



U.S. Citizenship
and Immigration
Services

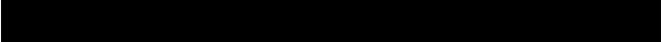
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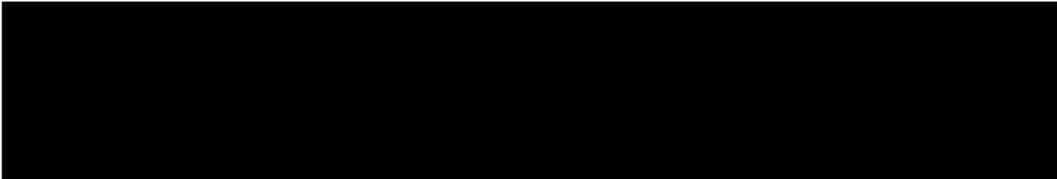
CA

FILE: LIN 06 076 50863 Office: NEBRASKA SERVICE CENTER Date: **MAY 24 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.

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

DISCUSSION: The Director, Nebraska 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 seeks classification 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 Roman Catholic chaplain at St. Thomas More Hospital, Cañon City, Colorado. The director determined that the petitioner had not established: (1) that the intending employer is a qualifying tax-exempt religious organization; (2) that the petitioner had the requisite two years of qualifying continuous work experience immediately preceding the filing date of the petition; (3) the existence of a coherent, qualifying job offer; or (4) the intending employer's ability to compensate the petitioner.

On appeal, the petitioner submits arguments from counsel and various exhibits, some of which are copies of previously submitted materials.

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).

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.

The petitioner's initial submission identifies his employer as Centura Health, Englewood, Colorado. A legend at the bottom of Centura Health's printed letterhead reads: "Centura Health is sponsored by Catholic Health Initiatives and Adventist Health System." The reference to "sponsorship" does not establish Centura's corporate standing, but the involvement of two different religious denominations (Roman Catholic and Seventh-day Adventist) suggests that Centura is not entirely owned or controlled by the Roman Catholic Church.

The petitioner's initial submission includes copies of certificates showing that the Diocese of Pueblo and St. Thomas More Hospital are exempt from Colorado State Sales and Use Tax. The certificates do not establish federal income tax exemption, and neither certificate pertains to Centura Health.

On February 28, 2006, the director issued a request for evidence (RFE), in which the director instructed the petitioner to submit evidence that "the employing religious organization" is either a 501(c)(3) tax-exempt religious organization in its own right, or else covered by a group exemption. In response, the petitioner submitted a copy of a letter from the Internal Revenue Service (IRS), dated July 1, 2005, confirming the group exemption that covers "the agencies and instrumentalities and all educational, charitable and religious institutions operated, supervised, or controlled by or in connection with the Roman Catholic Church in the United States, its territories or possessions appearing in *The Official Catholic Directory*." The petitioner did not, however, submit evidence to show that Centura Health appears in the *Directory*. Absent such evidence, the church's group exemption letter has no relevance in this proceeding. Simply claiming an ill-defined affiliation or sponsorship between the church and Centura Health cannot suffice in this regard.

The director denied the petition on July 7, 2006, stating that the petitioner had not established that either Centura Health or St. Thomas More Hospital is a 501(c)(3) tax-exempt religious organization. On appeal, the petitioner submits printouts from <http://catholichealthinit.org>, stating: "Centura Health is a joint operating agreement between Catholic Health Initiatives and PorterCare Adventist Health System in Colorado to manage facilities" including St. Thomas More Hospital. The printout indicates that Centura Health has its own President and Chief Executive Officer, and previous submissions indicate that Centura Health issues its own annual reports.

██████████, Director of Mission and Ministry at St. Thomas More Hospital, states: "Centura Health: St. Thomas More Hospital is listed in the Official Catholic Directory." The petitioner does not submit a copy of the relevant excerpt from the *Directory* to confirm this statement, nor does the petitioner explain the absence of this documentation. The petitioner does submit a partial copy of the 2005 *Diocese of Pueblo Directory*, which lists St. Thomas More Hospital under "Hospitals." The excerpt does not mention Centura Health or explain the nature of the relationship between Centura Health and St. Thomas More Hospital (for

instance, it is not clear whether Centura Health owns the hospital, or simply acts as a contractor providing personnel and other services).

The petitioner submits copies of corporate documents relating to Catholic Health Initiatives, which is “sponsored, within the meaning of Canon Law, by religious institutes of the Roman Catholic Church.” Nevertheless, the petitioner’s employer is neither St. Thomas More Hospital nor Catholic Health Initiatives, but Centura Health, an organization with ties not only to the Roman Catholic Church, but also to the Seventh-day Adventist Church. Because Centura Health is clearly not exclusively a Catholic organization, it cannot suffice for the petitioner to show that some vague, undefined relationship exists between the Roman Catholic Church, Centura Health, Catholic Health Initiatives and St. Thomas More Hospital. If Centura Health exists as a separate corporate entity, which the record strongly indicates, then the burden is on the petitioner to establish that Centura Health is a qualifying organization. It cannot suffice for the petitioner to claim that Centura Health is “sponsored by” qualifying organizations.

For the reasons outlined above, we concur with the director’s finding that the petitioner has not established that the prospective employer is a 501(c)(3) tax-exempt religious organization. It may well be that Centura Health is a qualifying organization, but the record lacks the evidence needed to support such a finding.

The next issue concerns the petitioner’s past experience. 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 documents in the record are consistent with more than two years of experience by the petitioner at St. Thomas More Hospital immediately prior to the filing date. At issue is not whether the employment took place, but the circumstances under which it occurred. In the RFE, the director stated:

[T]he beneficiary was admitted to the United States on July 4, 2004 as [an] R-1 nonimmigrant. . . . At the time the beneficiary was admitted to the United States he was authorized employment with St. Benedicts Parish Community. . . . Please submit evidence that the beneficiary was authorized to change employers.

In response, counsel stated:

Petitioner entered the U.S. [under an] R-1 visa to work with St. Benedict’s Parish Community. . . . [The petitioner] continues in his roles as part of St. Benedict’s and St. Thomas More. There was no change of employer as suggested in the request for evidence.

...

Petitioner's remuneration will continue to be paid directly by the hospital, as is the arrangement between the Diocese of Pueblo and Centura Health (operator of St. Thomas More Hospital).

The petitioner's employer is not the Diocese of Pueblo or St. Thomas More Hospital. The petitioner's employer is Centura Health, identified as such on IRS Form W-2 Wage and Tax Statements.

The director, in denying the petition, stated that the petitioner had not shown that his employment with Centura Health was authorized. The director concluded: "it appears the self-petitioner may have engaged in unauthorized employment and thus this employment would not be considered qualifying for the two-years of experience immediately preceding the filing of the petition now before the Service."

We have already discussed the confusion surrounding the nature of Centura Health and its relationship to various church bodies. We need not explore the issue of whether or not the petitioner's employment was authorized under his R-1 nonimmigrant status, because at the time of the director's decision there existed no requirement that an alien's prior employment in the United States be authorized. If the petitioner did violate his R-1 status by changing employers, which would be a violation of status under 8 C.F.R. § 214.5(r)(6), this violation would be an issue at the visa application/adjustment stage. 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).

Because the director's finding is based on a flawed premise, we hereby withdraw that finding.

Finally, we turn to the related issues of the job offer and the prospective employer's ability to meet the terms of that offer. Pursuant to 8 C.F.R. § 204.5(m)(4), an authorized official of the intending employer must state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration). The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner's initial submission included a letter from [REDACTED], Senior Vice President of Mission and Ministry at Centura Health. [REDACTED] stated the petitioner "is a bona fide Centura Health employee. . . . The Catholic Diocese of Nnewi, Nigeria accepts immigration responsibilities on behalf of" the petitioner. We note that, because the Diocese of Nnewi is outside the United States, that diocese cannot qualify as an employer; statutorily, the employer must be a "religious organization in the United States."

A "Celebret" from [REDACTED] of the Catholic Diocese of Nnewi, "valid for four years beginning from the 22nd day of June 2004," includes [REDACTED] request that "you kindly grant [the petitioner] faculties for the celebration of the Holy Mass and also any other priestly ministry as well as any courtesy which a Catholic priest may require." A November 5, 2004 letter from [REDACTED] reads in part:

I am pleased to grant you [the petitioner] the faculties of the Diocese of Pueblo. These faculties will allow you to serve as Chaplain at the St. Thomas More Hospital in Cañon City, Colorado.

These faculties are effective immediately and will remain in effect for three years, expiring on December 31, 2007. The faculties may be renewed at that time.

In the February 28, 2006 RFE, the director instructed the petitioner to submit "copies of annual reports, federal tax returns, or audited financial statements" to show that "the prospective United States employer has the ability to pay the proffered wage." In response, counsel stated: "Petitioner's remuneration will continue to be paid directly by the hospital." [REDACTED] also states that the beneficiary's "expenses . . . will be met by the St. Thomas More Hospital." Father Izuchi states that the petitioner "currently serves as full time chaplain in St. Thomas More at an annual salary of 45k with full benefits."

The petitioner submits copies of IRS Forms W-2, showing that Centura Health paid the beneficiary \$18,454.06 in 2004 and \$44,132.22 in 2005. The petitioner's response is said to include a copy of the "2005 Annual Report from Centura Health." The document in the record is entitled "Centura Health 2005 Report to the Community," and appears to be a printout from a web site. The report contains some very general financial information, such as the assertion that Centura Health "[e]arned net income of \$109 million on revenues of \$1.3 billion," but did not contain the detailed financial data usually contained in annual reports, tax returns, or audited financial statements.

The director found that the petitioner had not clearly or consistently identified the entity that would be responsible for the beneficiary's compensation or material support, and had failed to establish the employer's ability to pay the proffered salary as required by 8 C.F.R. § 204.5(g)(2). We find that the petitioner's employer, for the purposes of this petition, is Centura Health. The record sets forth the terms of employment. We therefore withdraw the director's finding that the petitioner has not sufficiently established or clarified the job offer.

There remains the issue of Centura Health's ability to compensate the petitioner. The petitioner's appeal contains no additional financial information. Counsel simply asserts: "There has been no problem for [the petitioner] to obtain the promised remuneration in the past, nor will there be in the future."

As cited above, 8 C.F.R. § 204.5(g)(2) includes specific documentary requirements regarding a United States employer's ability to compensate an alien beneficiary. Evidence of past payments is not, by itself, sufficient to prove that the employer will continue to be able to make those payments. Even after the director specified the regulatory requirements in the RFE, the petitioner has not supplied the required documents. If Centura Health is a 501(c)(3) non-profit organization (which it must be, in order to be a qualifying employer) with

“revenues of \$1.3 billion” as claimed, then Centura Health is required to file Form 990, Return of Organization Exempt From Income Tax, annually with the IRS. A Form 990 return would contain essentially the same financial information as a federal income tax return. Nevertheless, the petitioner did not provide a copy of this return when the director indicated that the submission of “federal tax returns” would assist in establishing the employer’s ability to pay the petitioner’s salary. 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 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.