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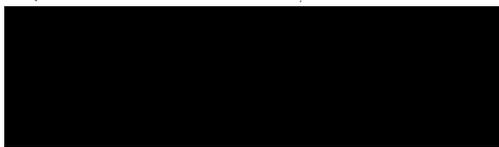


FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: FEB 02 2006
WAC 05 124 53744

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 its missions pastor. The director determined that the petitioner had not established that the beneficiary possessed the required two years membership in the denomination or 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 letter 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 the beneficiary had the required membership in the denomination for two full years 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 March 30, 2005. Therefore, the petitioner must establish that the beneficiary was a member of a qualifying denomination for two full years immediately preceding that date.

The evidence indicates that on the filing date of the petition, the beneficiary was a student at Fuller Theological Seminary pursuing a doctor of philosophy degree. In its letter of February 14, 2005, the petitioner stated that the beneficiary had been a member of its church for “over 2 years during which time he has served in several capacities, including as church elder, on the worship team, preaching, holding small group bible studies and on the missions team.”

The petitioner’s bylaws provide that it is “autonomous and maintains the right to govern its own affairs, independent of any denominational control.” The bylaws at Article IV further indicate that the petitioner has “voluntarily” affiliated with the Conservative Congregational Christian Conference.

In response to the director’s request for evidence (RFE) dated June 14, 2005, the petitioner submitted information about Fuller Theological Seminary, which indicates that the organization is a multidenominational evangelical organization. The petitioner also submitted a “typical work schedule” of the beneficiary for his work at the petitioning organization. On appeal, the petitioner submits copies of church programs dated in 2003 and 2004, reflecting the beneficiary’s participation in church activities, including as an elder of the church.

The petitioner’s bylaws at Article V set forth the qualifications for membership in the organization. Among the qualification requirements are attending a class and signing a commitment to membership, and attendance at worship services and church functions for a period of six months. The bylaws provide for a waiver of the latter requirement if the candidate is currently a member of another church that shares the petitioner’s beliefs and if the candidate submits a letter of transfer of membership from his or her previous church.

The petitioner submitted no documentary evidence that the beneficiary was a member of its church pursuant to its bylaws. 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)). Although the petitioner submitted evidence that the beneficiary had attended Fuller Theological Seminary, a multidenominational organization, it submitted no evidence that the beneficiary was a member of any particular denomination.

Accordingly, the petitioner has not established that the beneficiary was a member of its religious denomination for two full years immediately preceding the filing of the visa petition.

The second issue on appeal is whether the petitioner established that the beneficiary was engaged continuously in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa petition, March 30, 2005.

As discussed above, the record indicates that the beneficiary last entered the United States on November 14, 2004 pursuant to a J-1 nonimmigrant student visa. The beneficiary's DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status, which covers the period from July 1, 2003 until June 30, 2007, indicates that he was to matriculate at Fuller Theological Seminary in pursuit of a doctoral degree. In its February 14, 2005 letter accompanying the petition, the petitioner stated that the beneficiary had worked for the petitioning organization "for over 2 years" in various capacities. The petitioner also stated:

[The beneficiary] has a wealth of experience in the field of missions work and leadership training spanning Accra, Ghana, Nairobi, Kenya and more recently in the United States. He has been actively involved with Campus Crusade for Christ, since 1999; has managed and supervised community outreach groups and programs; has studied and evaluated Christian educational programs; has organized and conducted training programs for lay preachers and group leaders; has preached and taught bible studies; and more.

The petitioner submitted a copy of what it refers to as the beneficiary's résumé, in which he indicates that he has worked for the petitioning organization in various capacities since 2001, and with other organizations in the United States and Africa, presumably during the same time frame. The petitioner submitted no evidence to corroborate the beneficiary's claimed employment in any capacity. *Id.*

In his RFE of June 14, 2005, the director instructed the petitioner to:

Provide evidence of the beneficiary's work history beginning March 30, 2003 and ending March 30, 2005 only. Provide a breakdown of duties performed in the religious occupation for an average week. Include the employer's name, specific job duties, the number of hours worked, [and] remuneration . . . Ideally, this evidence should come in a way that shows monetary payment, such as W-2 forms, pay stubs, or other items showing the beneficiary received payment. Documentation showing the withholding of taxes is good evidence. However, you may also show payment through other forms of remuneration. If any work was on a volunteer basis, provide evidence to show how the beneficiary supported him or herself (and family members, if any) during the two-year period or what other activity the beneficiary was involved in that would show support.

In response, the petitioner submitted what it stated was the beneficiary's schedule for the qualifying period. The schedule indicated that the beneficiary worked approximately 20.5 hours per week, and an additional three hours per month preaching and leading the Sunday worship service. The petitioner also submitted copies of 2005 church flyers that listed the beneficiary on the church's staff as an elder. However, as the flyers indicate programs subsequent to the date the petition was filed, they are not probative in establishing the beneficiary's qualifying work experience.

The petitioner stated that it did not pay the beneficiary for his work as it was prohibited from doing so while he was in a J-1 status. The petitioner submitted a copy of a May 25, 2004 letter from Campus Crusade for Christ International "ensuring" that the beneficiary's financial needs would be fully met while he was at Fuller Theological Seminary. The petitioner also submitted copies of bank statements from the beneficiary's bank indicating that wire transfers from Campus Crusade for Christ were credited to the beneficiary's bank

account in May, September and November 2004, in the amount of approximately \$6,000, \$7,245 and \$4,845, respectively. A webpage from the Fuller Theological Seminary account listing for the beneficiary reflects that his account at the seminary was credited for monies received from scholarships and student aid. The petitioner submitted no other evidence of the work performed by the beneficiary during the qualifying period. See *Matter of Soffici*, 22 I&N Dec. at 165.

Counsel states that the statute and regulations contain no provision requiring that past employment be paid or full-time. Counsel neglects to consider case law. In *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980), the Board of Immigration Appeals found that an alien's part-time, unpaid volunteer work did not qualify the alien for immigration benefits as a religious worker. This case law being 25 years old, its application here does not, as counsel contends, constitute the imposition of a new requirement "outside the ambit of law and regulation." Counsel cites to several unpublished appellate decisions to support the argument that there is no requirement that the qualifying employment be full-time or paid. Apart from the fact that unpublished decisions have no precedential authority under 8 C.F.R. § 103.3(c), study must be consistent and compatible with qualifying religious work. Thus, evening theology courses would not disqualify a full-time pastor, but the full-time studies of an alien who volunteers part-time at a church are not compatible with qualifying work. The visa classification is for aliens with a *bona fide* intention of pursuing a career in religious work; it is not simply a reward for aliens who volunteer at church in their spare time. Here, while the petitioner has referred to the beneficiary's work as "full-time," the beneficiary's duties often occupy only 25 hours per week.

In its August 5, 2005 response to the RFE, the petitioner observed that, owing to the beneficiary's J-1 status and his "limited" employment authorization, the petitioner was "unable to remunerate him for his services." This is not a mitigating factor. The petitioner has not shown that Congress intended the J-1 student visa program to be a vehicle for aliens to enter the United States for the purpose of engaging in temporary studies, while at the same time accumulating qualifying employment experience. The R-1 nonimmigrant visa exists for temporary religious workers. It can hardly be argued that, when the voluntary actions of the beneficiary and the petitioner are not conducive to lawful employment, the petitioner's burden of proof should be lowered accordingly. Counsel's arguments on appeal do not overcome the director's findings, which we hereby affirm.

Beyond the decision of the director, the petitioner has not established that it has the ability to pay 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.

The petitioner stated that it would pay the beneficiary an annual salary of \$29,000. The petitioner submitted no evidence of its ability to pay this wage with the petition.

In response to the director's RFE, the petitioner submitted copies of its 2004 and 2005 budgets, a copy of its 2004 balance sheet and profit and loss statement, and copies of its monthly checking account statements for February through June 2005.

The petitioner stated that “[as] is common for ‘smaller’ churches, our accounts are not audited,” and that as it is exempt from filing taxes, it cannot provide a federal tax return. Nevertheless, 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, as the petitioner submitted no evidence that it has paid the beneficiary the proffered wage in the past and submitted none of the primary types of evidence, it has not established that it has the continuing ability to pay the beneficiary the proffered wage. This deficiency constitutes an additional ground for which the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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.