



U.S. Citizenship
and Immigration
Services

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



C1

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **SEP 14 2005**
WAC 03 177 53616

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:



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

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 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 pastor. The director determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization. The director further determined that the petitioner had not established that the beneficiary was qualified for the position within the organization.

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 first issue on appeal is whether the petitioner established that it was 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 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 § 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 organization may meet the requirements 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. This documentation must establish 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 William R. Yates, Associate Director of Operation for Citizenship and Immigration Services (CIS), *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003):

- (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.

With the petition, the petitioner submitted a copy of an August 3, 2000 letter from the IRS to Centro Cristiano Vida Abundante, Inc. in Ontario, California, granting that organization tax-exempt status under section 501(c)(3) of the IRC as an organization described under sections 509(a)(1) and 170(b)(1)(A)(i) of the IRC. The petitioner also submitted a copy of the articles of incorporation for Centro Cristiano Vida Abundante, Inc., Ontario, which reflects that the address of its agent and all of its directors are in Ontario, California. A

copy of an accountant's letter dated February 14, 2002 accompanying a financial report is addressed to [REDACTED] in Ontario, California.

In a request for evidence (RFE) dated June 8, 2004, the director noted the difference in the addresses of the petitioner and the organization that was granted tax-exempt status and instructed the petitioner to submit evidence of its tax-exempt status. The director advised the petitioner that it could submit a copy of its directory. In response, the petitioner stated that it had moved from Ontario, California to Santa Maria, California in February 2001, and stated that evidence that it and the church in Ontario were the same is the use of the same taxpayer identification number. The petitioner stated that it held services at 121 N. Alvin in Santa Maria, but that the church's office is located at 604 E. Chapel Street in Santa Maria.

Copies of Forms 1099-MISC, Miscellaneous Income, issued by the petitioner to the beneficiary in 2001 and 2002 reflect the Chapel Street address; however, the 2003 Form 1099-MISC reflects an address of [REDACTED] in Santa Maria. Additionally, copies of 2004 monthly bank statements for the petitioner reflect an address at [REDACTED], which is the personal address that the beneficiary provided to the IRS in 2003.

In its decision, the director noted that the church in Ontario was located over 200 miles from the petitioning organization, and that although the IRS indicated in its letter that tax-exempt organizations must notify the IRS of address changes, there was no evidence in the record that Centro Cristiano Vida Abundante, Inc. in Ontario had done so.

On appeal, the petitioner stated in a letter dated January 14, 2005, that the petitioner changed its address from Ontario, California in 2001 to the Chapel Street address, and that effective January 1, 2005, the church's address is [REDACTED]. The petitioner also stated:

Centro Cristiano Vida Abundante continues to hold church services at 943 S. Mountain Ave., Ontario, CA 91762. Both the church in its Santa Maria, California location and the Ontario congregation, are under the authority and oversight of the Board of Directors of Centro Cristiano Vida Abundante. Both share the same statement of faith and religious practices.

On appeal, counsel states that in 2001:

[T]he main portion of the church, including [the beneficiary] moved to Santa Maria, California. However, the Church also retained a Church in Ontario, California, still using the same church name, and the same church facility at 943 S. Mountain St., Ontario, California.

The Church in Ontario continues to this day to hold services for its members. Therefore, the Church did not notify the Internal Revenue Service of the change of address, because though the church established a second location for its services, it did not completely abandon its former location.

Counsel also stated that the petitioner “purchased a church sanctuary” in 2004 and “has now moved into its church sanctuary property.” The record contains a copy of a settlement statement with a closing date of January 31, 2003, indicating that the petitioner purchased property at several locations on West Alvin Avenue in Santa Maria, including the 121 West Alvin Avenue address. Copies of photographs in the record reflect a church building but the photographs contain no identifying information and therefore have no evidentiary value. Counsel submitted no evidence to substantiate his statements that the petitioner purchased and moved into a “church sanctuary property” in 2004. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported 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).

The petitioner submitted a copy of a Form 8822, Change of Address, dated January 20, 2005. However, there is no evidence that this form has been filed with the IRS. Further, the different addresses used by the petitioner in Santa Maria raises questions as to the nature and existence of the organization in Santa Maria. 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. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Additionally, the petitioner's letter of January 14, 2005 indicates that the church in Ontario and the petitioner are two separate organizations, although they use the same employer identification number. The petitioner submitted no evidence that it was covered under a group tax exemption granted to the Ontario church.

The evidence submitted does not establish that the petitioner is a bona fide nonprofit religious organization.

The second issue on appeal is whether the petitioner established that the beneficiary was qualified for the position within the organization.

The proffered position is that of minister. 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.

In its letter of April 30, 2003, the petitioner stated:

The ministerial responsibilities to be fulfilled by [the beneficiary] for this job position has been and will continue to be the following: Serve as the minister in charge of the [petitioning organization] in Santa Maria, California; Conduct religious services; Conduct Communion, Baptismal, Marriage, and Funeral services; Oversee pastoral care of church

members; Teach bible studies; Make home visits of members; Visit and pray for the sick of the congregation and the community in hospitals; Direct the Christian education program of church; and Oversee, administer, and govern the church congregation.

[The beneficiary] completed his theological education at the Christian Vision Seminary in Ramona California in 1996. This seminary included a four-year program of theological education. This theological education was followed by service as a traveling evangelist and Bible teacher for a number of years. Since March 2000, he has worked as the minister of this church.

The petitioner submitted a copy of a March 25, 1999 certificate of ordination issued to the beneficiary by Centro Cristiano Vida Abundante, Inc. at 1616 S. Palmetto Avenue, Ontario California. On the copies of his year 2000 and year 2001 Form 1040, U.S. Individual Income Tax Return, the beneficiary identified his occupation as "music minister" and his principal business or profession as "gospel music."

In his RFE, the director instructed the petitioner to submit its requirements for ordination. In the letter accompanying its response to the RFE, the petitioner stated that the beneficiary "has been a member of Centro Cristiano Vida Abundante, Inc. here in the United States continuously since March 25, 1999. He has been working for this church as its ordained minister continuously since March 25, 1999." The petitioner also stated:

[The beneficiary] has been a member of Evangelical Christian Churches continuously since his youth in Mexico. He worked as a traveling evangelist for several years in different States of Mexico, from 1988 through 1991, and from 1991 through 1999, in the State of California, prior to his ordination and ministry as this church's pastor in 1999. He was recognized as an evangelist by the Evangelical Christian Church, Estudiando Las Escrituras (Studying the Scriptures), as an evangelist. He was recognized as an evangelist, for his many years of ministry in evangelism. A copy of his certificate is enclosed.

He was ordained as a minister of the gospel of Jesus Christ, with full authority to conduct and oversee the services of this church by the Board of Centro Cristiano Vida Abundante. His qualifications for ordination described above, met the requirements for ministerial ordination contained in the written bylaws of the organization.

In addition, [the beneficiary] was granted an honorary Doctor of Divinity degree from California Christian University in Riverside, California. This honorary Doctorate was granted in recognition of [the beneficiary's] many years of devoted Christian service.

The petitioner submits a copy of what appears to be a certificate of Estudiando Las Escrituras; however, the document is not accompanied by an English translation as required by the regulation. Because 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.

On appeal, counsel states that the beneficiary was ordained in accordance with the petitioner's bylaws, after meeting the established ministry requirement and the alternative educational requirements. The copy of the bylaws submitted by the petitioner indicates that an individual may be ordained if he or she has an established or proven ministry and has the necessary biblical studies "or its equivalent." We note that the beneficiary signed the document as president of the board of directors (and identified himself as "reverend"). We also note that the bylaws indicate that the first meeting of the board would be on March 25, 1999, the date the beneficiary was "ordained."

On appeal, the petitioner also submits a copy of a transcript of the beneficiary's studies at the Instituto Biblico I.C.P. during the 1989 and 1990 and a copy of a 1990 diploma from that organization.

The petitioner's evidence is inconsistent and contradictory. According to the petitioner's letter of April 30, 2003, the beneficiary began working for the petitioning organization in March 2000. In response to the RFE, the petitioner stated that the beneficiary began working for the organization on March 25, 1999, the date of his ordination. However, the beneficiary signed the articles of incorporation for the Centro Cristiano Vida Abundante, Inc. in Ontario, dated March 11, 1999 as a director and "pastor." The beneficiary signed the bylaws of the organization as president of the board of directors. Although the bylaws do not indicate when they were signed and implemented, they do indicate that the first meeting of the board would be on March 25, 1999, the date the beneficiary was "ordained" with the organization.

Further, the beneficiary indicates on his Forms 1040 that his business is that of "gospel music." The petitioner submitted no evidence that the beneficiary had ever performed any of the sacerdotal duties of a minister or that he met the requirements set forth in the bylaws for ordination.

On appeal, counsel states that Citizenship and Immigration Services' inquiry into the beneficiary's qualifications are limited under *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978) where the individual has been performing the duties as an ordained minister and meets the qualifications of his church. We do not read *Matter of Rhee* so restrictively that it would prevent an inquiry into the requirements of ordination when those requirements are questionable or, as with the present case, those requirements were set by the beneficiary. Additionally, the petitioner has not submitted competent evidence that the beneficiary met the requirements for ordination.

The evidence does not establish that the beneficiary is qualified for the position within the organization.

Beyond the decision of the director, the petitioner has not established that the beneficiary was continuously employed in a qualifying religious occupation or vocation for the two-year period immediately preceding 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 May 22, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister throughout the two-year period immediately preceding that date.

As discussed above, the beneficiary indicated on his year 2001 Form 1040 that he was engaged in the profession of “gospel music” and that his occupation was that of “music minister.” The petitioner submitted copies of photographs; however, these documents not identified and are not dated. Therefore, they have no evidentiary value. The petitioner submitted no evidence that the beneficiary was engaged as a minister throughout the two-year period immediately preceding the filing of the visa petition. *See Matter of Soffici*, 22 I&N Dec. at 165. This deficiency constitutes an additional ground for dismissal of the appeal.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.