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U.S. Citizenship
and Immigration
Services

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FILE: LIN 04 046 52630 Office: NEBRASKA SERVICE CENTER Date:

JUN 23 2005

IN RE: Petitioner:
Beneficiary:



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, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Acting Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a conference of Seventh-day Adventists. 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.

On appeal, counsel 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 issue presented 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 December 8, 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 letter of October 7, 2003, the petitioner stated that the beneficiary had been ordained a minister in the Seventh-day Adventist church in 1987, which gave him the authority to "administer all the responsibilities of a Seventh-day Adventist pastor." According to the petitioner, the beneficiary enrolled in Andrews University in Berrien Springs, Michigan in September 1995, where he earned his Master of Divinity in Religion in 1998. In September 1998, the beneficiary continued his matriculation at Andrews, where he pursued a doctor of philosophy degree in Old Testament Exegesis. According to the petitioner, the beneficiary was still enrolled in this program as of the date of its letter.

The petitioner did not indicate that the beneficiary was continuing his work as a minister while he was enrolled at the school. The beneficiary's curriculum vitae indicates that he lectured at three Bible conferences in October 2002 in Russia and Belarus, and taught "an intensive course on Pentateuch" in Zaoksk, Russia in July 2001. The beneficiary's résumé does not reflect any other ministerial work during the qualifying two-year period.

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).

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).

Evidence that a practicing ordained minister who attends school to further his or her education in the religious vocation, and who continues to work in the vocation while attending school, may be sufficient to establish that there has been no break in the continuity of the work experience required by the statute and regulation.

On appeal, the petitioner submits a November 11, 2004 letter from [REDACTED] a professor in the Old Testament Department of Andrews University. [REDACTED] states:

During his studies in the Seminary, [the beneficiary] continued his religious ministry through his volunteer activities (e.g., holding various leadership positions and teaching Bible classes) at his local Fairplain Seventh-day Adventist Church . . . As an ordained minister, he also preached at area churches on a regular basis. [He] also served as a graduate assistant in the Seminary on projects involving working on a Hebrew/Aramaic dictionary and Greek manuscripts and tutoring of biblical Hebrew grammar. This work was clearly religious in nature. [The beneficiary] has continued his religious ministry in the United States while completing his religious studies.

The petitioner submitted no documentary evidence to corroborate any work by the beneficiary during the qualifying two-year period. 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)). Further, the beneficiary's curriculum vitae does not include any of the work that [REDACTED] alleges that the beneficiary performed. 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).

On appeal, counsel asserts that the director denied the petition based on a lack of evidence that was not expressly requested in the request for evidence issued on May 27, 2004. Counsel further asserts that the director violated 8 C.F.R. § 103.2(b)(8) by failing to request further evidence before denying the petition. The cited regulation requires the director to request additional evidence in instances "where there is no evidence of ineligibility, and initial evidence or eligibility information is missing." *Id.* The director is not required to issue a request for further information in every potentially deniable case. If the director determines that the initial evidence supports a decision of denial, the cited regulation does not require solicitation of further documentation. The director did not deny the petition based on insufficient evidence of eligibility.

Furthermore, even if the director had committed a procedural error by failing to solicit further evidence, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has in fact supplemented the record on appeal, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence.

The evidence does not establish that the beneficiary was continuously engaged in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition.

Beyond the decision of the director, the petitioner has not established that the prospective U.S. employer has the ability to pay the beneficiary a 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 submitted a copy of its audited financial report for the years ending December 2000 and December 2001. The petitioner submitted no evidence of its financial status in 2003, the year the petition was filed.

According to the financial statement:

Seventh-day Adventist congregations within Minnesota have formed the Minnesota Conference of Seventh-day Adventists (the Conference) [the petitioner in this case] and the Minnesota Conference Association of Seventh-day Adventists, Inc. (the Association). Because the Conference and the Association are commonly controlled, their financial statements are combined (the Organization).

According to the petitioner, the proffered position is that of minister of the Bemidji Seventh-day Adventist Church and that the petitioner is prepared to pay a salary of \$3,575 per month for the beneficiary's services. The financial statement is unclear, however, as to whether each individual congregation within the petitioning organization is responsible for its individual debts including payment of the salaries of its ministers.

The regulation requires that the petitioner establish the ability of the prospective U.S. employer to pay the beneficiary the proffered wage. The petitioner submitted no evidence that the Bemidji Seventh-day Adventist Church, the beneficiary's prospective employer, meets this regulatory requirement, or alternatively, that the petitioning organization pays all of the obligations of its member congregations regardless of the individual member congregation's contributions to the organization.

The evidence does not establish that the beneficiary's prospective employer had the continuing ability to pay the proffered wage as of the date the petition was filed. The deficiency constitutes an additional ground for denial of the petition and dismissal of the appeal.

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.