



U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED]
SRC 06 051 53853

Office: TEXAS SERVICE CENTER Date:

MAR 29 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:

[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.

Mari Johnson

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 dismissed.

The petitioner is identified as a Southern Baptist 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 music minister. The director determined that the petitioner had not established that (1) the petitioning entity is a qualifying tax-exempt non-profit religious organization, (2) the beneficiary had the requisite two years of continuous work experience as a religious instructor immediately preceding the filing date of the petition, (3) the petitioner had extended a valid job offer to the beneficiary, or (4) the position offered to the beneficiary qualifies as a religious occupation.

On appeal, the petitioner submits a brief and additional documentation.

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).

We shall first consider the issue of the petitioner's tax-exempt status, before moving on to issues relating to the beneficiary's individual qualifications.

8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

In a letter submitted with the initial filing of the petition, [REDACTED] indicated that the petitioning church is affiliated with the Southern Baptist Convention. The petitioner's initial submission, however, included no evidence of that claimed affiliation.

On December 20, 2005, the director issued a request for evidence (RFE), instructing the petitioner to submit, among other things, evidence of the petitioner's qualifying tax-exempt status. In the RFE, the director quoted from a memorandum from William R. Yates, Associate Director of Operations, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003). In that memorandum, the associate director listed the materials necessary to satisfy C.F.R. § 204.5(m)(3)(i)(B), such as:

- (1) A properly completed IRS Form 1023;
- (2) A properly completed Schedule A supplement, if applicable;
- (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization;
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

In response, the petitioner has submitted a copy of its Certificate of Existence, issued by the Secretary of State of the Commonwealth of Kentucky, acknowledging that the petitioner "is a nonprofit corporation duly organized and existing under KRS Chapter 273." This certificate establishes the petitioner's non-profit status under state (not federal) law.

The director denied the petition on March 24, 2006, in part because "[t]he petitioner failed to submit evidence of 501(c)(3) certification or eligibility for exemption." On appeal, counsel states that the "petitioner has adequately satisfied the requirement of the petitioner's tax-exempt status."

In a supplement to the appeal, counsel quotes the list of evidentiary requirements from the associate director's memorandum, and then states that the Kentucky-issued Certificate of Existence satisfies those requirements. Counsel adds that the appeal also includes "petitioner's federal tax number and Articles of Incorporation."

Counsel does not explain how the Certificate of Existence meets any of the documentary requirements outlined in the associate commissioner's memorandum. It falls under none of the listed criteria. Similarly, counsel fails to explain the significance of the petitioner's "federal tax number."

The Articles of Incorporation do fall within the parameters of the memorandum, as the petitioner's organizing instrument, but this would suffice only in conjunction with other documents (such as a completed Internal Revenue Service Form 1023 application). Furthermore, the director, in the RFE, had called for the petitioner to submit this document. The petitioner's response did not include the document, or any explanation for its omission. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner initially failed to submit the requested evidence and now submits it on appeal. The AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The director was, therefore, justified in denying the petition after the petitioner forfeited the opportunity to submit the materials in a timely manner.

We affirm the director's finding that the petitioner failed to submit documentation to show that the petitioner is a tax-exempt non-profit religious organization in its own right, or that the petitioner is covered by a group exemption granted to an umbrella organization.

We now turn to issues more specific to the beneficiary. 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 December 5, 2005. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a music minister throughout the two years immediately prior to that date.

8 C.F.R. § 204.5(m)(2) states that a religious occupation must relate to a traditional religious function. Citizenship and Immigration Services 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. Part-time work is not satisfactory in this regard, as shown in a 1980 decision in which the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

8 C.F.R. § 204.5(m)(4) requires the religious organization to describe the terms of the beneficiary's job offer, including terms of compensation, and to clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support.

In his initial letter, Pastor Allen stated that the beneficiary "was a full time Music Minister for churches in Brazil for 12 years," and "has been ministering in [the petitioning church] . . . as a paid staff member."

The director, in the RFE, requested further information and evidence regarding the beneficiary's prior work experience, particularly during the two-year qualifying period. In response, [REDACTED] the petitioner's Chairman of the Deacons, has stated that the beneficiary "began working for us in an official capacity in June of 2001. He has been employed by us part-time, and continuously, since then to the present." According to "excerpts of the summary of [the beneficiary's] schedule," the beneficiary works a total of less than twenty hours per week, mostly on Sundays and Wednesdays.

[REDACTED] Dean of the Center for International Education at Campbellsville University, has stated:

[The beneficiary] first came to Campbellsville University (CU) as a student in Masters of Music program and after successful completion he continued his F-1 [nonimmigrant student] status and transferred to the Southern Baptist Seminary to pursue his Masters of Divinity. During his years of F-1 Status . . . his CU campus employment was with the Office of International Education. During his optional practical training he worked as a Minister of Music and later he received his R-1 [nonimmigrant religious worker] visa to continue his employment.

The beneficiary's CU transcript shows that he studied there from spring 2000 through fall 2001, receiving an M.A. in Music in December 2001. Materials from Southern Baptist Theological Seminary (SBTS) indicate that the beneficiary had been enrolled full-time at SBTS' Southern Seminary & Boyce College from January 2002 through December 2005. A separate document appears to be the beneficiary's SBTS course schedule for the spring 2006 semester.

Witnesses at several Brazilian churches discuss the beneficiary's work in Brazil in the 1990s. This work fell before the two-year qualifying period and therefore cannot meet the beneficiary's experience requirement. Many of these letters are worded similarly or even identically except for specific details such as job titles and dates of employment. In another letter, [REDACTED] Human Resources Director at South Brazilian Baptist Theological Seminary, states that the beneficiary "was a professor in our institution during the period of 1996 until 2002." This appears to conflict directly with academic transcripts show that the beneficiary was a student in Kentucky from 2000 onward.

Tax documents indicate that the petitioner was the beneficiary's sole source of income in 2003, paying him \$8,075.00. In 2004, the beneficiary and his spouse reported \$17,468 in wages. The petitioner paid the beneficiary \$8,716.64 of this total, and CU paid the beneficiary \$5,860.70, leaving \$2,890.66 from an unidentified source. Finally, the beneficiary and his spouse reported \$24,414 in wages in 2005, of which \$10,748 was from the petitioner and \$9,424.50 was from CU. The record does not specify the source of the remaining \$4,241.50 in wages, or that of an additional \$800 that the petitioner and his spouse reported as business income. On all of the tax returns, the beneficiary's occupation is listed as "Student."

The director denied the petition, stating that the petitioner did not employ the beneficiary on a full-time basis during the qualifying period, and that the beneficiary's intended future work with the petitioner would

apparently be part-time as well. The director therefore concluded that the beneficiary did not possess the required continuous experience, and that “the petitioner has not tendered a qualifying job offer.”

In the initial appeal statement, counsel states: “Beneficiary was paid for full-time work continuously during the two-year [qualifying] period. . . . [T]his is a full-time position; petitioner tendered a qualifying job offer.” Counsel does not elaborate in this initial statement, indicating instead that a brief will follow.

In the supplement to the appeal, counsel does not attempt to support the claim that “this is a full-time position.” Instead, counsel abandons and contradicts that claim, by acknowledging [REDACTED] assertion that the beneficiary “has been employed by us part-time” since June 2001, and by contending: “The fact that he has not been working [a] full forty hours per week is not conclusive as far as he has been continuously and solely engaged in qualifying religious work.” Counsel’s credibility necessarily suffers from these contrary claims. We will return, shortly, to the claim that the beneficiary “has been . . . solely engaged in qualifying religious work.”

In a new, jointly signed letter, [REDACTED] and [REDACTED] state: “Our church has given [the beneficiary] the amount of time available for this position which we consider full-time in regards to the needs and size of our church.” Thus, the officials do not claim that the beneficiary worked what are normally regarded as full-time hours; rather, they essentially claim a new definition of the term “full-time” and assert that the beneficiary worked the maximum number of hours that “the needs and size of [the] church” could justify. It may well be that the petitioning church can produce no more than 20 hours of work for the beneficiary to do each week, but it does not follow that such work is therefore “full-time.” It indicates only that the petitioner is not in a position to make a *bona fide* offer of employment for a full-time music minister.

Counsel contends that the beneficiary “did not take up any other occupation nor vocation . . . music minister has been the only occupation for the beneficiary.” The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 2, 4 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Furthermore, tax documents in the record outright contradict counsel’s claim, as they show that the petitioning church provided less than half of the amount reported on the beneficiary’s 2004 and 2005 income tax returns (on which the beneficiary identified himself as a “student” rather than as a “music minister”). As we have already demonstrated, Campbellsville University paid the beneficiary \$5,860.70 in 2004, an amount that increased to \$9,424.50 the following year. According to a CU official, the beneficiary’s “CU campus employment was with the Office of International Education.” There is no evidence that CU ever employed the beneficiary as a music minister, and it appears far more likely that the beneficiary worked for CU in some other capacity. We reject, therefore, counsel’s discredited claim that the beneficiary “did not take up any other occupation or vocation” during the qualifying period.

Because counsel’s arguments are based on demonstrably flawed or outright false claims, we find that the petitioner has failed to overcome the director’s stated grounds for denial.

Citizenship and Immigration Services does not interpret the statute or regulations to mean that part-time church employment is a viable basis for permanent immigration benefits. Even if this were not the case, the petitioner has failed to establish that it qualifies as a tax-exempt, non-profit religious organization under section 501(c)(3) of the Internal Revenue Code of 1986. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for denial.

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.