



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
EAC 04 219 52803

Office: VERMONT SERVICE CENTER

Date: JUL 05 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:



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.

Maura Deednick
for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The AAO will also enter a separate finding of fraud and misrepresentation of a material fact.

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

On appeal, the petitioner argues that it has met its burden of proof and overcome the grounds for denial.

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 July 22, 2004. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a pastoral assistant throughout the two years immediately prior to that date.

In a letter accompanying the initial filing, [REDACTED] (sometimes spelled "[REDACTED]" Presiding Pastor of the petitioning church, states that the beneficiary "has been serving for our church as Pastoral Assistant from January 2000 to Present on a full-time basis." [REDACTED] asserts that the beneficiary "will be compensated at an annual rate of \$30,000 along with full medical benefit[s]" and "will not be dependent on supplemental employment." The petitioner submits copies of payroll and tax documents to show the beneficiary's earnings during 2001-2004. These documents show that the petitioner has paid the beneficiary significantly less than \$30,000 per year, and that the beneficiary has in fact been dependent on supplemental employment.

Internal Revenue Service (IRS) Form 1099-MISC Miscellaneous Income statements indicate that the petitioner paid the beneficiary "Nonemployee compensation" in the amounts of \$6,500 in 2000; \$13,000 in 2001; and \$9,750 in 2002. The beneficiary and her spouse amended their 2000 and 2001 income tax returns to account for "self-employed income" said to have been "inadvertently omitted on original return." The newly claimed income matches the amounts shown on the Forms 1099-MISC for those two years.

A 2002 IRS Form 1040 Individual Income Tax Return jointly filed by the beneficiary and her spouse identifies the beneficiary's occupation as "Religious" and her spouse's occupation as "Employee." According to the return, the beneficiary reported the \$9,750, minus \$2,500 in expenses, as "Business income" from the petitioning church. The couple also reported \$69,890 in "Wages, salaries, tips, etc." This \$69,890 derives from three employers: \$43,700 from the spouse's unidentified employer; \$24,000 from [REDACTED]; and \$2,190 from "[REDACTED]," presumably a reference to the petitioning church.

For 2003, Form W-2 Wage and Tax Statements show that the beneficiary received \$13,142.52 in wages from the petitioner, and \$24,000.00 from [REDACTED]. The beneficiary's spouse received \$50,250.00 from [REDACTED]. The 2003 tax return again shows the beneficiary's occupation as "Religious."

For 2004, a pay stub from the petitioning church (under its previous name, [REDACTED]) reflects year-to-date payments to the beneficiary in the amount of \$7,666.47 as of July 30, 2004. The stub identifies the pay period as the entire month of June 2004; the beneficiary's gross pay for the month was \$1,095.21, leaving exactly \$1,000.00 net after tax withholding.

The documents described above indicate that the petitioner paid the beneficiary substantially less than \$30,000 per year for her past work on an allegedly full-time basis, and that the beneficiary did, in fact, rely on outside employment, to the point where such employment was her primary source of income.

On April 26, 2005, the director instructed the petitioner to submit additional information regarding the beneficiary's work schedule and the petitioner's compensation of employees. In response, the petitioner has submitted profit and loss statements for calendar years 2003 and 2004. These statements contain itemized lists of expenses, but salaries are not included on that list. The statement for 2003 does not show any line item that corresponds to the \$13,142.52 shown on the beneficiary's Form W-2. The only line items that exceed that amount are "Building Repairs," "Food service," "Gas and Auto expense," "Hardware & Supplies," "Service Fee," "Utilities," and "Gas and Electric - Other."

The petitioner has submitted a list of employees and their year-to-date compensation as of May 26, 2005, prepared by a payroll service. The list shows seven names. The beneficiary's name is not on the list. The petitioner has also submitted copies of quarterly payroll tax reports from the third quarter of 2002 through the second quarter of 2004. The beneficiary's name first appears on the report for the fourth quarter of 2002. The quarterly tax documents show that the beneficiary earned \$1,095.21 per month from November 2002 through June 2004.

repeats the assertion that the beneficiary "will work for 40 hours a week" and that the petitioner "will compensate [the beneficiary] annually at the rate of \$30,000," but the record shows that the petitioner has never compensated the beneficiary at that rate, and, as noted above, the beneficiary's name is absent from the payroll documentation from 2005.

In denying the petition, the director determined that the beneficiary's reported wages are consistent with part-time rather than full-time employment. The director also noted the beneficiary's significant income from outside employment. The director found, therefore, that the petitioner had not shown that the beneficiary was continuously engaged in qualifying religious employment throughout the qualifying period.

On appeal, states:

[T]he beneficiary was on the payroll of the petitioner as a pastoral assistant from year 2000 till present. At times, income received from the petitioner was less than initially agreed with the church; however, as a devout Christian, [the beneficiary] did not choose to resign from the petition because she was not fully compensated for her full time services. Instead, she found a part time position to work at the beauty salon, where she made enough funds to meet her financial needs so that [the beneficiary] and her family will [not] become public charge[s] to the U.S. government. The amount of her salary from the church does not reflect her service as a full time pastoral assistant for [the petitioning] Church.

asserts that, with the explanation offered, "the grounds for U.S.C.I.S.' denial have been overcome." The appeal statement itself, however, amounts only to a set of claims, rather than evidence to support those claims. 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)).

When considering the claim that the beneficiary worked full-time for the petitioner at a reduced salary, we must take into account both the evidence and the credibility of the source of the claim. With regard to the latter, we note that the petitioner has filed at least three petitions on behalf of this beneficiary. The first petition, filed March 24, 2003, was denied on June 24, 2004. The petitioner filed the present petition roughly a month later, on July 22, 2004. While the present appeal was pending, the petitioner filed a third petition on February 23, 2006. The most recent petition, receipt number EAC 06 102 52851, was approved on April 11, 2006.

The first petition on the beneficiary's behalf, filed in 2003, identified the beneficiary as the petitioner's "Religious Education Director." As late as September 1, 2003, in the context of that first petition, [REDACTED] referred to the beneficiary as the "Religious Education Director." In the same letter [REDACTED] mentioned a list of church positions, including "assistant pastor," but there was no indication at that time that the beneficiary had ever held, or been offered, that position. Thus, [REDACTED]'s own prior statements contradict the later claim that the beneficiary has worked "as a pastoral assistant from year 2000 till present."

Also, the assertion that the beneficiary's salary was low "at times" is a significant understatement. The quarterly records show consistent payments of \$1,095.21 per month, rather than occasional fluctuations. There is no evidence that the petitioner ever paid the beneficiary \$30,000 per year. The beneficiary's name is entirely absent from the most recent payroll documents from mid-2005.

Furthermore, the beneficiary's salary from "the beauty salon" was nearly twice her compensation from the church in 2003 and 2004. Judging from the objective evidence of record, the evidence points to the beneficiary's work at the salon as being her primary employment throughout much of the qualifying period. The petitioner, whose self-contradictory statements are a matter of record, appears to have exaggerated the beneficiary's religious work in order to assist her in securing immigration benefits. We note that, in the most recent petition filed on the beneficiary's behalf, the proffered salary has dropped from \$30,000 to \$24,000 per year. This drop in salary appears to be yet another attempt to "fine tune" the petition.

We have already discussed the quarterly reports leading up to mid-2004. The petitioner's latest petition includes subsequent reports. The beneficiary earned only one month's wages in the fourth quarter of 2004. The petitioner did not submit the reports for the first three quarters of 2005. The statement for the fourth quarter of 2005 shows a year-to-date total of \$24,000, consistent with the newly claimed salary rate, and reflected on the beneficiary's IRS Form W-2 for 2005. The same statement, however, shows the beneficiary's quarter-to-date earnings as \$24,000, indicating that the petitioner did not pay the beneficiary during the first three quarters of 2005. This is consistent with the absence of the beneficiary's name from the May 2005 employee list discussed elsewhere in this decision. Thus, the evidence consistently shows that, at the end of 2005, the petitioner paid the beneficiary an entire year's wages. Given the timing of this payment (just before the filing of a petition on the beneficiary's behalf), we conclude that this lump sum payment was in furtherance of an effort to create the appearance of a full year's employment.

With respect to the credibility of documentary submissions, we note that that the beneficiary was arrested in Dodgeville, Wisconsin on December 29, 2005, and charged with fraudulent use of a document (specifically, a forged utility bill, providing a fictitious Wisconsin address for the beneficiary) to obtain a Wisconsin driver's license. (The beneficiary resided in New Jersey at the time.) The record before the AAO does not contain documentation of the disposition of this charge. It does, however, contain copies of the booking documents, the forged utility bill, and an affidavit in which the beneficiary does not deny that the utility bill contains false information. The beneficiary admits that she purchased the documents in an attempt to obtain a driver's license, supposedly because she "was having . . . trouble with renewing [her] driver's license" in New Jersey. Thus, in this affidavit, the beneficiary essentially admits to having purchased documents from a third party in order to secure a government benefit. The beneficiary's arrest is relevant to the present proceeding because this proceeding also involves the submission of questionable documents in an effort to secure a government

benefit for the beneficiary. At the time of her arrest in 2005, the beneficiary identified her employer as “ [REDACTED] and not the petitioning church.

On March 7, 2007, the AAO advised the petitioner of the above derogatory information, and indicated that, unless the AAO received a credible rebuttal within 18 days, the AAO would dismiss the appeal and enter a finding of fraud and misrepresentation of a material fact. The allotted period has elapsed, and the AAO has received no further correspondence from the petitioner or counsel. The AAO shall therefore render its decision based on the record as it now stands.

The AAO finds that the petitioner knowingly submitted documents containing false statements in an effort to mislead CIS and the AAO on an element material to the beneficiary’s eligibility for a benefit sought under the immigration laws of the United States. See 18 U.S.C. §§ 1001, 1546. The AAO will enter a finding of fraud and misrepresentation of a material fact.

The AAO finds that the petitioner’s evidence is not credible and will not be given any weight in this proceeding. If CIS fails to believe that a factual claim stated in the petition is true, CIS may reject that factual claim. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). Doubt cast on any aspect of the petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988).

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.

FURTHER ORDER: The AAO finds that the petitioner knowingly submitted documents containing false statements in an effort to mislead CIS and the AAO on an element material to the beneficiary’s eligibility for a benefit sought under the immigration laws of the United States.