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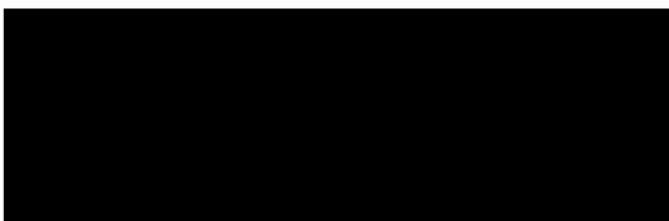
U.S. Department of Homeland Security  
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Washington, DC 20529



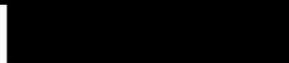
U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: TEXAS SERVICE CENTER

Date: **AUG 20 2008**

SRC 06 071 52687

IN RE:

Petitioner:

Beneficiary:



PETITION: 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church district. 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 minister of its church in Orlando, Florida. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

On appeal, counsel states that the regulation requires submission of neither tax returns nor pay stubs to establish the beneficiary's continuous qualifying experience. The petitioner submits additional documentation in support of the appeal.

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 issue presented on appeal is whether the petitioner has established that the beneficiary had been continuously employed in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition.

The record reflects that the petitioner filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on behalf of the beneficiary on February 7, 2001 under Citizenship and Immigration Services (CIS) receipt number SRC 01 101 53282. The AAO dismissed the petitioner's appeal of that decision on March 11, 2005, finding that the petitioner had failed to establish that the beneficiary had been engaged

continuously in a qualifying vocation or occupation for two full years immediately preceding the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States.” The regulation 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.”

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on January 3, 2006. Therefore, the petitioner must establish that the beneficiary was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

As evidence of the beneficiary’s qualifying experience, the petitioner submitted the beneficiary’s résumé. The résumé **does not indicate any experience subsequent to the year 2000**. The petitioner submitted documentation indicating that the beneficiary was ordained as a minister in 1994, and documentation of his employment as a minister from 1997 to 2000. However, it submitted no documentation to establish the beneficiary’s employment from January 2004 through the date the petition was filed.

In a request for evidence (RFE) dated January 26, 2006, the director instructed the petitioner to:

Submit a detailed description of the beneficiary’s prior work experience including duties, hours, and compensation, accompanied by appropriate evidence (such as original pay stubs or cancelled checks, earning statements, W-2’s or other probative evidence). Submit an RIS certified copy of the beneficiary’s income tax returns with all the pertaining W-2s for the two years preceding the filing of this petition. All evidence should be submitted for the time frames of January 03, 2004 up to January 03, 2006.

The director also instructed the petitioner to submit evidence of how the beneficiary supported himself and his family during the qualifying period if he did not receive compensation for his services.

In response, the petitioner submitted documentation about the beneficiary’s employment in Venezuela prior to 2000, but submitted no evidence of the beneficiary’s work experience during the qualifying period. In his April 18, 2006 letter accompanying the petitioner’s response to the RFE, counsel stated that the beneficiary

was employed by the petitioning organization from January 3, 2004 to January 3, 2006. However, nothing in the record supports counsel's statements. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

On appeal, the petitioner submits a June 22, 2007 letter in which it states that the beneficiary "served with the International Church of the Nazarene as pastor of the Antimana Church and in the United States" from January 2001 to January 2004. The letter also states:

[The beneficiary], as Nazarene pastor, while not [an] employee per se and not [a] volunteer, is supported with benefits extended such as free boarding and lodging, as he carries on the work of the church. The type of benefits are extended by our church organization for pastors from overseas who come to the U.S.A. for pastoral assignments to foster brotherhood with all the members of the Church of Nazarene worldwide. [The beneficiary] has been continuously performing his duties in Venezuela and in Florida since [his] arrival from Venezuela.

Again, the petitioner submitted no documentation to corroborate the beneficiary's employment during the qualifying period. Counsel asserts that the neither the statute nor regulation require that the petitioner establish the beneficiary's qualifying experience through tax returns or pay stubs. While counsel correctly recognizes that no specific documentation is listed in the regulations in order to prove work experience, the petitioner submitted no documentation to establish the beneficiary's work experience during the qualifying period. The burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). 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 legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." *See* H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

The term "continuously" also is discussed in a 1980 decision where 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).

In line with these past decisions and the intent of Congress, it is clear, therefore, that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

As the petitioner has provided no documentary evidence to establish the beneficiary's qualifying period, the petitioner has not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

Beyond the decision of the director, the petitioner has established that the beneficiary's prospective employer has the ability to pay the proffered wage.

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.

In a November 3, 2005 letter, the petitioner stated that the beneficiary's salary will be \$25,000 per year to be paid by the local church. The petitioner also stated that the beneficiary's compensation "should include housing and health insurance." In a July 22, 2005 letter, the petitioner stated that the Way to Calvary Church, the beneficiary's prospective employer, raised \$28,000 during 2004-2005. The letter also stated that the local church would be responsible for the beneficiary's salary but that "[i]f this becomes a problem, the [petitioner] would step in to cover the shortfall and resolve the situation."

The petitioner submitted a copy of a document labeled "VI. Financial and Statistical." The document does not indicate the name of the organization to which the document refers, but indicates that is the 2003-2004 year-end report for the district treasurer.

The petitioner submitted none of the documentation, such as federal tax returns or audited financial reports, as required by the above cited regulation. Therefore, the petitioner has failed to establish that it has the ability to pay the beneficiary the proffered wage.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied 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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.