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U.S. Citizenship
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Services

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FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date:

JAN 05 2007

SRC 06 007 50768

IN RE:

Petitioner:

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:

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, Chief
Administrative Appeals Office

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

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 an assistant pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as an assistant pastor immediately preceding the filing date of the petition.

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 October 11, 2005. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an assistant pastor throughout the two years immediately prior to that date. The Form I-360 petition indicates that the beneficiary entered the United States on June 11, 2005, and therefore spent most of the two-year qualifying period outside the United States.

In a letter submitted with the initial filing, Rev. [REDACTED] President of the petitioning church, states that the beneficiary “is an ordained Minister of the Gospel and member and missionary of our church since 1997. [The beneficiary and his spouse] served as representative[s] of our interests in Austria for these years.”

Because the petitioner’s initial submission contained little evidence and few details about the beneficiary’s work, the director issued a request for evidence, instructing the petitioner to “[s]ubmit a detailed description of the beneficiary’s prior work experience including duties, hours and compensations . . . accompanied by appropriate evidence (such as cop[ies] of pay stubs or checks, W-2’s/foreign equivalent or other evidence as appropriate).”

In response, Rev. [REDACTED] states that the beneficiary “has been known and supported as missionary in Austria and Eastern Europe by our church since our founding year.” The petitioning church was founded in December 1996.

The petitioner submits copies of 18 canceled checks, dated between August and December 2005. Most of the checks were issued to the beneficiary; the remaining checks were issued either to the beneficiary’s spouse, or to various others to cover the beneficiary’s rent and car insurance. These checks cover only the last few months of the two-year qualifying period.

Rev. [REDACTED], Senior Pastor of the [REDACTED] of Londrina, Brazil, states:

[The beneficiary] is [a] Missionary-Pastor ordained by our church in 10.25.1995. [The beneficiary] and his wife . . . went to Europe as Brazilian career missionaries in 1986. They worked in partnership with various Mission Organizations in Europe until June 2005. . . .

[The beneficiary] and his family have been fully financially supported in the missionary field by a team of prayer partners and specific congregations within our bounds. . . . We are sending attached the bank transactions regarding the last two years.

Photocopies of several untranslated Brazilian credit card statements, dated between January 2004 and December 2005, accompany Rev. [REDACTED] letter. Through September 2004, the statements show transactions in Brazilian cities such as Rio de Janeiro and Sao Paulo. Beginning in October 2004, the statements show transactions in Austrian cities such as Vienna and Stockerau. Transactions in the United States first appear in the August 2005 statement. The beneficiary’s name appears on the statements, apparently as a cardholder, and the statements were mailed to [REDACTED] in Londrina, the “[REDACTED]” apparently an abbreviation for “Igreja Presbiteriana” (Portuguese for “Presbyterian Church”). These statements indicate that the church in Brazil took responsibility for the beneficiary’s expenses as early as January 2004, which is circumstantial evidence supporting the claim that the beneficiary was working on the church’s behalf at the time. At the same time, witnesses in Brazil are not ideally placed to attest to the beneficiary’s work in Austria.

To further corroborate the beneficiary's work in Austria, the petitioner submits a letter from [REDACTED] Pastor of [REDACTED] who states: "After a year furlough in Brazil, [the petitioner and his spouse] took responsibility in August 2004 over the leadership in our church planting program in Stockerau." This assertion is consistent with the credit card statements described above, which by themselves show where the beneficiary was but not what he was doing. Pastor [REDACTED] states that the beneficiary and his spouse "served as Brazilian Missionaries leading our Brazilian home cell group and taking pastoral responsibility of our Portuguese speaking church members."

A translation of the beneficiary's "Brazilian Ministry Card" reads, in part: "Act in the intercultural field – European East – Austria, Hungary and Romaine [*sic*] / Room of Sessions / December 16, 2003. Was absent in the 20th R.O. of PRGL. Excused in the terms of the article 43 of the CI-TPB with the finality of missionary work in the intercultural field. / Room of Sessions / December 16, 2004."

The director denied the petition, stating, in part:

The petitioner submitted copies of seventeen checks. . . . It could not be determined that these are paychecks. . . . The petitioner submitted what appeared to be bank statements, however no translations were provided. . . .

This, the petitioner has failed to establish that the beneficiary was paid for full-time work continuously during the two-year period immediately prior to the date of filing.

On appeal, the petitioner submits a notarized statement from [REDACTED], Finance Director of the church in Londrina, who asserts that the beneficiary received a salary from the organization every month from October 2003 to October 2005.

The director's decision rests on the question of whether or not the beneficiary received a salary during the qualifying period. The record contains no single piece of evidence to confirm continuous payments. Nevertheless, the record contains numerous documents that offer a more fragmentary, but nonetheless persuasive, indication that the church compensated the beneficiary.

The canceled checks cover only a small fraction of the qualifying period, but they establish that the petitioner has regularly paid the beneficiary \$700 per week, while covering other expenses for the beneficiary as well. It is true that these checks are not expressly labeled as "paychecks," but the record offers no particular reason to believe they are anything else. The payment pattern – the same amount, once a week – is consistent with a salary. It is true that the checks show no sign that the petitioner withheld taxes, and this may be a matter of concern to the Internal Revenue Service, but it does not discredit the checks as evidence of paid work.

The credit card statements (the director called them "bank statements" but they display the Visa credit card logo) place the beneficiary where church officials have said he was working. That the church received the beneficiary's credit card bills suggests that the church was paying those bills. Again, this is consistent with compensated employment.

The record amply, albeit sometimes erratically, documents years of church work by the beneficiary. While there are some gaps in the evidence, the record contains no inconsistencies or contradictions that would cast doubt on the credibility or reliability of claims by church officials in the United States, Austria or Brazil. The record does not indicate that the petitioner has attempted to explain its way around affirmative evidence of disqualifying secular employment or long periods of inactivity.

The director's sole stated ground for denial is the assertion that the beneficiary does not appear to have been paid for his religious work. The record, however, shows that the beneficiary performed religious work, and that the church paid him at the time he performed that religious work. It is not clear what further evidence the director would require before accepting that the documented payments were compensation for the documented religious work. The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). We find that the petitioner's evidence, in this instance, meets that standard of proof and overcomes the single stated basis for the denial of the petition.

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. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

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