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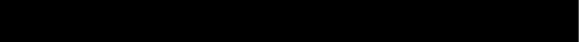
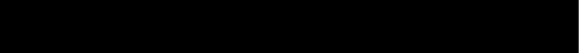
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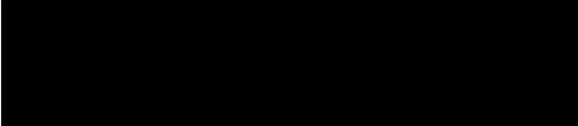


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FILE: WAC 05 258 52525 Office: CALIFORNIA SERVICE CENTER Date: **JUN 20 2007**

IN RE: Petitioner: 
Beneficiary: 

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.

Laura Deadrick
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 member church of the Pacific Coast Slavic Baptist Association. 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 director of the petitioner's Christian Family Medical Center. The director determined that the petitioner had not established that had the requisite two years of continuous work experience in the occupation immediately preceding the filing date of the petition.

On appeal, the petitioner submits arguments from counsel and a new witness letter.

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 September 23, 2005. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of the occupation throughout the two years immediately prior to that date.

The petitioner's initial submission did not identify the beneficiary's intended job title. The submission did include a "Letter of Intent and Qualification" from [REDACTED] Pastor of the petitioning church, describing the positions offered to the beneficiary, her spouse, and one of their sons. Regarding the beneficiary, Pastor [REDACTED] stated:

[The beneficiary] will greatly contribute to our outreach program through her consultative and counseling expertise among children, youth, women and other age groups on local, national and international level[s]. . . .

Main Purpose: Organization of the Consultative Center at [the petitioning] Church for the purpose of enriching the quality of life of the individuals and families and the human relationships in the society.

1. Organizing the seminars for teenagers concentrating on sexual lifestyle and the consequences of sexual activity before marriage.
2. Providing consultative aid to young adults and engaged couples.
3. Providing consultative aid to pregnant women.
 - a. Informative counseling concerning physiology and pathology during the course of pregnancy.
 - b. Teaching the basic instructions how to [care] for the newborn.
4. Setting up the regular informative seminars concerning the physiology of teenagers.
5. Preparing special seminars on [a] regular basis at [the petitioning] Church as well as other churches on certain desired topics such as: (Depression, its cause, effect and the ways to conquer it.)
6. Providing individual consultative aid to women by means of counseling.
7. Creating and printing informative booklets for teenagers, pregnant women and young mothers.

On Form G-325A, Biographic Information, the beneficiary indicated that her only employment between October 1998 and August 2005 was as a "director" and an obstetrician/gynecologist for Emanuel Christian Medical Center. A translated certificate, issued in 1998, identifies the beneficiary as the Secretary of that organization. Other documents indicate that the beneficiary conducted educational discussions at several high schools in Moldova regarding "Consequences of premarital intercourse." Letters from several schools do not mention any religious content in these presentations.

On March 7, 2006, the director issued a request for evidence (RFE), instructing the petitioner to submit "evidence of the beneficiary's work history beginning September 23, 2003 and ending September 23, 2005," including "evidence that shows monetary payment, such as pay stubs." In response, the petitioner submitted a letter from [REDACTED] President of the Emanuel Interconfessional Christian Medical Society,¹ indicating that the beneficiary has been "working with [the] Christian Medical Center as [a] gynecologist doctor [since]

¹ Translated documents in the record offer variations of the organization's name. For consistency, we use the name as stated on the organization's own letterhead, corrected for grammar and spelling.

1998.” In a separate letter, [REDACTED] states that, throughout the 2003-2005 qualifying period, the beneficiary worked “as a gynecologist” and “is also a consultant on family and marriage issues, she hold[s] seminars, conferences and meetings on a regular basis at the [national] and international level.” [REDACTED] Chief Accountant of the Emmanuel Interconfessional Christian Medical Association, stated:

The doctor and consultant [the beneficiary] from September 23rd, 2003 till September 23rd, 2005 has received salary in the amount of 46620 lei. . . .

Consulted on gynecology issues – 2400 patients

Consulted on family issues – 240 patients

We note the 10-to-1 ratio of “gynecology issues” patients to “family issues” patients.

The petitioner also submitted documentation from Moldova’s Department of Education regarding the beneficiary’s lectures at schools. These government documents do not indicate that the beneficiary’s school presentations were religious in any way. Thus, while the beneficiary’s employer in Moldova may have been a religious organization, there is little evidence that the beneficiary’s activities as a clinical physician and a speaker at public schools related to traditional religious functions. Even if the beneficiary’s public school activities were religious in nature, First Amendment considerations would presumably bar the beneficiary from engaging in overtly religious activities at public schools in the United States. The beneficiary’s list of prospective duties does not mention public school appearances.

A description of the position that the petitioner has offered to the beneficiary does not indicate that the beneficiary would spend any time treating patients. The petitioner repeated the previously submitted list of consultative and educational duties, with accompanying percentages of time spent on each activity. The percentages add up to 100%, indicating that there are no significant duties other than those on the list.

The materials submitted in response to the RFE deal with the beneficiary’s experience in Moldova prior to June 2005, the month that the beneficiary left Moldova. Once outside [REDACTED] the beneficiary could not accumulate any further qualifying experience in that country. The petitioner has submitted no evidence to show that the beneficiary had performed any qualifying religious work between her June 5, 2005 arrival in the United States and the filing date three and a half months later. The petitioner had earlier indicated, on the Form I-360 petition, that the beneficiary had never worked in the United States without authorization. The beneficiary’s B-2 nonimmigrant visitor status would not have authorized her to work for the petitioner. Therefore, if the beneficiary did not work in the United States without permission, then she cannot ever have worked for the petitioner prior to the filing date. (The record shows that the beneficiary’s B-2 status expired on December 4, 2005. Counsel, on appeal, states that the beneficiary and her family left the United States before the expiration of that status.)

The director denied the petition on July 8, 2006, stating that the record does not establish that the beneficiary continuously performed qualifying religious work during the 2003-2005 qualifying period. On appeal, counsel asserts that the petitioner’s response to the RFE was inadequate because, prior to the appeal, the

petitioner was not represented by “an immigration attorney who was proficient in immigration laws and regulations.” Therefore, counsel states, the petitioner did not know what details to solicit from the beneficiary’s employers in Moldova. Counsel states that the President of the Emanuel Interconfessional Christian Medical Society wrote a new letter “after our office interviewed the President of the Society.” That letter accompanies the appeal.

In the new letter, dated July 28, 2006 [REDACTED] states:

Since 1998 [the beneficiary] has been working as a gynecologist at the Christian Medical Society.

However, she did not stop there. In the next three and a half years under the sponsorship of our Christian Medical Society, she personally founded a[n] Evangelical Medical Family Center, which she headed.

[The beneficiary] works as the manager [of] the Evangelical Medical Family Center since March 2003. Her schedule is divided between Christian Medical Center, where she works part time as a gynecologist approximately 15 hours weekly, and Evangelical Medical Family Center, which she heads on a full-time basis at 35 hours weekly. [The beneficiary] receives [a] monthly salary of 2000 Moldovan levs for working as the manager of the Evangelical Medical Family Center.

Her duties at the Evangelical Medical Family Center include the following:

- prepare and conduct educational seminars concerning tenets of the Christian family life;
- prepare and conduct seminars with Christian teenagers concerning premarital sexual relations and the consequences;
- prepare and conduct lessons/seminars for spiritual family life;
- consult women from the Christian community concerning spiritual wellness, health and hygiene;
- conduct seminars concerning psychology of teenagers and upbringing of teenagers in the spirit of Christian values;
- conduct personal consultations with married and engaged couples concerning spiritual value of the relationship, planning a family and upbringing of children with Christian values;
- joint work with local Evangelical churches in conducting Christian seminars;
- conduct consultations with pregnant women.

[The beneficiary] is working as the manager of the Evangelical Medical Family Center continuously without interruption since March 2003. Only short trips and vacations interrupted her experience. . . .

Our organization previously wrote a letter in support of the immigrant petition filed for [the beneficiary] in the US. However, because we were not clearly [instructed] that we had to provide her entire employment history, in our previous letter we only mentioned her work as a gynecologist in lieu of her profession and her work at the Evangelical Medical Family Center, which she founded, was not mentioned.

The new claims in the above letter are not persuasive. The new letter states that, prior to the denial, the Moldovan “organization previously wrote a letter.” In reality, the petitioner submitted three letters from officials of that organization. [REDACTED] signed two of those letters. Those prior submissions emphasized the beneficiary’s work as a gynecologist without even mentioning the Evangelical Medical Family Center. [REDACTED] had previously stated that the beneficiary “worked in the Christian Medical Center ‘Emanuil’ as a gynecologist,” adding that the beneficiary “is also a consultant on family and marriage issues.” The structure of that letter does not suggest that the beneficiary’s work as “a consultant on family and marriage issues” took up the great majority of her working time. The letter from [REDACTED] indicated that, over the course of the two-year qualifying period, the beneficiary consulted with ten patients on “gynecology issues” for every one patient consulted on “family issues.” [REDACTED] indicated that the beneficiary received “46620 lei” for this work – roughly consistent with a monthly salary of 2,000 lei over 24 months. Thus, her initially reported work, emphasizing medical rather than spiritual issues, accounts for most if not all of her income.

Even the beneficiary herself, on Form G-325A, did not mention the Evangelical Medical Family Center. She only stated that she was an “OBGYN/MD” and “DIRECTOR” of the “CHRISTIAN MEDICAL ASSOCIATION ‘EMANUEL.’” The beneficiary, by signing Form G-325A, certified under penalty of perjury that the information on the form was accurate. The claim that the petitioner’s employers repeatedly focused on the beneficiary’s allegedly part-time work as a physician, and nobody thought to mention the beneficiary’s full-time work as the director of the Evangelical Medical Family Center until the petitioner retained an attorney, strains credulity.

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). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 592.

With regard to the new claim that the beneficiary was away from her job in Moldova only for “short trips and vacations,” the record shows that the beneficiary was in the United States for the last sixteen weeks of the 2003-2005 qualifying period, and possibly for some months afterward.

For the above reasons, we do not find the petitioner’s substantially revised claim on appeal to be credible. Although the petitioner has consistently indicated that the beneficiary’s work overseas involved some degree of religious instruction and “consultation,” the record also emphasized her work as a practicing physician. Only on appeal has the petitioner claimed that the beneficiary’s medical work amounted to only a small proportion of her working time. We do not find that the petitioner has overcome the director’s finding, and we therefore affirm that finding.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The regulations already cited do not merely require two years of continuous experience in a given religious occupation. The beneficiary must also have been a member, throughout those two years, of the intending employer's religious denomination. The petitioner has not specifically identified its own denomination, but the record shows that the petitioner belongs to the Pacific Coast Slavic Baptist Association. It is not clear whether this association is a denomination unto itself, or else belongs to some other particular Baptist denomination ("Baptist" being a category of denominations rather than a single denomination). The record does not identify the religious denomination in Moldova to which the beneficiary belonged prior to joining the petitioning church in the United States.

8 C.F.R. § 204.5(m)(2) indicates that "an inter-denominational religious organization" qualifies as a religious denomination for the purposes of the regulatory definition. The beneficiary's employer in Moldova uses the word "Interconfessional" in its title, which suggests that the Moldovan organization is "an inter-denominational religious organization," and therefore arguably a denomination in its own right for the purposes of this petition. There is no evidence that the petitioning organization and the Emanuel Interconfessional Christian Medical Society belong to the same religious denomination. The petitioner has indicated that the beneficiary's "family is required to transfer membership to [the petitioning] church from their present home-church in Chisinau, Moldova." The beneficiary's "present home-church" is not identified.

We further note that, in an unsigned letter submitted in response to the RFE, the petitioner stated: "The number of hours [the beneficiary] will be working may fluctuate on a weekly basis, but will average about 30 (thirty) hours a week." The petitioner, therefore, seeks immigration benefits for the beneficiary based on an offer of part-time employment. It is not readily evident that this is permissible. Case law indicates that past experience must be full-time. *See Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980). Such a requirement makes considerably less sense if the intended future employment is to be part-time. Therefore, it is not clear that an offer of part-time employment could qualify the beneficiary as a special immigrant religious worker.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely 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.