



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: JAN 04 2005
SRC 01 117 51001

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:

PUBLIC COPY

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

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas 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 or that the position qualified as that of a religious worker. The director further determined that the petitioner had failed to establish that it had extended a qualifying job offer to the beneficiary, or that it had the ability to pay the beneficiary a wage.

On appeal, the petitioner submits a brief. The petitioner indicated that it would submit a separate memorandum of law within 30 days following the date of the appeal. However, as of the date of this decision, more than 13 months after the appeal was filed, no further documentation has been received by the AAO. Therefore, the record will be considered complete as presently constituted.

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 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 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 March 1, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister throughout the two-year period immediately preceding that date.

The petitioner states that it wishes to employ the beneficiary as its children's minister. It stated that her duties would include conducting the children's worship and Bible study services, and selecting and preparing the children's choir material.

In response to the director's request for evidence (RFE) dated June 19, 2003, the petitioner stated that the beneficiary would also be responsible for teaching at "CAPEC" – a course given by the petitioner "for the purpose of perfecting children's teachers." The petitioner also stated that the beneficiary was currently performing the duties of the proffered job and "has worked voluntarily at [the petitioning organization] since she entered the U.S."

With the petition, the petitioner submitted an October 4, 2000 letter from the Evangelical Assembly of God Church in [REDACTED] Brazil, which states that the beneficiary is a member of the church, and that from 1997 through the date of the letter, had been "dedicating her time as [REDACTED] Vacation Bible School) and also conducts the [REDACTED]. A September 15, 2000 "declaration" from Maria Ilda B. De Moura of the [REDACTED] that the beneficiary "worked in this School Unit in the Period of March from 1996 to May 1999 exercising [sic] the teacher's [sic] of this pre-school."

In response to the RFE, the petitioner submitted a letter from [REDACTED] pastor of the Assembly of God Evangelical Church, also in [REDACTED]. The letter states that the beneficiary "is a member and occupied the position of minister of the children and regent of the Children Chorus from December 1986 to May 1999, having participated as a teacher in the summer break bible school and Sunday school in others [sic] AGEC in this same period."

None of the documents submitted by the petitioner indicate that the beneficiary was employed full-time in any capacity with the organizations or was compensated for her services. The petitioner stated in its letter accompanying its response to the RFE that "[t]he form of compensation given to our Ministers is to provide him or her with basic necessities . . . and very often they receive officers from Church members during Sunday services." In response to the RFE, the petitioner stated that those church members who "are working but their

petition is still pending in [CIS] usually receive their salary from affiliated churches in Brazil, but they also receive offers given by Church members in Assembly of God Bethlehem Ministry. Those offers are voluntary money given. [The beneficiary] is not paid by an affiliated Church in Brazil because she receives monthly money from the rent of apartments in Brazil.”

The petitioner submitted receipts that it stated were for the apartments in Brazil, presumably leased by the beneficiary. However, the receipts attached do not mention the beneficiary and are not accompanied by an English translation.¹ A document, which appears to be a receipt for money signed by the beneficiary in August 1999, is also not accompanied by an English translation.

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.

¹ The regulation at 8 C.F.R. § 103.2(b)(3) requires that documents submitted in a foreign language “shall be accompanied by a full English translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.”

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 states that the beneficiary "performs the same kind of work that [she] was performing in Brazil when she received a monthly salary. [Since entering the United States], she has been fully supported by the Church. She is waiting her petition to be approved by [CIS] so that her name can be included in the Church's payroll." This statement is inconsistent with previous statements by the petitioner that it compensates its ministers only with the basic necessities, which it stated it is already providing to the beneficiary. 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).

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.

According to 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work in a religious occupation. The director noted that while the petitioner stated that the proffered position was that of children's minister, its organizational chart reflects that someone else holds that particular position and that the beneficiary is listed under children's choir ministry. The director determined that the record was unclear as to the exact position being offered to the beneficiary.

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.

On appeal, the petitioner stated that the proffered position is that of children's minister at the Lighthouse Point location, and that the person listed in that position on the organizational chart "is the Children's Minister of the Bethlehem Ministry and coordinates all activities that are related to this Ministry in all 26 congregations in the United States." However, the evidence submitted does not corroborate this statement and does not explain why the beneficiary is listed under a music ministry.

In documentation submitted with the petition, the petitioner submitted an organizational chart listing the beneficiary as children's minister. In response to the RFE, the petitioner submitted a more comprehensive picture of its organization, and a different organizational chart for its Lighthouse Point, Florida entity. That chart clearly lists the beneficiary under the category of music minister. As noted above, it is the petitioner's responsibility to resolve inconsistencies in the record by independent objective evidence. *See Matter of Ho, id.* A statement unsupported by documentary evidence does not meet the petitioner's burden of proof.

We note that the petitioner lists as one of the duties of the proffered position the selection and preparation of the children's choir material and, according to the letter from the church in Santa Isabel, the beneficiary was in charge of the children's choral.

The evidence does not establish that the beneficiary is a minister within the meaning of the regulation, and none of her alleged prior experience involves traditional ministerial work. The petitioner states on appeal that the proffered position "is not an ecclesiastic position within the church. The person who is in charge of that position neither baptizes the church's members nor celebrates weddings. So there is no necessity for the Children's Minister to be ordained." The petitioner has not provided a work schedule to indicate the time the beneficiary is expected to devote to each of her assigned tasks. We concur with the director that the record is unclear as to the exact nature of the position being offered to the beneficiary.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions would reasonably be expected to perform services directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

CIS therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

The petitioner has not established the exact nature of the proffered position or that it is traditionally a permanent, full-time salaried occupation within its denomination. The evidence is insufficient to establish that the proffered position is a religious occupation within the meaning of the statute and regulation.

The director determined that, as the petitioner had not established that the proffered position is a full time occupation or that it is a religious occupation within the meaning of the regulation, it had not extended a qualifying job offer to the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

On appeal, the petitioner states "as soon as the BCIS approves the beneficiary's petition her schedule will be as follows: From Monday to Friday the beneficiary will work from 9:00 am to 5:00 pm. She will also conduct the Children's Workshop Services on Sundays from 5:00 pm to 7:00 pm."

According to the petitioner, the beneficiary is currently performing the duties of the proffered position. As such, one would expect her to be already working a full-time schedule. The fact that she is not currently doing so indicates that the duties of the position will not provide the beneficiary with permanent full-time employment in the future. As it has not been established that the proffered position is a religious occupation within the meaning of the regulation, the petitioner has failed to establish that it has extended a qualifying job offer to the beneficiary.

The director also determined that the petitioner has not established that it has 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.

In a "Declaration of Income," [REDACTED] president of [REDACTED], the petitioner's parent organization in Brazil, stated, "We clarify that the Evangelical Church Assembly of God in [REDACTED] is the provider of the financial support for the referred Minister for living expenses and sustenance of hers [sic] and her family as long as they are residing in this country and will monthly send to her the amount of US\$ 1,500." Nonetheless, the regulation requires that the ability to pay the proffered wage must be established by the prospective U.S. employer.

With the petition, the petitioner submitted copies of a set of balance sheets for December 2000, and January and February 2001, and another set of balance sheets for November and December 2000 and January 2001. As the balance sheets for December 2000 reflect different figures, it is unclear as to which documents are accurate. The petitioner also submitted copies of its monthly checking account statements for November through December 2000 and January 2001.

In response to the RFE, the petitioner submitted financial documentation for 2001, 2002 and 2003 consisting of balance sheets and copies of monthly checking account statements. It also submitted copies of its Form 990, Return of Organization Exempt from Income Tax for the years 2000 and 2001. The regulation states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. In this instance, the petitioner submitted copies of its income tax returns.

The petitioner's 2001 tax return reflects net assets or fund balances at the end of the year of negative \$967,828 and cash assets of negative \$69,617. Although the return reflects total assets of \$1,219,109, it also reflects fixed or long-term assets (land, buildings, and equipment) of \$1,282,906.

The evidence does not establish that the petitioner had the continuing ability to pay the beneficiary the proffered wage from the date the visa petition was filed.

The petitioner stated that the beneficiary entered the United States on a B-2, temporary visitor for pleasure, visa. The director stated that it could not be determined that the beneficiary's sole purpose in entering the United States was to work for the petitioner. The regulation does not require that the alien's initial entry into the United States be solely for the purpose of performing work as a religious worker. "Entry," for purposes of this classification, would include any entry under the immigrant visa granted under this category or would include the alien's adjustment of status. We withdraw this statement by the director.

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.