious worker, the beneficiary must have worked continuously during the qualifying period, performing essentially the same duties in which the petitioner seeks to employ him in the future. The regulations at 8 C.F.R. § 204.5(m)(1) and (3)(ii)(A) require that the beneficiary must have carried on *the* vocation or occupation, rather than *a* vocation or occupation, indicating that the work performed during the qualifying period should be substantially similar to the intended future religious work. The underlying statute, at section 101(a)(27)(C)(iii), requires that the alien "has been carrying on such . . . work" throughout the qualifying period. An alien who seeks to work in occupation A has not been carrying on "such work" if employed in occupation B for the past two years. Judging from the circumstances described by the beneficiary, it is not readily apparent that his current work as head of the petitioning organization is largely similar to his prior work on behalf of Worldwide Gospel Ministries.

The director requested additional information regarding the beneficiary's work for the petitioner. In response, [redacted] the petitioner's program director, stated "[t]he beneficiary currently is the Chief Executive Officer running the day-to-day activities and operations of" the petitioning entity. The same letter offers the following "Work History":

September 26, 2000 to September 26, 2002

Assistant Pastor –
Worldwide Gospel Ministry Inc. under Rev. [redacted]
Teacher/Preacher, Manager Food Community Programs, Church
Administration and engagement in all day to day and weekly activities of the Church.
No Monetary Compensation.

July 2002 – September 2002
Pastor – [the petitioning entity]

Program Counselor/Visiting Minister – Christ Channel Sober Living
Homes and Adult Day Care Visitation Ministries
Donations received from [these] Outreach Programs average \$25 per hour from the Outreach
Group activities and counseling sessions.

The petitioner has submitted nothing from Worldwide Gospel Ministry to corroborate the above claims. Leaving aside the lack of any actual evidence that the beneficiary performed the functions described above, there appear to be significant differences between the beneficiary's past and present duties. The record offers no basis to conclude that the beneficiary has performed the duties of the proffered position continuously throughout the two-year qualifying period.

Regarding the denominational issue, 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

Bona fide nonprofit religious organization in the United States means an organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations, or one that has never sought such exemption but establishes to the satisfaction of the Service that it would be eligible therefor if it had applied for tax exempt status.

Bona fide organization which is affiliated with the religious denomination means an organization which is closely associated with the religious denomination and which is exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

Religious denomination means 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, 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.

[REDACTED] simply identified the denomination as “evangelical,” which is not an organized or recognized denomination. Rather, “evangelical” is a descriptive term that applies to a broad variety of Christian denominations. The petitioner indicated that “[n]o connection exist[s] between [the petitioner] and Worldwide Gospel Ministries Inc.,” so there is no claim that any formal or denominational ties exist between the petitioner and the entity where the beneficiary previously worked. Similarly, the petitioner asserted there is “no connection” between First Congregational Church of Lawndale, which ordained the beneficiary, and the petitioning entity.

There is no evidence that the petitioning entity is affiliated with any religious denomination outside of itself. Even if we consider the petitioner to constitute its own “denomination,” it remains that the petitioner had existed for only a few months as of the filing date. Therefore, it was mathematically impossible for the beneficiary to have had two years of membership in the denomination as of the filing date.

We turn, finally, to the issue of the job offer. 8 C.F.R. § 204.5(m)(4) requires the petitioner to show how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration), or how the alien will be paid or remunerated if the alien will work in a professional

religious capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support. The initial filing offered no information about the terms of payment or remuneration. Subsequently, the petitioner indicated that the beneficiary currently resides at the petitioner's residential facility, and will eventually receive a salary (of unspecified amount) once the petitioner is more firmly established.

The director determined that the petitioner had failed to set forth credible terms of employment to demonstrate that the beneficiary will not be solely dependent on supplemental employment or solicitation of funds for support. In discussing the petitioner's response to this finding, we also discuss an issue not raised by the director, specifically the petitioner's ability to pay the beneficiary's 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.

Here, the petitioner has not even specified how much the beneficiary is to be paid, let alone provided sufficient evidence to establish that it can afford to pay that amount. On appeal, [REDACTED] identified as an "authorized official" of the petitioning entity, states that the beneficiary "has no other job," and that the "last one month bank statement of account is an evidence that the beneficiary does not depend on any other supplemental income or solicitation of funds for support." The bank statement in question shows that the petitioner carried a balance of only \$741.93 as of August 31, 2003. A Form 990 Return of Organization Exempt from Income Tax indicates that the petitioner's total revenue for 2002 was \$12,277. The petitioner claimed to have spent this entire amount on "management and general" (there were no reported expenses for "program services"). These expenses, in turn, consisted entirely of the following four itemized expenses:

Occupancy	\$6,000
Office expenses, utilities and telephone	1,987
Organizational expenses	3,000
Pick up and delivery vehicle	1,290

The Form 990 return lists the beneficiary as "president" of the petitioning organization, and specifies that he is not paid. The return further indicates that the petitioner has no liquid assets. The only assets claimed at all consisted of depreciation of "land, buildings and equipment." The petitioner claims, on appeal, that it "presently accommodates 37 residents." The closest thing to evidence that the petitioner presents to support this claim is a series of photographs of a motel-like structure decorated with signs showing the petitioner's logo. The petitioner has not explained how it can reasonably accommodate 37 people and provide services such as drug abuse treatment for \$6,000 a year.

The petitioner asserts that the beneficiary has not worked at any other job while working for the petitioner. The beneficiary had earlier claimed that he received no salary, no housing, and no food while working for Worldwide Gospel Ministries. Nevertheless, he must have had some source of food and lodging during that time, even if the petitioner has not disclosed what that source is. If a religious 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).

Given the complete lack of evidence as to how the beneficiary has supported himself since 2000, and the fact that the petitioner's income appears to be insufficient to provide for the beneficiary's support, we conclude that the petitioner has not set forth a qualifying job offer or demonstrated its ability to remunerate the beneficiary.

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.