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20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: NOV 21 2007

WAC 07 049 51000

IN RE:

Petitioner:



Beneficiary:

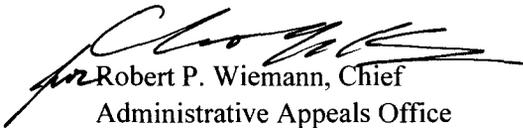
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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.


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 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 missionary. The director determined that the petitioner had not established its ability to pay the beneficiary's wage, or that the beneficiary had the requisite two years of continuous work experience as a missionary immediately preceding the filing date of the petition.

On appeal, the petitioner provides information about the beneficiary's claimed prior compensation.

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 first issue concerns the petitioner's ability to compensate the beneficiary. The regulation at 8 C.F.R. § 204.5(m)(4) requires the prospective United States employer to show how the alien will be paid or remunerated. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support. 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.

In a letter accompanying the initial petition, [REDACTED] Pastor of the petitioning church, stated:

[The beneficiary] receives his support through Central Missionary Clearinghouse (CMC) in Pasadena, Texas. CMC processes an average of \$3000 in monthly support from approximately 60 churches for him each month. CMC is an Independent Baptist Service Agency. . . .

[The beneficiary's] income will increase significantly while he is in America, as he will be receiving honorariums in varying amounts from the churches in which he speaks. These honorariums are in addition to his regular monthly support. Churches will also provide him and his family food [and] lodging. The honorariums, food and lodging are all normal benevolence for returning missionaries among independent Baptist Churches. [The petitioner] guaranties [sic] any additional support that may be required.

[REDACTED]

[The beneficiary and his spouse] have missionary status and were approved for their ministry on October 15, 1993 by Central Missionary Clearinghouse.

[The beneficiary and his spouse] receive all their funds from the United States, funds that are sent to them by churches affiliated with Central Missionary Clearinghouse and individual donors. Their income is a minimum of \$3,000.00 US each month. The Central Missionary Clearinghouse guarantees their full financial support. This includes subsistence, housing and travel.

A January 9, 1978 determination letter from the Internal Revenue Service indicates that CMC is a tax-exempt organization that is required to file a Form 990 Return of Organization Exempt from Income Tax each year. In terms of the information contained therein, a Form 990 return is analogous to an income tax return. The record does not contain any of CMC's Form 990 returns, or any other documentation of CMC's financial status.

On March 2, 2007, the director issued a request for evidence (RFE), instructing the petitioner to submit financial documents that conform to 8 C.F.R. § 204.5(g)(2) or "**well-documented** evidence that [the petitioner] provided all of the beneficiary's living expenses during 2004-2006" (director's emphasis). The director added that affidavits alone would not suffice in this regard.

In response, [REDACTED] repeated his prior assertions regarding support from CMC and honoraria from unnamed other churches. The petitioner submitted a new letter from [REDACTED] which is mostly word-for-word identical to [REDACTED] first letter, with two differences. The stated amount of the beneficiary's minimum monthly compensation has increased from \$3,000 to \$3,400, and [REDACTED] added a sentence indicating that the beneficiary "has not been to the States for furlough since 1999 and he needs to report to his donors about the ministry and to raise additional support."

The petitioner also submitted two pamphlets, *Articles of Faith* and *God's Simple Plan of Salvation*. These publications consist primarily of scriptural verses and statements of church doctrine, and have no demonstrated relevance to the issues discussed in this decision.

The director denied the petition on June 5, 2007, in part because "the petitioning organization failed to submit corroborative evidence such as recent audited financial statements, IRS-certified federal tax returns, and/or well-documented evidence that they have provided all of the beneficiary's living expenses during the past two years." The director acknowledged the petitioner's claim that "several different churches are collectively responsible for the beneficiary's wage," but observed that the petitioner failed to document "payments being sent to the beneficiary."

On appeal, [REDACTED] states:

Central Missionary Clearinghouse is the financial institution that provides the funds for [the beneficiary's] living expenses when he is in Thailand or the United States.

The \$3,000.00 and the \$3,400.00 [figures] were only approximately the amounts he receives. Attached are the exact amounts he received through Central Missionary Clearinghouse.

Accompanying the appeal is a third letter from [REDACTED] of CMC, listing specific amounts purportedly paid to the beneficiary each month from December 2004 (\$3,950.83) to June 2007 (\$3,703.00).

The director did not deny the petition because the petitioner had provided approximate, rather than exact, amounts with respect to the beneficiary's compensation. Rather, the director based the denial on the petitioner's failure to submit documentary evidence to demonstrate that the petitioner (or CMC) has sufficient income or available funds to continue paying the beneficiary. To date, the petitioner still has not provided any of the financial documentation required by the regulation at 8 C.F.R. § 204.5(g)(2). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The petitioner has consistently provided only after-the-fact letters, claiming that the beneficiary has received financial support. These letters do not suffice as evidence of ability to pay, regardless of whether the dollar amounts are stated as rounded estimates or exact sums.

For the above reasons, we affirm the director's finding that the petitioner has not met the regulatory requirements relating to the employer's ability to pay the beneficiary.

The remaining issue in the director's decision concerns the beneficiary'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 petition was filed

on December 1, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a missionary throughout the two years immediately prior to that date.

In his letter accompanying the initial filing, [REDACTED] stated that the beneficiary and his spouse “have been members of [the petitioning church] since March 20, 1993 when he was here studying to return to Thailand for missionary service. Our Church ordained [the beneficiary] on April 26, 1998. They have been [in] the field in Thailand since August 8, 2000.” The petitioner submitted copies of various credential certificates issued to the beneficiary since 1993, but no direct evidence of the beneficiary’s missionary work during the December 2004-December 2006 qualifying period.

The director’s RFE included instructions to submit a detailed work history to account for the beneficiary’s activities during the 2004-2006 qualifying period. The director specifically requested, for each job, a statement from “an authorized official from the specific location at which the experience was gained.” In response, [REDACTED] stated that the beneficiary “has been serving on the field of Thailand continuously since 2000.” [REDACTED] listed several cities in Thailand where the beneficiary has purportedly engaged in missionary activities. The petitioner did not, however, submit any evidence from Thailand to support any of these claims.

The director, in denying the petition, found that the petitioner had failed to submit “corroborating evidence” and therefore “the Service is unable to conclude that the beneficiary has been engaged in any particular occupation, religious or otherwise, during the two-year qualifying period.” On appeal, the petitioner does not directly address this finding; the appeal focuses, instead, on financial issues discussed previously in this decision.

The record contains no evidence at all from the time or place where the beneficiary is said to have worked as a missionary. Throughout this proceeding, the petitioner has claimed that the beneficiary has worked for years in Thailand, but has offered no support for that claim except letters from individuals in Texas who do not claim to have personally witnessed the beneficiary’s activities in Thailand. The petitioner has not provided any documentary evidence to establish even the existence of the churches in Thailand where the beneficiary is said to have worked.

For the above reasons, we affirm the director’s finding that the petitioner has not sufficiently established that the beneficiary accumulated the required continuous experience during the two years immediately preceding the filing of the petition.

Review of the record reveals an additional issue not previously discussed. 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 statute provides for classification of an alien who seeks to enter the United States in order to work for a religious organization in the United States in a religious occupation. Section 101(a)(27)(C)(ii)(III) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(III). The religious organization must be in the United States, as must the alien’s proposed employment. *Id.*; 8 C.F.R. § 204.5(m)(1).

In this instance, the petitioner has clearly and consistently stated that the beneficiary is a "Missionary to Thailand." The petitioner has not established that the beneficiary seeks to enter the United States in order to work as a missionary to Thailand. To the extent that the petitioner, a United States church, seeks to support a Thai national working *in Thailand*, such an arrangement would not appear to be a matter of concern to United States immigration authorities.

In his first letter, [REDACTED] stated:

[The beneficiary] and his family need to return to America as part of his normal missionary duties. Baptist Missionaries periodically return to their sending and supporting churches in order to report the progress of the work that they have done (Acts 13:1-4, 14:25-28), and for deputation at prospect churches to raise new support as needed (3 John 5-8). [The beneficiary] will be both reporting and [performing] deputation work on his trip to America.

We acknowledge the petitioner's assertion that the beneficiary must, from time to time, visit the United States in order to report to sponsor churches. These visits, however, appear to be very infrequent. In his April 10, 2007 letter, [REDACTED] stated that the beneficiary "has not been to the States for furlough since 1999." In his initial letter, [REDACTED] asserted that the beneficiary had been in "the field in Thailand since August 8, 2000." These claims differ from one another, but they are broadly consistent insofar as they indicate that the beneficiary does not often travel to the United States.

[REDACTED]'s earliest letter in the record appears to be worded as a request for a nonimmigrant visa rather than permanent resident status. He stated, at that time, that the beneficiary sought "a Religious worker's visa to visit America." It does not appear that the beneficiary seeks to immigrate to the United States. Rather, the beneficiary evidently seeks to reside and work in Thailand, visiting the United States only occasionally and staying in temporary, church-supplied lodging.

For the above reasons, the petitioner has not established that the beneficiary seeks to enter the United States as an immigrant, to work in the United States pursuant to section 101(a)(27)(C) of the Act.

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.

ORDER: The appeal is dismissed.