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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: JUN 07 2006
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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, Chief
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 sustained and the petition will be approved.

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 the co-dean of its Bible college. The director determined that the petitioner has not established that the beneficiary possessed the required two years membership in the denomination.

On appeal, counsel submits a brief.

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 has established that the beneficiary possessed the required two years membership in the denomination.

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 January 18, 2005. Therefore, the petitioner must establish that the beneficiary has the required membership in the denomination for two full years preceding the filing date of the petition.

In its December 16, 2004 letter accompanying the petition, the petitioner stated that the beneficiary had worked in the proffered position since July 2001 pursuant to an R-1 nonimmigrant religious worker visa. In response to the director's request for evidence (RFE) dated May 2, 2005, the petitioner stated that it is an interdenominational religious organization, not affiliated with any specific religious denomination (and, in fact, has been determined by the Internal Revenue Service (IRS) as a denomination). In her cover letter accompanying the petitioner's response to the RFE, counsel stated that, as the petitioner is an interdenominational organization, it does not have to prove affiliation with a specific religious denomination.

The director noted that the beneficiary had been approved for R-1 status on February 24, 2001, and that her qualifying experience and training were with the Bay City Outreach Center, in Hastings, New Zealand. The director stated that the evidence did not establish that the petitioner and the Bay City Outreach Center shared a religious affiliation, and that approval of the R-1 visa appeared to be in error. The director then concluded that the petitioner had failed to establish that the beneficiary was a member of its denomination for two full years prior to the filing of the R-1 petition, and therefore was not qualified for this immigrant visa petition.

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that Citizenship and Immigration Services (CIS) or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). However, in the instant case, the record does not suggest that the R-1 nonimmigrant visa petition was approved in error.

The regulation at 8 C.F.R. § 204.5(m)(2) provides, in pertinent part:

[A] religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship and religious congregations, or comparable indicia of a bona fide religious denomination. For the purposes of this definition, an inter-denominational religious organization which is exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 will be treated as a religious denomination.

On appeal, counsel states that the beneficiary's current work and membership with the petitioner clearly satisfies the requirements of the regulation. We concur. The petitioner has submitted sufficient evidence to establish that the beneficiary was a member of its denomination for two full years preceding the filing of the visa petition. Further, the evidence indicates that the beneficiary is otherwise qualified for this visa preference classification.

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 met that burden.

ORDER: The appeal is sustained. The petition is approved.