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U.S. Citizenship  
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[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: JUL 02 2008

WAC 07 021 50801

IN RE:

Petitioner:

[REDACTED]

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:

[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.

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 member church of the Christian Congregation in the United States. 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. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a minister 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 argues that the denial of the petition amounts to a violation of the petitioner's constitutional right to conduct its religious activities, including staffing, as it sees fit.

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 under discussion concerns the job offer. The Citizenship and Immigration Services (CIS) regulation at 8 C.F.R. § 204.5(m)(4) reads, in part:

*Job offer.* The letter from the authorized official of the religious organization in the United States must also state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration), or how the alien will be paid or remunerated if the alien will work in a professional religious capacity or in other

religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support.

In a September 8, 2006 letter accompanying the initial filing, [REDACTED] Elder of the petitioning church, identified the beneficiary as a minister of the petitioning church, but did not provide any details about the terms of employment or compensation. In a separate letter, the beneficiary stated that he has “two kinds of work.” *The beneficiary cited biblical verses which, he believes, indicate that religious workers should work without pay. The beneficiary stated that he earns his living “as a ceramic installer” who seeks “new work every morning” rather than holding a fixed position for a single employer.*

On December 11, 2006, the director issued a request for evidence (RFE), instructing the petitioner to submit, among other things, a job offer letter setting forth the expected job duties, work schedule, and compensation for the position. In response, the petitioner submitted a new letter from [REDACTED], dated January 26, 2007. The letter reads, in part:

The Christian Congregation in North America . . . does not extend any type of salary or any other compensation to its ministerial officials. . . .

The ministerial officials do not charge and do not receive any type of gift or reward for presiding [over] worship services, prayers, or for visiting other congregations because we believe that all of these activities are spiritual matters. . . . They do not exhort or charge the tithes. . . .

The members of the Christian Congregation do not have any obligation of maintaining the ministerial officials financially. All of our members, including the Elders, work for the church voluntarily . . . and do not expect any kind of compensation from the church. Therefore, all members have jobs or other sources of income that provide for their personal needs.

asserted that the beneficiary supports his family through “the installation of ceramic tile.” The petitioner submitted copies of the beneficiary’s tax documentation, showing that the beneficiary earned income from Miller Brothers Floors in 2004.

On April 24, 2007, the director issued a second RFE, asking: “Does the petitioning organization provide food and housing for the beneficiary?” In response, [REDACTED] stated: “Housing and food are not supplied for the members or Ministry of the Congregation unless in cases that the same ones cannot maintain his/her own sustenance which are extreme situations.” [REDACTED] repeated the assertion that the petitioner’s denomination holds that work performed for the church should not be compensated.

The director denied the petition on July 25, 2007, in part because the petitioner “clearly stated that the beneficiary will be working for the petitioner [on] a strictly unpaid and voluntary basis,” and because the record “clearly shows that the beneficiary has been involved in continuous full-time employment with

secular, for profit companies. Therefore, the evidence is insufficient to establish that the beneficiary will not be solely dependent on supplemental employment or solicitation of donations for support.”

On appeal, counsel asserts: “The government has no power as provided in the U.S. Constitution to interfere with any aspect of religion as to its establishment or practice.” Counsel contends that the denial of the petition is an impermissible infringement of the beneficiary’s constitutional right to freedom of religion “because it violates the principles respecting the establishment of religion or prohibiting the free exercise thereof.” Counsel cites extensive case law to support the assertion that “[r]eligious organizations are entitled to select their own clergy.”

Nothing in the statute entitles every church worker to automatic classification as a special immigrant religious worker. Rather, the structure of the statute demonstrates that there are limits to eligibility, and that individuals who fall outside those limits are not entitled to the classification sought. While the determination of an individual’s status or duties within a religious organization is not under the purview of CIS, the determination as to the individual’s qualifications to receive benefits under the immigration laws of the United States rests within CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *See Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607, 608 n.2 (BIA 1978).

The statute, regulations, and case law are all binding on CIS and the AAO, and all of these sources of law point squarely against a finding in the petitioner’s favor. Section 101(a)(27)(C)(ii)(I) of the Act indicates that CIS may approve a special immigrant religious worker petition for an alien who seeks to enter the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination. The record amply and consistently proves that the beneficiary does not seek to enter the United States solely for that purpose. Our inquiry need proceed no further, as the beneficiary’s goals and the petitioner’s stated policy place the beneficiary outside the scope of the statutory provision by which the beneficiary seeks immigration benefits. The law simply does not permit the approval of this petition, regardless of counsel’s argument that the beneficiary is constitutionally entitled to approval.

The remaining issue 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 October 26, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a minister throughout the two years immediately prior to that date.

Elder of the petitioning church, stated that the beneficiary and his spouse “have both served continuously as ministers of our church since October 2002.”

In the December 2006 RFE, the director requested information about the beneficiary’s work history during the qualifying period. In response, [REDACTED] stated: “Since that time in 2002, [the beneficiary] has

progressively fulfilled his functions, obligations, and responsibilities as a cooperator of the ministry of God, under our supervision.” [REDACTED] listed twelve “functions and responsibilities of a Cooperator of the Ministerial Office,” such as “Conducting funeral services” and “Anointing the ill”; the only function to which a specific time attached was “Presiding services: Wednesdays from 7:30 p.m. to 9:00 p.m. and Sundays from 10:00 a.m. to 11:30 a.m.” The petitioner also submitted copies of the beneficiary’s tax documents, as discussed elsewhere in this decision, showing the beneficiary’s income from tile installation.

In the April 2007 RFE, the director requested additional evidence regarding the beneficiary’s work history and means of support during the qualifying period. The petitioner responded with additional tax documents showing the beneficiary’s 2005 earnings from Miller Brothers Floors. [REDACTED] stated that the beneficiary “is currently and has been since the end of the year 2002 working on a voluntary basis executing the functions of evangelic missionary and later as the Cooperator of the Ministry,” performing duties typically performed by clergy such as conducting weekly services, baptisms, and funerals. [REDACTED] added: “the exact hours performed as both a spiritual and material Cooperator cannot be determined,” but “one’s availability for this celestial vocation is practically full-time.”

In denying the petition, the director cited the beneficiary’s full-time secular employment throughout the qualifying period, and found that “[i]ncidental voluntary activities with one’s church are not consisted engagement in a religious organization and the services provided are not considered qualifying experience in the religious organization.”

On appeal, as noted above, counsel relies upon the argument that the government cannot interfere with the relationship between a church and its clergy. We have already established that this argument fails to show that the government is obligated to provide permanent immigration benefits to every alien member of the clergy. Immigration benefits are bestowed by the government, as noted in *Matter of Hall*. The matter at hand is not, as counsel contends, a matter of “church autonomy.” It is, rather, a petition for a secular, government benefit, and the doctrines of a particular church cannot and do not supersede federal statute and regulations with respect to the adjudication of that petition.

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 (Sept. 19, 1990). The statutory term “continuously” is discussed 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, 402 (BIA 1980).

An alien seeking classification as a special immigrant minister must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought, and must intend to be engaged solely in the work of a minister of religion in the United States. See *Matter of Faith Assembly Church*, 19 I&N 391, 393 (Commr. 1986). We note that the Ninth Circuit Court of Appeals has upheld the

AAO's interpretation of the two-year experience requirement. *See Hawaii Saeronam Presbyterian Church v. Ziglar*, 2007 WL 1747133 (9<sup>th</sup> Cir., June 14, 2007).

The terms by which the petitioner seeks to engage the beneficiary's services are contrary to the plain wording of the statute and regulations. The denial of the petition is, therefore, not an infringement of the petitioner's constitutional rights, as counsel claims. Rather, the denial is consistent with the statute, regulations, and long-standing case law. The director could not have approved the petition, as it now stands, without stepping well outside the bounds of the law.

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.