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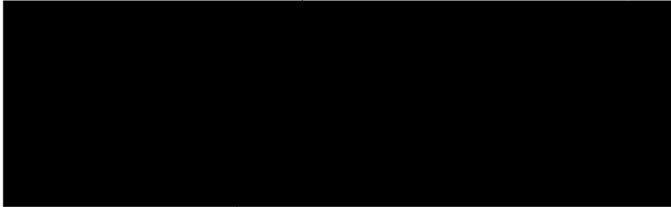
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: MAY 03 2007
EAC 06 008 50986

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
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 on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is a church of the International Pentecostal Holiness denomination. 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 in the petitioner's Sunday school program. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a Sunday school pastor immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary.

On appeal, counsel contests the director's interpretation of the word "immediate."

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 October 7, 2005. Therefore, the petitioner must establish that the beneficiary was

continuously performing the duties of a Sunday school pastor throughout the two years immediately prior to that date.

In a letter accompanying the initial filing of the petition, Rev. [REDACTED] Imbimbo stated:

Since November 2002, [the beneficiary] has served as a licensed Minister for [the petitioning church]. . . .

The position offered to [the beneficiary] is that of Pastor in our Sunday School program. [The beneficiary] also has responsibilities as a Minister of [the petitioning church]. . . . [The beneficiary] has served as a spiritual leader to the [petitioning] congregation since his licensing in 2002, and has worked in [the petitioner's] Sunday School program on a temporary – but full-time and continuous – basis for the past four and a half years in R-1 nonimmigrant visa status. He has performed the duties of Pastor of the Sunday School program from 2002 to the present.

Other information in the initial submission contradicts Rev. Imbimbo's statement that the beneficiary had spent "the past four and a half years in R-1 nonimmigrant visa status." The beneficiary's passport shows that he had, in the past, held R-1 status, but on the Form I-360 petition, the petitioner indicated that the beneficiary's current nonimmigrant status was R-2; the beneficiary's R-1 status had expired in August 2005. While an R-1 nonimmigrant is a religious worker, an R-2 nonimmigrant is the spouse or unmarried minor child of an R-1 nonimmigrant religious worker. Pursuant to 8 C.F.R. § 214.2(r)(8), an alien may not accept employment while in the United States in R-2 nonimmigrant status.

Tax documents and pay receipts in the record show that the petitioner paid the beneficiary \$2,625.00 in 2000, \$11,773.35 in 2001, \$11,715.00 in 2002, \$14,395.02 in 2003, \$15,532.50 in 2004, and \$5,700.00 during the first five months of 2005. The beneficiary's most recent paycheck in the record is dated June 3, 2005.

On November 10, 2005, the director issued a request for evidence (RFE), instructing the petitioner to "[s]ubmit additional evidence that establishes that the beneficiary has the continuous two years full-time experience" during the qualifying period. The director also observed that, because of the beneficiary's change of status from R-1 to R-2 nonimmigrant, he lacked employment authorization during part of the two-year qualifying period.

In response, counsel stated that the beneficiary worked "in the same position . . . from November 01, 2002, to August 07, 2005. . . . The petitioner respectfully submits that this is a period of full time employment . . . for a continuous period of more than two years immediately prior to the filing of this I-360 petition." The petition, however, was filed not in August 2005, but in October of that year. The beneficiary's activities in late August, September, and early October 2005 were clearly more immediate to the filing date than any employment that ended in early August of that year.

Counsel asserted that the passage of time between the beneficiary's change of status and the filing date is reasonable. Counsel cites "the definition of immediate in Black's Law Dictionary, Sixth Edition, 1990, page

749, 'A reasonable time in view of the particular facts and circumstances.'" Counsel repeats this argument on appeal, and we shall address it in that context.

██████████, the petitioner's Director of Personnel, provided a chronology of the beneficiary's work for the petitioner. The portion of the chronology that relates to the qualifying period reads as follows:

On November 1, 2002 [the beneficiary's] title changed to "Licensed Pastor of our Sunday School Program." [The beneficiary] held this position until August 7, 2005.

Finally, from August 7, 2005 to the present, [the beneficiary] has been serving our ministry in a volunteer position in valid R-2 status. To the present date, [the beneficiary] does not receive a salary, he is provided with room and board and a stipend.

The director denied the petition on April 4, 2006, stating that the beneficiary "does not receive a salary, he is provided with room and board and a stipend. . . . The alien became an unpaid volunteer within the two-year period of time immediately preceding the filing of the petition."

On appeal, counsel repeats the prior argument involving the definition of the adjective "immediate":

Immediate is not defined in the Immigration Act nor is it defined in the Regulations. . . . Thus the petitioner turns to Black's Law Dictionary which gives the following definition:

"Present: at once; without delay; not deferred by any interval of time. In this sense, the word, without any very precise signification, denotes that action is or must be taken either instantly or without any considerable loss of time. A reasonable time in view of the particular facts and circumstances of case under consideration." Black's Law Dictionary, Sixth Edition, 1990, page 749.

This argument is not persuasive, as there are different senses of the adjective "immediate." The definition of "immediate" in the Seventh Edition of *Black's Law Dictionary*, published in 1999, is considerably simplified from the prior edition. The three-part definition in the Seventh Edition reads as follows:

1. Occurring without delay; instant <an immediate acceptance>. 2. Not separated by other persons or things <her immediate neighbor>. 3. Having a direct impact; without an intervening agency <the immediate cause of the accident>.

For our purposes here, the applicable definition is the second one: "Not separated by other persons or things." Thus, no intervening period of time would separate the two-year qualifying period from the filing date. The definition counsel quotes from the Sixth Edition deals not with the second sense, which applies here, but with the first sense. The first sense applies when "action must be taken" "immediately" *following* another action, for instance an immediate response to an offer or a summons. In this sense, the response clearly cannot be instantaneous, and reasonable time must be allowed between the demand for "immediate" action, and the actual act of compliance. In this sense, "immediate" could be taken to mean "as soon as possible."

The statutory and regulatory language, however, describes a period of time “immediately” *before* a specific event. There was no particular deadline or calendar benchmark for the filing of the petition; the proceeding did not begin until the petitioner initiated it by filing the petition. Thus, once the petitioner has filed the petition, no further “action must be taken”; the end point of the qualifying period is automatically and instantaneously fixed at the time of filing. Any prior preparatory actions fall within, rather than outside of or after, the statutory two-year period. The qualifying period ends at the time of filing, not the time when the petitioner begins to prepare the petition, or the time when the petitioner contacts an attorney for advice that eventually leads to the filing of the petition.

Even if counsel had persuasively shown that the statutory term “immediately preceding” allowed for “reasonable time,” this would not demonstrate that the petitioner’s delay in filing the petition was “reasonable.” Counsel has not shown that anything prevented the petitioner from filing the petition while the beneficiary’s R-1 status was still current and valid. The petitioner evidently waited for the beneficiary’s R-1 status to expire before the petitioner took any further action, but there is no evident reason that the petitioner had to act – or rather, refrain from acting – in this manner. The petitioner had employed the beneficiary for well over two years, creating a sizeable window during which the petitioner could have filed the petition at any time.

For the reasons explained above, we are not persuaded by counsel’s assertion that “particular facts and circumstances” allow for a gap between the two years of employment and the filing of the petition.¹ That being said, however, the outcome of the proceeding does not hinge on counsel’s interpretation of the term “immediately.”

As noted above, [REDACTED] has indicated that the beneficiary “is provided with room and board and a stipend.” The director, in denying the petition, did not dispute this claim. The director simply repeated it as though it were an uncontested stipulation, stating that the beneficiary “does not receive a salary, he is provided with room and board and a stipend.”

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, the petitioner’s assertion that the beneficiary worked for “room and board and a stipend” in lieu of salary is not facially disqualifying. (Such work could raise questions of admissibility at the adjustment stage, but the visa petition procedure is not the forum for determining substantive questions of admissibility under the immigration laws. *Matter of O*, 8 I&N Dec. 295 (BIA 1959).)

Regarding the issue of the beneficiary’s claimed continued work for the petitioner, two issues must be resolved before a decision can be reached. First, the petitioner must substantiate its claims that the beneficiary continued to work, and that it provided the beneficiary with room, board, and a stipend. Simply

¹ The exact length of this gap is unclear from the record. At various times, the beneficiary’s change of status is said to have occurred on August 7, August 27, and August 29, 2005.

asserting this to be the case cannot suffice. The petitioner has already shown that statements from its officials may be incomplete or unreliable. For instance, Rev. [REDACTED], in a letter dated September 27, 2005, indicated that the beneficiary had worked "for the past four and a half years in R-1 nonimmigrant visa status," but he omitted crucial information about the expiration, weeks earlier, of the beneficiary's R-1 status. 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)).

The second issue concerns the beneficiary's spouse. The beneficiary's status as an R-2 nonimmigrant is contingent on the beneficiary's spouse's status as an R-1 nonimmigrant religious worker. The petitioner must clarify the terms of the beneficiary's spouse's employment. If the beneficiary's spouse receives room, board, and a stipend for her own (authorized) work as an R-1 nonimmigrant, and the beneficiary simply shares these resources, then it could be argued that the beneficiary would have secondary access to room, board, and a stipend whether or not he himself worked at the church. The petitioner must, therefore, show that the beneficiary receives some material consideration for his own work, rather than simply sharing consideration provided to his spouse.

If the petitioner can answer the above issue by demonstrating that the beneficiary has continuously worked at the petitioning church, in exchange for substantial material support of some kind, then the petitioner will have overcome the director's finding regarding the continuity of the beneficiary's employment during the two-year qualifying period.

The second stated ground for denial also relates to the terms under which the beneficiary has worked for the petitioner. 8 C.F.R. § 204.5(m)(4) requires the intending employer to state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration).

A five-page job description submitted with the initial filing goes into considerable detail regarding the beneficiary's responsibilities, but it does not mention terms of remuneration.

8 C.F.R. § 103.2(b)(8) states that, when required initial evidence is missing from the record, the director must issue a request for evidence to advise the petitioner of the omission and give the petitioner a chance to rectify it. Here, as noted above, the director issued an RFE on November 10, 2005, but this RFE contained no mention of the deficiency regarding the job offer.

The director, in denying the petition, concluded that because the beneficiary "does not receive a salary . . . [t]he record does not satisfactorily establish that the beneficiary has been given a valid job offer." The director articulated no further basis for this finding. We note that the record shows that the petitioner has, in the past, compensated the beneficiary for his work, and has indicated that salary payments ceased only because of the change in the beneficiary's nonimmigrant status. The implication is that salary payments would resume once the beneficiary gained employment authorization.

Flawed though the director's finding – or at least the explanation thereof – may have been, it is true that the petition cannot be approved so long as the petitioner has failed to set forth specific terms of payment for

services or other remuneration. Because the petitioner seeks to employ the beneficiary as a minister, 8 C.F.R. § 204.5(m)(4) also requires the petitioner to demonstrate that the beneficiary will be engaged solely in the capacity of a minister.

The record contains nothing that would clearly disqualify the beneficiary for the classification sought. At this point, the only obstacles to the approval of the petition are the evidentiary omissions described above. If the petitioner is able, following further inquiry, to resolve these issues, and no new disqualifying factor surfaces, then the proper course of action at that time would be for the director to approve the petition.

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.