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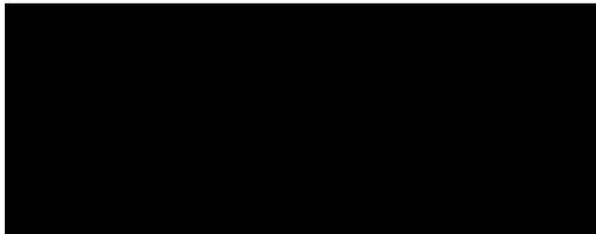
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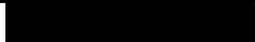
U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUL 08 2008

WAC 07 044 51424

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.

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 AAO will withdraw the director's decision and remand the petition for further action and consideration.

In this decision, the term "prior counsel" shall refer to _____ of Holme Roberts & Owen LLP, who represented the petitioner at the time the petitioner filed the petition. The term "counsel" shall refer to the present attorney of record.

The petitioner is an international Christian ministry organization. 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 its director of Outreach Ministries for the Middle East and North Africa. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience in the occupation immediately preceding the filing date of the petition.

On appeal, the petitioner submits a brief from counsel as well as various exhibits.

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 November 29, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of the position throughout the two years immediately prior to that date.

According to the Form I-360 petition and the beneficiary's passport, the beneficiary entered the United States on September 13, 2006, eleven weeks before the petition's filing date. Therefore, the beneficiary spent most of the qualifying period outside the United States. The passport attests to substantial international travel before the beneficiary's latest entry, consistent with the beneficiary's job description which indicates that the beneficiary's duties require such travel.

In an introductory letter, [REDACTED], International President of the petitioning organization, stated that the beneficiary "has been a staff member of [the petitioning entity] serving as the Director of Outreach Ministries for Egypt (Country Leader), a position he currently holds and has held continuously since 1991." Mr. [REDACTED] stated that the petitioner "will pay [the beneficiary] an annual salary of \$36,000.00," but he did not describe the beneficiary's past compensation. Mr. [REDACTED] also indicated that the beneficiary's past duties were essentially the same as those of the proffered position, albeit on a smaller scale.

Mr. [REDACTED] stated:

In Egypt, [the petitioner] conducts its activities through the Evangelical Presbyterian Church in Egypt, which shares a common Christian mission with [the petitioner]. Pursuant to this arrangement, [the petitioner's] staff members working in Egypt conduct their activities as part of the Christian Education Council and/or one or more local churches under the denominational authority of the Evangelical Presbyterian Church in Egypt. These staff members are compensated by, and report to, [the petitioning organization]. . . .

[The beneficiary] has been a member since 1966 of the Evangelical Church of Shubra El Nozha in Cairo, Egypt, which is a local church of the Evangelical Presbyterian Church in Egypt.

The petitioner's initial submission included substantial documentation relating to the petitioning organization, but little documentary evidence specific to the beneficiary. To attest to the beneficiary's past work, the petitioner submitted two letters, both dated November 16, 2006, from church officials in Egypt. Rev. Dr. [REDACTED], Senior Pastor of the Evangelical Church of Shubra El Nozha, stated that the beneficiary "has served . . . as Egypt Country Leader for [the petitioner] from 1991 to the present." Rev. [REDACTED]

President of the Christian Educational Council, stated that the beneficiary "has been the leader of [the petitioner] in Egypt from 1991 to the present."

On June 14, 2007, the director issued a request for evidence, instructing the petitioner to submit documentary evidence relating to the beneficiary's work throughout the two-year qualifying period. The director stated: "Each experience letter must be written by an authorized official from the specific location at which the experience was gained. The petitioner may only write an experience letter for the experience gained at the

petitioner's location." The director also instructed the petitioner to "submit evidence that shows monetary payment, such as pay stubs or other items showing the beneficiary received payment."

In response, the petitioner submitted a letter from [REDACTED], the petitioner's Senior Vice President and Chief Financial Officer, who stated that the beneficiary "typically worked more than 40 hours per week in this position" and "received the following compensation for his services in this position: approximately \$10,000.00 in 2005 and approximately \$10,000.00 in 2006." Mr. [REDACTED] did not identify the source(s) of this compensation.

The petitioner submitted copies of several fundraising letters from [REDACTED] on behalf of the petitioning organization. These letters solicited contributions to pay the salaries of the petitioner's full-time staff in Egypt, including the beneficiary (mentioned by name).

Prior counsel stated:

[The beneficiary's] compensation was . . . paid from available financial resources both within [the petitioning organization] as well as from other churches in Egypt and other countries. The chart attached as *Exhibit 5* hereto is a report produced from [the petitioner's] accounting system showing the amounts transferred from [the beneficiary's] account to the Middle East account between November 2004 and November 2006 for [the beneficiary's] compensation and other Middle East ministry expenses. Within the accounting system, there is an account specifically for [the beneficiary] and there is also the ability to pay [the beneficiary] from other accounts.

Exhibit 5 consists of a single page containing two tables. The tables do not specify whether the amounts shown are in United States dollars, Egyptian pounds, or some other currency. Information submitted on appeal indicates that the amounts are in United States dollars. The first, larger table shows \$20,466.57 in "Funds Disbursed to Middle East Account For [the beneficiary's] Compensation and Ministry Expenses," paid monthly in widely varying amounts between November 30, 2004 and November 30, 2006, including \$6,398 in 2005. A smaller table on the same page as the table described above shows three "Direct Payments" to the beneficiary, all in late 2006: \$5,000 on September 27, \$3,000 on November 2, and \$3,000 on November 9.

A "Typical Work Schedule" indicates that the beneficiary works 49 hours per week. Like the tables described above, the schedule is not attributed.

The petitioner submitted another copy of Rev. [REDACTED]'s letter of November 16, 2006, as well as a photocopied letter on Christian Education Council letterhead, dated November 1, 2006 and signed by Rev. [REDACTED] that reads, in part: "The Christian Education Council, subordinate to Synod of the Nile, certifies that the [petitioning] Organization is working with the church in evangelism, discipleship and training of servants. [The beneficiary] is the one in charge of directing this organization since 1991 and until now."

The director denied the petition on October 3, 2007, stating: “the evidence is insufficient to establish that the beneficiary has been performing full-time salaried work as a Director of Outreach Ministries for the Middle East and North Africa for the two-year period immediately preceding the filing of the petition.” The director found that “the beneficiary’s earnings in [the] year 2005 were much less than the petitioner’s claim [of \$10,000 per year]. It shows that he only received \$6,398 in [the] year 2005.”

On appeal, counsel argues that the director was in no position to ask for evidence of compensation at all, because the requirement of “full-time salaried work . . . has been called into question by the Third Circuit Court of Appeal.” Counsel then cites *Camphill Soltane v. US Department of Justice, Immigration & Naturalization Service*, 381 F.3d 143, 2004. The relevant portion of that decision reads as follows:

The requirement that the position be “salaried” appears to be inconsistent with the list of religious occupations given in the regulation itself, which includes positions—perhaps most notably “missionaries”—who do not always receive salaries. We further note that in promulgating the final rules at issue, the agency explicitly stated that they had been “revised to account more clearly for uncompensated volunteers, whose services are engaged but who are not technically employees.” 56 Fed. Reg. 66965 (Dec. 27, 1991) (emphasis added).

Id. at 150. According to the record of proceeding, the beneficiary’s intended place of work is in California, which is not under the jurisdiction of the Third Circuit. *Camphill Soltane* was never a binding precedent for this proceeding. We note that the Ninth Circuit Court of Appeals, within whose jurisdiction this proceeding arose, has upheld the AAO’s interpretation of the two-year experience requirement. See *Hawaii Saeronam Presbyterian Church v. Ziglar*, 2007 WL 1747133 (9th Cir., June 14, 2007). We also note that *Camphill Soltane* involved an alien who received room, board, and a stipend; she received no “salary” as such, but she was not an uncompensated volunteer.

Even then, the court made no definitive finding that unpaid volunteer experience is qualifying experience. Rather, the court’s use of the terms “questionable” and “appears to be” indicate an ambiguity that could be resolved with, in the court’s words, “further evidence or explanation.” Counsel acknowledges as much, stating that the director’s interpretation has been not reversed or rejected, but “called into question” by the court in the *Camphill Soltane* decision.

In support of its reasoning, the court cited to the supplemental language in the promulgating rule at 8 C.F.R. § 214.2(r)(3)(ii)(D) that applies to an unrelated class of aliens: R-1 nonimmigrant religious workers. 56 Fed. Reg. 66965, 66966 (Dec. 27, 1991). The final rule for special immigrant religious workers was promulgated separately, at 56 Fed. Reg. 60897 (Nov. 29, 1991). There is nothing in the implementing regulations for special immigrant religious workers to indicate that “uncompensated volunteers” can qualify for that classification. For nonimmigrants, the regulation at 8 C.F.R. § 214.2(r)(3)(ii)(D) requires petitioners to specify “[t]he arrangements made, *if any*, for remuneration for services to be rendered by the alien” (emphasis added). This “if any” clause was inserted “to account more clearly for uncompensated volunteers,” as reported in the Federal Register. With regard to the immigrant classification, the parallel regulation at 8 C.F.R. § 204.5(m)(4) contains no comparable “if any” clause, and therefore no language “revised to account more clearly for uncompensated volunteers.”

Contrary to the special immigrant classification under review here, the R-1 nonimmigrant religious worker classification does not require any previous experience, whether compensated or not. It is unclear why the court cited to language from an unrelated regulation rather than one that applied to the special immigrant religious worker petition under review. In any event, while the court found that the AAO “failed to show why the position offered by Camphill . . . does not qualify,” it also determined that it “need not set forth here a definitive test regarding when a job may or may not be characterized as a ‘religious occupation.’” Instead, the court vacated and remanded the case to allow the AAO to develop its position (as well as its position on three other determinations) because the court could not “sustain the decision of the AAO on this ground without further evidence or explanation.”

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). If an individual receives no compensation for religious work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712, 713-14 (Reg. Commr. 1963) and *Matter of Sinha*, 10 I&N Dec. 758, 760 (Reg. Commr. 1964). 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 (9th Cir., June 14, 2007). If the petitioner did not support the beneficiary during part or all of the two-year qualifying period, the burden is on the petitioner to demonstrate that the beneficiary did not have to rely on outside employment to support himself during that time.

Counsel argues that the petitioner has satisfactorily established that the beneficiary worked full-time for the petitioner, and that “[t]he documentary evidence of compensation in the record was sufficient to satisfy the Petitioner’s burden of proof.”

Counsel observes that the petitioner had merely asserted that the beneficiary “was paid ‘approximately’ \$10,000 in 2005,” and that the \$10,000 figure was clearly not meant to be an exact figure. Counsel argues that the cited table “presented not actual compensation payments to Beneficiary, but rather internal account transfers from Beneficiary’s account to a general Middle East/Egypt account from which funds were disbursed for the compensation of Beneficiary and for the compensation of other workers and for ministry expense reimbursements.” In other words, according to counsel, only a fraction of the funds represented in the table actually went toward the beneficiary’s compensation.

Counsel states: “Petitioner [has] explained that the Beneficiary received payments from multiple sources; Petitioner never claimed to have presented documentary evidence of all compensation given to the Beneficiary in that year.” The assertion “that the Beneficiary received payments from multiple sources” came not from the petitioner, as counsel now claims, but from prior counsel. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Furthermore, prior counsel's unsubstantiated claim appears to contradict assertions in [REDACTED]'s December 22, 2006 letter. In that letter, [REDACTED] stated that the petitioner's "staff members working in Egypt conduct their activities as part of the Christian Education Council and/or one or more local churches under the denominational authority of the Evangelical Presbyterian Church in Egypt." In the very next sentence, [REDACTED] stated: "These staff members are compensated by, and report to, [the petitioning organization]." The structure of [REDACTED]'s letter indicates that, while the petitioner's staff members in Egypt work in cooperation with "local churches" and organizations, their employment relationship, including compensation, remains solely with the petitioner. Mr. [REDACTED] did not state or imply that any fraction of the beneficiary's compensation came from the "local churches" that he had just mentioned in the preceding sentence.

Furthermore, the fundraising letters from [REDACTED] did not indicate that the petitioner's employees in Egypt receive compensation from any other source besides the petitioner. For instance, in a December 3, 2004 letter, [REDACTED] stated: "The figure \$19,200.00 that we raised last year was the annual salary for five new younger staff in Egypt." He did not state that the sum was part of the salary, or was the petitioner's contribution to the salary; it "was the annual salary."

New exhibits submitted on appeal (to be discussed further below) likewise refer to the petitioning organization as being the beneficiary's sole source of support, rather than one source among many vaguely described others. Counsel's assertions, therefore, lack merit and any demonstrable basis in fact. The appeal, however, does not rest entirely on counsel's assertion that the beneficiary need not have been compensated at all. Additional elements of the appeal are more favorable to a finding of eligibility.

[REDACTED], in an affidavit dated November 30, 2007, states:

My position with [the petitioner] is Middle East and North Africa Regional Director.

. . . Between November 29, 2004 and November 29, 2006, I was the direct supervisor of [the beneficiary].

. . . As supervisor, I was responsible for authorizing payments to [the beneficiary] for his compensation and expenses.

Such payments were disbursed by [the petitioner] from the Middle East Egypt internal account, based upon my instructions.

[The petitioner] maintained a separate internal account for [the beneficiary] into which contributions designated for [the beneficiary's] ministry were initially credited.

. . . From time to time . . . I authorized [the petitioner] to disburse funds from the Middle East Egypt internal account for [the beneficiary's] compensation and expenses. These disbursements did not directly correspond to the internal transfers from [the beneficiary's] internal account to the Middle East Egypt internal account. Therefore, the amounts

transferred in any given month may not have been disbursed to [the beneficiary] for several months or more after such transfer. . . .

In 2005, I authorized and [the beneficiary] received a total of \$6,484 in payments disbursed from the Middle East Egypt internal account for compensation and expenses.

Between January 2006 and September 13, 2006, I authorized and [the beneficiary] received a total of \$8,106 in payments disbursed from the Middle East Egypt internal account for compensation and expenses.

The foregoing payments were delivered to [the beneficiary] in cash because [the beneficiary] did not have a U.S. bank account and any payments made through the banking system in Egypt could be monitored by Egyptian authorities. If certain such authorities became aware that [the beneficiary] was receiving payments from a U.S.-based Christian organization, he and his family could have suffered serious religious persecution.

In addition to the foregoing payments, [the beneficiary] also received each month from January 2004 through August 2006 payments of 1,500 Egyptian pounds from [the petitioner] in Egypt, which operates under the Evangelical Synod of the Nile, a division of the Evangelical Presbyterian Church in Egypt. *Attachment I* contains a spreadsheet prepared by [the petitioner] in Egypt showing the monthly payments to a number of [the petitioner's] workers in Egypt, including [the beneficiary]. . . .

In September and November 2006, I authorized and [the beneficiary] received a total of \$11,000 in payments from the Middle East Egypt internal account. These payments were made by wire transfer into a U.S. bank account [the beneficiary] opened in September 2006. *Attachment II* contains bank statements confirming these wire transfers.

Attachments I and II match the descriptions in the affidavit quoted above.

While we reject counsel's argument that the petitioner need not have paid the beneficiary at all, at the same time the regulations do not require the petitioner to account, with pinpoint accuracy, for every dollar paid to the beneficiary over the course of the two-year qualifying period. Here, while the petitioner has presented somewhat fragmentary evidence, the director has not cited any derogatory evidence that would undermine the credibility of that evidence. Furthermore, the director, in the RFE, requested only "evidence that shows monetary payment"; the director did not specifically instruct the petitioner to submit exact information spanning the entire qualifying period.

The denial rested on a single point, specifically the disagreement between [redacted]'s letter and the financial table submitted at the same time. This conclusion is not supported by the record, considering that (1) Mr. [redacted] figures were, admittedly, approximations rather than precise numbers, and (2) the table does not show payments to the beneficiary. Rather, the table shows transfers of funds from the United States to Egypt for multiple uses, including but not limited to the beneficiary's compensation. Information regarding payments

from the petitioner's Egyptian organization, which would not be reflected as transfers from the United States, has shed further light on the issue of the beneficiary's compensation. (This information indicates that the petitioning entity, an international organization, paid the beneficiary through various channels; it does not support prior counsel's claim that the beneficiary received payment from numerous independent sources.)

The petitioner has submitted statements from individuals who worked with the beneficiary in Egypt, attesting to the beneficiary's continuous work there. Fundraising letters from [REDACTED], created for purposes unrelated to the petition, consistently refer to the beneficiary as being in charge of the petitioner's full-time staff in Egypt. The record contains no evidence to contradict these claims or undermine the credibility of the witnesses.

The petitioner has overcome the grounds for denial stated in the director's decision, and the AAO's appellate review of the record has revealed no new grounds for denial. Pursuant to a memorandum from Michael Aytes, Associate Director, Domestic Operations, and Louis D. Crocetti, Jr., Division Chief, Office of Fraud Detection and National Security, *Standard Operating Procedures for Religious Worker Petition Anti-Fraud Enhancements* (July 5, 2006), the petition is remanded for additional processing. If routine checks and any necessary follow-up reveal no new basis for denial, the director is instructed to approve the petition. 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.