



U.S. Citizenship
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[REDACTED]

FILE: [REDACTED]
WAC 06 154 50208

Office: CALIFORNIA SERVICE CENTER

Date: **AUG 28 2007**

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

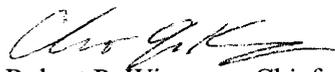
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[REDACTED]

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a church of the Assemblies of God denomination. 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 and overseer of the church's Spanish-language department. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience in the position immediately preceding the filing date of the petition. In addition, the director found that the beneficiary relied on supplemental secular employment.

On appeal, the petitioner submits a brief from counsel.

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 regulation at 8 C.F.R. § 204.5(m)(1) 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." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of experience in the religious vocation, professional religious work, or other religious work. The

petition was filed on April 19, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of the position throughout the two years immediately prior to that date.

8 C.F.R. § 204.5(m)(3)(ii)(B) requires the petitioner to demonstrate that, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested.

The prospective employer must show that the alien will be solely carrying on the vocation of a minister. Section 101(a)(27)(C)(ii)(I) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(I); 8 C.F.R. § 204.5(m)(4).

The petitioner's initial submission contains a copy of a *Diploma en Teologia* issued by the Instituto Biblico Maranatha, South Gate, California, on April 9, 2005. An accompanying letter indicates that "[t]his preparation enables him to perform diverse ministries in the Christian field, such as pastoral, evangelistic, lay ministry and missions." The beneficiary received this diploma just over one year before the filing date, and therefore did not possess it when the two-year qualifying period began in April 2004. The initial submission contains no information regarding the beneficiary's means of support, except for his 1996 marriage license which described his occupation as "driver" for a "car dealer."

On July 17, 2006, the director issued a request for evidence (RFE), instructing the petitioner to "[s]ubmit evidence to show that the beneficiary has been ordained and the requirements for ordination. If the religion does not have formal ordination procedures, there must be other evidence that the individual has authorization to conduct religious worship and perform other services usually performed by members of the clergy."

In response to the RFE, [REDACTED] indicated that the beneficiary "has the capacity to do all the requirements to fulfill the duties that are required for the job position."

The petitioner submitted a copy of the "Credential Application Process" from the Southern California District Council of the Assemblies of God. The document states that several "preliminary basic requirements must be met." One of these requirements is: "You must be an American citizen or have a permanent residency visa (i.e., green card)." The document further indicates: "A ministerial credential is not actively or legally in place until General Council approval has been received." This document indicates that the beneficiary does not qualify for the credential, as he is neither a United States citizen nor a permanent resident. There is no evidence, and the petitioner has not claimed, that the beneficiary earned a credential outside the United States before he entered this country at the age of 20 in 1991. The petitioner did not explain how the beneficiary is authorized to perform the functions of a pastor without such a credential.

The director, in the RFE, also requested evidence, including payroll and tax records, of the beneficiary's work history and means of support during the two-year qualifying period. In response, [REDACTED] stated: "The terms for payment for the services are \$1000.00 dollars every two weeks." Pay stubs from Gardena Christian Academy, at the same address as the petitioning church, show semimonthly (not biweekly) payments of \$1,000 in early 2006. An Internal Revenue Service Form W-2 Wage and Tax Statement shows that the

petitioner paid the beneficiary \$15,000 in 2005. [REDACTED] indicated that the beneficiary had previously been “a work volunteer at church.”

Other Forms W-2 show that [REDACTED], paid the beneficiary \$36,503.09 in 2004 and \$48,431.10 in 2005. Clearly, while the petitioning church has compensated the beneficiary for part of the two-year qualifying period, it has not been his sole employer.

The director denied the petition on January 11, 2007, stating that the evidence indicates “the beneficiary is not recognized as a Pastor/Minister by the Assemblies of God denomination. Therefore, the petitioner has not established that the beneficiary has been performing the duties [of] an ordained minister for the two-year period immediately preceding the filing of the petition.” The director also found that the beneficiary is dependent on supplemental employment.

In the initial appeal statement, counsel states that the beneficiary “is not dependent on supplemental income.” Counsel does not explain how this claim is compatible with clear evidence that the beneficiary earns the great majority of his income from automotive work. In a subsequent brief, counsel does not defend or return to this argument, instead asserting that the beneficiary’s secular employment is consistent with a finding of eligibility.

Counsel asserts:

The Petition indicated that the beneficiary would serve as a pastor and not a minister. . . .

As such, the district director [*sic*] was incorrect in determining that the beneficiary did not meet the classification of pastor since the Credential Application Process refers to ordination as a minister which is distinct from the proffered position of Pastor of Hispanic/Latino ministry . . . which applies to the beneficiary.”

Counsel argues that the position of “pastor” (which involves leading church services) is not the vocation of a minister, requiring ordination and forbidding outside employment, but rather a religious occupation that the beneficiary is qualified to undertake, and which permits outside employment. Throughout this proceeding, counsel is the only one to distinguish between a “pastor” and a “minister” in this way. Counsel cites no evidence (such as denominational publications or governing documents) to show that the Assemblies of God, as a denomination, recognizes that an individual with no ministerial credentials (such as a certificate, license, or ordination) qualifies as a “pastor.” The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). We note that, if counsel is correct and the “Credential Application Process” has nothing to do with the beneficiary or his position at the petitioning church, then it is not clear why the petitioner submitted that document.

Even if we accept the assertion that the beneficiary, as a “pastor” who engages in “leading . . . service[s]” and “baptizing,” is not a minister but rather a lay preacher in a religious occupation, the record does not show that the beneficiary continuously engaged in that occupation (an “occupation” being a paid activity) throughout

the two years immediately preceding the filing date. Counsel does not contest that the beneficiary, in order to qualify, “must have two years of continuous compensated experience,” but counsel does not explain how the available evidence meets the petitioner’s burden of proof in this regard.

The beneficiary’s salary from the petitioner annualizes to \$24,000 per year, but the church paid him only \$15,000 in 2005 and there is no record of any payments in 2004. The record, therefore, suggests that the petitioner began to employ the beneficiary around May or June of 2005. We note that this correlates with the April 2005 date on the beneficiary’s theology diploma (a diploma which purportedly “enables [the beneficiary] to perform diverse ministries”). Therefore, the available evidence is consistent with the finding that the beneficiary was not qualified to work in the position until he earned that diploma.

The petitioner submits a letter from [REDACTED] Parts and Service Director at [REDACTED], indicating that the beneficiary “is a commission paid technician” whose schedule “gives him three days off every other week of the month and two days off for the other two weeks in the same month.” Citing this letter, counsel observes that the beneficiary “has several days off during the week that permit him to be employed full-time as a religious worker.” [REDACTED] does not state that the beneficiary has two to three days off each week plus weekends. The letter does not indicate that the beneficiary has significantly more time off work than most people who work five-day, forty-hour weeks. Furthermore, the burden is on the petitioner to show that the beneficiary actually has worked, and continues to work, full-time for the church. The petitioner cannot meet this burden simply by claiming that the beneficiary’s work schedule as a mechanic hypothetically leaves enough free time to permit full-time church work.

We further note, as counsel acknowledges, that the beneficiary receives a commission rather than a fixed salary for his automotive work. The Forms W-2 in the record show that the beneficiary’s secular compensation increased by almost 25% from 2004 to 2005, suggesting that as time passes, the beneficiary has performed more, not less, secular work at automobile dealerships.

The available evidence suggests that the beneficiary is, first and foremost, an automobile repair technician. We affirm the director’s finding that the petitioner has not shown that the beneficiary possesses the necessary credentials for the position, or that the beneficiary worked continuously in the proffered position throughout the two-year qualifying period.

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.