



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]
SRC 05 210 52145

Office: TEXAS SERVICE CENTER

Date: JUL 26 2007

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:

[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.

Robert P. Wiemann
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 (AAO) on appeal. The appeal will be dismissed. The AAO will enter a separate finding of material misrepresentation.

The petitioner operates several Christian churches. 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 missionary. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a missionary immediately preceding the filing date of the petition and failed to establish that the beneficiary's position qualifies as a religious occupation.

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 25, 2005. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a missionary throughout the two years immediately prior to that date.

The first issue we shall consider is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) defines “religious occupation” as an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Citizenship and Immigration Services (CIS) therefore interprets the term “traditional religious function” to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

██████████ senior pastor of the petitioning church, offers this description of the beneficiary’s work:

As a missionary she has been in charge of evangelism and training others to evangelize. She has been in charge of cell Youth and Children groups with the goal of opening new churches and disciplining leaders in order to train them in this area, involving in programs activities, evaluation of the progress of the same and coordinate activities of the Youth and Children Ministries, as well as participating in the worship Youth Ministry. She is responsible for providing instruction in Christian traditions, [to] impart values and beliefs of the Christian religion.

On August 2, 2005, the director issued a request for evidence (RFE). The director requested a detailed description of the beneficiary’s duties. In response, ██████████ states that the beneficiary “is responsible to expand the Gospel, the position calls for the coordination of all evangelistic projects and missionary outreach within the Hispanic community in Miami with the ultimate goal of bringing people to Christ.” ██████████ then repeats the essential details from his previous statement.

The petitioner submits a photocopy of a “Resolution of Ordination” dated September 2000. The document indicates that the petitioner “has publicly set apart [the beneficiary] for the Missions Ministry. . . . Credentials shall be renewed each year after approval of the President of the Board and the two trustees.” The Resolution bears the signatures of the beneficiary, two witnesses, and the president and secretary of the petitioning entity.

In denying the petition, the director stated: “The evidence does not show that this is a mostly non-administrative and non-secular position. Thus the petitioner has not tendered a qualifying job offer.” The director also stated that the resolution of ordination is expired and bears no seal, indicating that it is no longer valid, if it had ever been so.

On appeal, the petitioner submits copies of missionary credential cards issued to the beneficiary and dated 2003, 2004 and 2005 respectively. This evidence is consistent with annual renewal of the beneficiary's credentials. The director had not requested evidence of annual renewal prior to the decision. The petitioner also submits what appears to be the original "Resolution of Ordination," from which the previously submitted photocopy had been made. This original document bears a raised seal, in low relief, which would not have been evident on a photocopy. The evidence described above appears to resolve the director's concerns regarding the validity of the "Resolution of Ordination." We find that the beneficiary possesses, and has possessed, the necessary credentials for the position offered.

With respect to the nature of the beneficiary's duties, [REDACTED] repeats previous assertions and states that the beneficiary "is responsible for supervising, training and leading the liturgical dance group which performs liturgical dance rituals during our religious services." The petitioner also submits further documentation of the beneficiary's participation in religious courses such as "Children's Ministries." The beneficiary's duties, as described by the petitioner, involve organizational functions, but they do not appear to be secular or administrative in nature. From review of the record, there is no clear basis for the director's determination that the beneficiary's position as a missionary is not a qualifying religious occupation. We hereby withdraw this particular finding by the director. There remains, however, the issue of the continuity of the beneficiary's past work.

[REDACTED] states:

We desire that [the beneficiary] assumes the duties [of] a Religious Worker/Missionary of our religion organization located in Miami, Florida. . . .

[The beneficiary] has been an active member of our churches since 1996 and has been working for our churches since 2000 under R-1 nonimmigrant status, as a Religious Worker/Missionary . . . in Puerto Rico. Currently she is working for our church in the same position she has held for the past 4 years. . . .

[The beneficiary] will receives [sic] a yearly compensation / salary of \$12,480.00, and housing allowance.

The petitioner submits copies of certificates establishing the beneficiary's training and occupational credentials. Visa documents show that the beneficiary has held an R-1 nonimmigrant religious worker visa since August 2000, which was in effect throughout the two-year qualifying period.

The petitioner submits copies of the beneficiary's Internal Revenue Service (IRS) Form 1040X Amended U.S. Individual Tax Returns for 2003 and 2004. The returns show that the beneficiary had originally claimed \$3,300 in adjusted gross income in 2003 and \$2,853 in 2004; the revised figure for each year is \$12,480, an amount that matches her proffered annual salary. Under "Explanation of Changes," the beneficiary stated: "to report income not reflected on original return." The petitioner does not explain why the beneficiary did not report this income on her original tax returns. The amended returns were prepared in July 2005, days before the filing of the petition.

In the August 2, 2005 RFE, the director instructed the petitioner to submit evidence of compensation “such as cop[ies] of pay stubs or checks, W-2’s or other evidence as appropriate.” The director also requested IRS-certified copies of the beneficiary’s income tax returns.

In response, the petitioner submits photocopies of IRS Forms 1099-MISC, Miscellaneous Income, from 2003 and 2004. The forms indicate that the petitioner paid the beneficiary \$12,480.00 in “Nonemployee compensation” in each of those two years. The petitioner also submits a photocopy of IRS Form 1096, Annual Summary and Transmittal of U.S. Information Returns. The form show that the petitioner paid a total of \$12,480.00 in compensation in 2003, reported on Form 1099-MISC. The document is unsigned and undated, and there is no evidence that the form was timely submitted to the IRS.

The director denied the petition on November 7, 2005. In the decision, the director acknowledged the petitioner’s submission of the beneficiary’s Forms 1099-MISC, but observed that these forms reflect “nonemployee compensation,” suggesting that “the beneficiary is a self-employed contractor.” The director also noted that the petitioner did not submit payroll records or any evidence at all that the petitioner paid the beneficiary in 2005.

The director also stated that “the beneficiary’s tax returns for 2003 and 2004 . . . were not submitted.” We note that the petitioner had, previously, submitted amended versions of those returns. Apparently the director referred to the absence of IRS-certified copies of those returns, and/or the beneficiary’s original tax returns, before they were amended to reflect her claimed compensation from the petitioner. The director concluded: “All evidence submitted to provide proof for the beneficiary’s prior experience does not indicate a salary received by the beneficiary.”

The director had acknowledged the Forms 1099-MISC and did not question their authenticity. The director’s objection seems to be, at least in part, that the petitioner paid the beneficiary as a “nonemployee” rather than as an employee. The director does not explain why this is relevant for the purposes of this proceeding. If the petitioner paid the beneficiary to perform religious work, then this exchange of services for compensation would appear to constitute “employment” for immigration purposes. See *Matter of Hall*, 18 I&N Dec. 203, 205 (BIA 1982), in which the Board of Immigration Appeals ruled that an alien who “receives compensation in return for his efforts on behalf of the Church” is “employed” for immigration purposes.

On appeal, the petitioner submits copies of the beneficiary’s identification cards from the petitioning church for 2003, 2004 and 2005. The petitioner also submits copies of canceled paychecks that the petitioner issued to the beneficiary in 2004 and 2005, and copies of pay stubs dated between 2002 and 2004.

Matter of Soriano, 19 I&N Dec. 764 (BIA 1988), limits the circumstances under which materials requested in an RFE can be accepted on appeal. In this instance, however, we note that the director merely requested evidence of compensation. The phrasing of the request indicated that the director would request copies of paychecks *or* Forms W-2; there was no indication that the director required both types of evidence. Here, the petitioner did provide Forms 1099-MISC, which serve the same purpose as Forms W-2 in that they establish

compensation for tax purposes. Given the petitioner's good-faith attempt to comply with the RFE, we will accept and consider the copies of paychecks submitted on appeal.

The pay stubs do not represent an uninterrupted record of payments to the beneficiary. The stubs in the record do, however, establish the amount of those payments, specifically \$300 per month, generally paid in \$150 installments on the 15th and 30th of each month; the beneficiary's payments for December 2002 and January 2003 were paid in a \$600 lump sum on January 30, 2003. Assuming that these payments were regular – and the fragmentary evidence shows no deviation from the pattern – the petitioner paid the beneficiary \$3,600 in 2003. This amount is close to the \$3,300 that the beneficiary (according to her amended tax return) originally reported as income for that year. The difference between the two amounts is exactly one month's pay, consistent with unpaid leave. As for 2004, the only contemporaneous pay record is a December 2004 check for \$350. More recent checks show payments of \$203.81 twice a month.

As stated previously in this decision, the director did not question the authenticity of the beneficiary's Forms 1099-MISC. The critical issue, however, appears to be not the nature of the beneficiary's compensation, but its amount. The amounts shown on the Forms 1099-MISC match those on the beneficiary's amended tax returns, but not those on her original tax returns or on the pay stubs submitted on appeal. The petitioner has provided no contemporaneous records to show that the amounts shown on the Forms 1099-MISC are accurate.

In short, the evidence suggests that the petitioner paid the beneficiary \$300 per month in 2003, and then, in 2005, the petitioner created backdated Forms 1099-MISC and the beneficiary amended her tax returns, in order to create the impression that the petitioner actually paid the full proffered wage of \$1,040 per month during that time.

As noted above, the petitioner has submitted documentation showing that the beneficiary worked for the petitioner as an R-1 nonimmigrant religious worker. On August 12, 2003, the petitioner filed a Form I-129 petition to extend the beneficiary's R-1 status. The 2003 petition was filed during the two-year qualifying period, and therefore its record of proceeding is valuable contemporaneous evidence of the beneficiary's employment situation as of 2003.

Part 5 of the Form I-129 bears the heading "Basic information about the proposed employment and employer." This part contains the following information:

| | |
|-------------------------------|--|
| Job Title | Lay Minister |
| Is this a full-time position? | Yes |
| Wages per week or per year | \$3,600 (yr) |
| Other Compensation (explain) | Organization covers all regular expenses (housing, food) |
| Value per week or per year | \$7,200 (yr) |
| Current Number of Employees | 2 |
| Gross Annual Income | \$10,800 |
| Net Annual Income | \$3,600 |

It appears that the petitioner was confused as to the information requested under "Gross Annual Income" and "Net Annual Income." The petitioner appears to have listed its payments to the beneficiary, rather than the annual income of the church itself.

The Form I-129 petition indicates that the beneficiary's total compensation as of 2003 was \$10,800, most of which was in the form of material support rather than a cash salary. The salary figure of \$3,600 per year is consistent with the canceled checks that show monthly payments of \$300. Given these discrepancies, we can afford no credibility to the more recent claim that the petitioner paid the beneficiary \$12,480 per year. The oldest and most reliable evidence available indicates a significantly lower rate of pay. The attempts by the petitioner and by the beneficiary to revise this rate of pay amount to misrepresentation of material facts in furtherance of an attempt to obtain a visa or other benefit under the Act.

On November 1, 2006, the AAO notified the petitioner of the above discrepancies. The AAO allowed the petitioner "a final opportunity to provide independent, objective evidence to show that the \$12,480 amount shown on the Forms 1099 and on [the beneficiary's] amended income tax returns is true, correct, and accurate, rather than a false revision" in furtherance of the petition. The AAO allowed the petitioner 15 days to respond. To date, the AAO has received no response. We conclude, in the absence of any rebuttal, that the beneficiary and the petitioner specifically created the revised tax returns and Forms 1099 in order to influence the outcome of the decision on the petition.

The AAO finds that the petitioner and the beneficiary knowingly misrepresented the beneficiary's income 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 material misrepresentation. Pursuant to section 212(a)(6)(C)(i) of the Act, 18 U.S.C. § 1182(a)(6)(C)(i), any alien who, by willfully misrepresenting a material fact, seeks to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act is inadmissible.

Additionally, the evidence is not credible and will not be given any weight in this proceeding. If CIS fails to believe that a claim stated in the petition is true, CIS may reject that 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).

While there is considerable evidence to show that the petitioner has employed the beneficiary as a missionary, the extent and continuity of that work is in question. Moreover, the petitioner's misrepresentation brings into question the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Therefore, we affirm the director's finding that the petitioner has not credibly demonstrated that the beneficiary possesses the required continuous experience.

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 and the beneficiary 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.