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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: JUN 20 2007
SRC 02 086 53551

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.

Maura Deadrick
fr Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) remanded the matter following an appeal. The director again denied the petition and forwarded the matter to the AAO for review. The decision of the director will again be withdrawn and the petition will again be remanded for further action and consideration.

The petitioner is a Pentecostal Christian 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 pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a pastor immediately preceding the filing date of the petition, because the beneficiary received no salary during that time. In addition, the director determined that the petitioner had not established its ability to pay the beneficiary's wage or salary.

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).

In its prior decision, dated November 28, 2005, the AAO withdrew the director's initial decision on procedural grounds and instructed the director to issue "a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review." The director issued the new decision on December 5, 2006. The director did not, however, follow proper procedures to certify the decision to the AAO as instructed.

8 C.F.R. § 103.4(a)(2) states:

Notice to affected party. When a case is certified to a Service officer, the official certifying the case shall notify the affected party using a Notice of Certification (Form I-290C). The affected party may submit a brief to the officer to whom the case is certified within 30 days after service of the notice. If the affected party does not wish to submit a brief, the affected party may waive the 30-day period.

The director, in re-denying the petition, did not indicate that the decision had been certified to the AAO or that the petitioner had the right to submit a brief within 30 days of the decision. Instead, the director issued a standard Form I-292 decision, indicating that the petitioner would have to file an appeal, with fee, before the AAO would review the matter. The record does not indicate that the petitioner has filed any subsequent appeal. The director forwarded the matter to the AAO, in keeping with certification procedure, but there is no evidence that the director properly advised the petitioner of its rights in the certification process. The director clearly erred by informing the petitioner, incorrectly, that another appeal (with fee) would be required.

Pursuant to the above, the AAO remands this proceeding to the director for issuance of a proper notice of certification. In doing so, the AAO offers an observation regarding the merits of the matter.

One of the stated grounds for denial concerns the petitioner's repeated assertion that the petitioner has never paid the beneficiary a salary, presumably because the beneficiary lacked lawful nonimmigrant status that would permit him to collect a salary. The director apparently took this to mean that the beneficiary's service was uncompensated. The petitioner has, however, consistently claimed to have provided the beneficiary with housing, food and transportation, thereby meeting the beneficiary's basic material needs. 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, even if that compensation takes the form of material support rather than a cash wage. *See Matter of Hall*, 18 I&N Dec. 203, 205 (BIA 1982). Therefore, if the beneficiary worked for the petitioner as claimed, and the petitioner provided material support as claimed, then the director would not be justified in finding that the experience does not count because it was uncompensated. If the director doubts that the work took place, or that the petitioner supported the beneficiary as claimed, the director may pursue those issues, but it is not permissible to deny the petition based on selective quotation of the petitioner's letters (quoting the references to the work as "voluntary" while omitting repeated assertions that the petitioner was entirely responsible for the beneficiary's material support).

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review pursuant to 8 C.F.R. § 103.4(a)(2).