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U.S. Citizenship
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Services

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FILE:



Office: TEXAS SERVICE CENTER

Date: JAN 20 2006

SRC 04 001 52123

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Acting 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.

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 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 October 1, 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 his September 25, 2003 letter accompanying the petition, Reverend Robert L. Ransom, the petitioner's director of U.S. ministries stated:

Since December 1978, [the beneficiary] has been involved full time in operational religious activities. Since 1998 he has been working with the [petitioning organization] under the guidance and support of [redacted]. With the aggressive leadership of [the beneficiary] they decided to assign him to coordinate the establishment of a network of Hispanic churches in Florida . . . Here in [the] U.S. he has preached in different churches, ministered in homes and has been involved in the initiation and development of church growth strategy in order to expand our congregation's membership.

In a separate letter dated March 24, 2003, Reverend Ransom stated that the beneficiary "was a successful pastor for twenty-three years." The petitioner, however, submitted no evidence to corroborate the beneficiary's work experience 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)).

In a request for evidence (RFE) dated October 28, 2003, the director instructed the petitioner to:

Submit a detailed description of the beneficiary's prior work experience including duties, hours and compensations . . . accompanied by appropriate evidence (such as original pay stubs or cancelled checks, earning statements, W-2's or other evidence as appropriate). Submit an IRS certified copy of the income tax returns with all the pertaining W-2s for the two years preceding the filing of this petition.

In response, the petitioner submitted copies of canceled checks that it made payable to the beneficiary in January and February 2003 with their corresponding check stubs. The petitioner indicated that these were "typical pay checks and stubs from 2003." The petitioner also submitted a copy of a September 15, 2003 letter from the Internal Revenue Service (IRS) advising the beneficiary that he had incorrectly computed his tax liability for 2002, and refunding him \$665 on reported income of \$17,727. The letter does not indicate the source of the beneficiary's reported income.

The petitioner also submitted copies of calendars that purport to show the beneficiary's activities from February 2002 through December 2003. However, the record does not reflect when these documents were created or by whom. There is no evidence that the calendars were created contemporaneously with the beneficiary's activities during the specified period. Additionally, the documents are not authenticated or verified by any senior authority of the employing organization and therefore are of little probative value in establishing that the beneficiary worked continuously as a minister during the qualifying period.

The petitioner submitted a letter signed by officers of the Oasis of Love Church who attested that the beneficiary, as pastor and director of "Project Multiplication of Churches on Florida . . . commenced his work with family groups in March 2002. The first Church was founded in April 4, 2002 . . . [and named] Oasis of Love." The petitioner also submitted a copy of its Spring 2002 newsletter announcing the beneficiary's arrival "in late February to lead a new Florida District venture to multiply Hispanic churches," a copy of a log for a vehicle purportedly assigned to the beneficiary that reports mileage driven and the purpose of the trips beginning in February 28, 2002 through December 22, 2002. The petitioner submitted no evidence to reflect when the document was prepared and submitted no documentation to establish the source of the information reported on the vehicle log.

Additional documentation submitted by the petitioner in response to the RFE included three photographs that indicate that they are of youth meetings at the Oasis of Love Church in September and October 2003 and e-mails from the beneficiary apparently forwarding progress reports for June and October 2002. The photographs do not purport to depict the beneficiary performing services in any particular capacity and none of the documentation establishes the terms and conditions of the beneficiary's employment with the petitioner.

The petitioner submitted what appears to be a February 5, 2001 letter from the board of the International Missionary Community of Venezuela, indicating that the beneficiary founded the organization in 1988 and held the position of president until January 2001, transferring his leadership via a national election in January 2002 so that he could work in Florida. In addition to the inconsistent dates in the document, the translation accompanying the document does not comply with the provisions of 8 C.F.R. § 103.2(b)(3) in that the translator is not identified, did not certify that the translation was complete and accurate, and did not certify that he or she is competent to translate from Spanish into English. Therefore, the evidence is not probative and will not be accorded any weight in this proceeding. The petitioner also submitted a financial document that is not accompanied by an English translation. Because the petitioner failed to submit certified translations of the document, 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 also not probative and will also not be accorded any weight in this proceeding. The petitioner submitted no other evidence to establish the beneficiary's work experience with the International Missionary Community of Venezuela. *Id.*

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.

On appeal, the petitioner submits copies of the beneficiary’s Forms W-2, Wage and Tax Statements, for the years 2002 through 2004 and a partial copy of the beneficiary’s Form 1040, U.S. Individual Income Tax Return, for 2003. The Form W-2 for 2002 reflects that the beneficiary received approximately \$16,577 in wages and \$10,300 in a housing allowance. As the petitioner did not provide a copy of the beneficiary’s 2002 Form 1040, the record is unclear as to whether this reported compensation is consistent with that reported by the beneficiary to the IRS. We note, however, that the beneficiary reported income of \$17,727 to the IRS, and there is no evidence of what, if any of the reported income, is for unused housing allowance. The Form W-2 for 2003 reflects only a housing allowance in the amount of \$9,950. The beneficiary reported \$6,044 on his year 2003 Form 1040 as business income; however, as the petitioner did not submit a full copy of the return, the document does not reflect the source of this income.

The petitioner also submitted a translated copy of the Venezuelan tax return. However, the translation does not comply with the provisions of 8 C.F.R. § 103.2(b)(3) in that the translator is not identified and the document contains no certification from the translator including a statement as to his or her competency to translate the document. Further, as the document appears to precede the qualifying period, it is not probative in establishing the beneficiary’s work experience for the two years immediately preceding the filing of the visa petition. The petitioner submitted no evidence to substantiate the beneficiary’s employment in Venezuela during the qualifying period.

The evidence submitted by the petitioner, therefore, does not establish that the beneficiary worked continuously as a minister for two full years preceding the filing date of the petition.

Beyond the decision of the director, 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.

The petitioner stated that it would pay the beneficiary \$35,000 per year. As evidence of its ability to pay the proffered wage, the petitioner submitted an unaudited copy of its balance sheet for the period ending September 30, 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.

The beneficiary's Forms W-2 for 2002, 2003 and 2004 and the two canceled checks for 2003 indicate that he was paid by the petitioner's Florida district. Neither the checks nor the Forms W-2, however, establish that the beneficiary was paid the proffered wage prior to the filing of the visa petition.

Accordingly, as the petitioner has not submitted any of the required types of primary evidence and has not submitted evidence that it has paid the beneficiary the proffered wage in the past, the evidence does not establish that the petitioner had the continuing ability to pay the beneficiary the proffered wage as of the date the petition was filed. This deficiency constitutes an additional ground for denial of the petition.

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.