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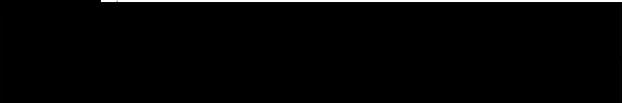
Date:

JUN 24 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:

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.

for Robert P. Wiemann, Director
Administrative Appeals Office

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 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 an associate pastor and youth minister. The director determined that the petitioner had not established that the beneficiary's sole purpose for entering the United States was to work for the petitioner, 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 it had extended a qualifying job offer to the beneficiary, that it had the ability to pay the beneficiary the proffered wage, that it qualified as a bona fide nonprofit religious organization, or that the beneficiary's sole purpose for entering the United States was to work for the petitioner.

On appeal, the petitioner submits 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 of appeal is whether the director properly found that the beneficiary had not entered the United States for the sole purpose of working for the petitioner.

The director stated that the record reflects that the beneficiary entered the United States by unknown means, and 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 to 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 to the immigrant visa. We withdraw this determination by the director.

The second 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 August 12, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as an associate pastor and youth minister throughout the two-year period immediately preceding that date.

In its July 30, 2002 letter accompanying the petition, the petitioner indicated that its petition was for an immigrant visa for the beneficiary as a "religious minister," and that the beneficiary would "live and preach and administer to the needs of the congregation." In an undated statement, the petitioner's pastor and its secretary referred to the beneficiary as "a Laborer Associated in our church from year 2000 to 2002," who "is practising [sic] his ministry in this place." The petitioner submitted a document labeled "Proposed Church Itinerary for Ministerial Work-Lay Worker." This list reflects duties of "congregational service," Bible studies and praise, visiting the sick and elderly, assisting the pastor in preparation for Sunday church services, street minister, and church services. The petitioner also submitted letters from the pastors of two other churches, who refer to the beneficiary as a minister. The petitioner submitted a copy of a year 2000 photographic identification card identifying the beneficiary as a licensed minister with the petitioning organization.

In response to the director's request for evidence (RFE) dated June 3, 2003, the petitioner stated that the beneficiary had served as an associate pastor and youth minister for the petitioning organization since January 2000. The petitioner stated that as associate pastor, the beneficiary substitutes for the pastor in the pastor's absence, "and does social activities like visiting the hospitals, counseling marriages and drug [addicts]." The petitioner stated that as youth minister, the beneficiary "gives teachings with biblical principles, he instructs them with the word of God. He also teaches them music and songs, so that they can be involved with the worship team." The petitioner also submitted an updated copy of the document "Proposed Church Itinerary for Ministerial

Work-Lay Worker,” adding the hours during which the duties were to be performed and adding the duty to work on a radio program.

The petitioner submitted copies of documents indicating that the beneficiary received a May 1997 ministerial diploma from the ██████████ Ministries. The petitioner also submits several flyers that refer to the beneficiary as a minister. However, as 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.

Although the identification card indicates that the beneficiary is a licensed minister, the petitioner submitted no evidence of a license or ordination of 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.

The petitioner submitted no evidence that the beneficiary is authorized to perform all of the duties of an authorized member of the clergy, including performing traditional sacerdotal duties such as performing marriage and funeral ceremonies or administering the sacraments.

We concur with the director's determination that the proffered position is that of a lay minister.

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.

The petitioner stated that the beneficiary began his association with the petitioning organization in January 2000. The petitioner submitted copies of flyers that appear to indicate that the beneficiary performed some services for the church in December 2000, September 2001 and September 2002. However, as noted above, these documents are not accompanied by English translations as required by the regulation at 8 C.F.R. § 103.2(b)(3). Therefore, the documents have no evidentiary value in these proceedings. In letters submitted with the petition, Pastor [REDACTED] of Jesucristo es la Respuesta, and Pastor [REDACTED] of Mision Cristiana Internacional, Inc., indicate that they have known the beneficiary as a minister for at least the past two years. However, the flyers and the statements of the ministers, without more, do not establish that the beneficiary worked full time as a lay minister during the qualifying two-year period.

In a letter dated June 12, 2003, submitted in response to the RFE, the petitioner stated that the beneficiary "receives help from this church as free room and board and cash money because he doesn't have [a] social security number and valid identification." The petitioner submitted no evidence such as canceled checks, cash vouchers, verified work schedules, or other documentary evidence to corroborate the beneficiary's employment with the petitioner. 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)).

On appeal, the petitioner submitted no additional documentation in support of this requirement. The petitioner submitted no evidence to establish how the beneficiary supported himself financially during the qualifying two-year period.

The evidence does not establish that the beneficiary was continuously employed as an associate pastor and youth minister for two full years prior to the filing of the visa petition.

The third issue on appeal is whether the petitioner established that it had 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.

The petitioner stated that it would pay the beneficiary \$150.00 per week plus expenses for a home. In the "Proposed Church Itinerary for Ministerial Work-Lay Worker," the petitioner indicated that the duties of the proffered position would encompass no more than 31 hours per week.

Consistent with the requirements of the U.S. Department of Labor's Bureau of Labor Statistics and other regulations pertaining to employment based visa petitions, Citizenship and Immigration Services (CIS) holds that employment of less than 35 hours per week is not full time employment. The petitioner has not established that it will provide permanent full-time employment to the beneficiary. Part-time employment is not a qualifying job offer for the purpose of this employment based visa petition.

The evidence does not establish that the petitioner has extended a qualifying job offer to the beneficiary.

The fourth 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.

As evidence of its ability to meet this regulatory requirement, the petitioner submitted copies of its December 2001, December 2002 and March 2003 monthly bank statements. On appeal, the petitioner submits copies of its monthly bank statements for 2002 and 2003.

The above-cited 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 has not submitted any of the required types of primary evidence.

Accordingly, the evidence does not establish that the beneficiary had the continuing ability to pay the proffered wage as of the date the petition was filed.

The remaining issue in this case is whether the petitioner has established that it is a bona fide nonprofit religious organization.

The regulation at 8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

(3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with § 501(c)(3) of the Internal Revenue Code (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 § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code (IRC) as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement, if applicable, and a copy of the organizing instrument of the organization that contains a proper dissolution clause and which specifies the purposes of the organization.

The petitioner submitted copies of a March 11, 1998 letter from the IRS assigning it an employer identification number, a March 9, 1998 letter from the state of Texas Comptroller of Public Accounts informing the petitioner that it qualified for exemption from state franchise and sales tax, and excerpts from its articles of incorporation

In her RFE, the director instructed the petitioner to:

Submit a copy of the IRS's 501(c)(3) certification . . . including the actual request for certification Form IRS 1023 . . . If the organization is under an umbrella of a parent organization, submit a letter from the parent organization stating the status and affiliation between the two organization for purposes of the IRS's 501(c)(3) certification . . . including the actual request for certification Form IRS 1023.

The petitioner submitted none of the requested evidence in its response to the RFE.

On appeal, the petitioner submits a copy of a March 12, 2004 letter stating that it is submitting its request for tax-exemption under section 501(c)(3) of the IRC to the IRS.

As the petitioner does not have a letter from the IRS granting it tax-exempt status as a bona fide nonprofit religious organization under section 501(c)(3) of the IRC, its other option is to comply with the provisions of 8 C.F.R. § 204.5(m)(3)(i)(B) by submitting the documentation that the IRS would require to determine that the entity is a religious organization.

The organization can establish this by submitting documentation that establishes the religious nature and purpose of the organization, such as brochures or other literature describing the religious purpose and nature of the

activities of the organization. The necessary documentation is described in a memorandum from [REDACTED] Associate Director of Operation for CIS, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003). The documentation includes:

- (1) A properly completed IRS Form 1023,
- (2) A properly completed Schedule A supplement, if applicable,
- (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization, and
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The above list is consistent with the regulatory requirement at 8 C.F.R. § 204.5(m)(3)(i)(B), cited above. The memorandum specifically states that the above materials are, collectively, the "minimum" documentation that can establish "the religious nature and purpose of the organization." Thus, for example, a petitioner cannot meet this burden by submitting only its articles of incorporation. Also, obviously, it is not enough merely for the petitioner to *submit* the documents listed above. The *content* of those documents must establish the religious purpose of the organization.

The director, prior to denying the petition, made no effort to ascertain whether the petitioner could establish qualification as a bona fide nonprofit tax-exempt religious organization pursuant to 8 C.F.R. § 204.5(m)(3)(i)(B). The director did not provide the petitioner with an opportunity to submit the materials outlined in Mr. [REDACTED] memorandum, and thereby demonstrate that it qualifies as a bona fide nonprofit tax-exempt religious organization. This deficiency is not fatal to the director's decision, however, because (as discussed above) we have affirmed the other stated grounds for denial, which clearer evidence of qualifying tax-exempt status would not overcome.

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.