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U.S. Citizenship
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Services

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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **JUL 23 2008**
WAC 07 017 52862

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a religious corporation. 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 an associate minister. 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, that it has extended a qualifying job offer to the beneficiary, or that it has the ability to pay the proffered wage.

On appeal, the petitioner submits a brief and additional documentation.

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 presented on appeal is whether the petitioner 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 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. 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 October 20, 2006. Therefore, the petitioner must establish that the beneficiary was continuously working in qualifying religious work throughout the two-year period immediately preceding that date.

In its October 16, 2006 letter accompanying the petition, the petitioner stated that the beneficiary was ordained as a minister in 2000 and has “continuously and uninterruptedly served as a minister with our organization since that time.” The petitioner further stated that it does not pay salaries to its ordained ministers but provides them with food, clothing, shelter and other life necessities. The petitioner submitted no documentation to corroborate any of the compensation that it stated it provided to the beneficiary. 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.

In response to the director's request for evidence (RFE) dated December 11, 2006, the petitioner stated that the beneficiary had been in the United States since December 27, 2002, and that she had served the petitioner at the following branches: [REDACTED], Newark, New Jersey, from December 2002 to July 2004; [REDACTED] Philadelphia, Pennsylvania from July 2004 to May 2, 2006; and 200-202 [REDACTED] in Washington, DC from May 2, 2006 to the date of the petitioner's letter. The petitioner submitted letters from the beneficiary's supervisors in each of the different locations. All state that there are no set hours for work by their clergy and that the beneficiary served in a non-salaried position.

The petitioner submitted no evidence that, in any of the locations, the beneficiary lived in a monastery, dormitory, parsonage, or similar living environment, or that it provided her with a monetary housing and subsistence allowance. In a second RFE dated March 14, 2007, the director instructed the petitioner to "provide evidence to show how the beneficiary supported [herself] during the two-year period or what other activity the beneficiary was involved in that would show support." In response, the petitioner submitted a May 22, 2007 letter from [REDACTED], pastor of the New Testament Church in Philadelphia, in which he stated that the beneficiary was entirely supported by the church but it had no evidence of such support because "she was maintained out of the general fund." The petitioner also submitted a May 21, 2007 letter from [REDACTED], who stated that she was an assistant minister at the New Testament church in Washington, DC, and was responsible for the church's financial records. Reverend [REDACTED] stated that the beneficiary resided in accommodations provided by the church and that her food, clothing and other expenses are provided by the church. [REDACTED] also stated that the church does not have any records of the support provided to the beneficiary as the support was provided out of their general funds.

On appeal, the petitioner reiterates that the beneficiary, pursuant to the practices of their church, serves without monetary compensation. The petitioner asserts that the director erred in "the erroneous belief that if a person serves in a nonremunerative position, they cannot be considered as a full-time employee." Nonetheless, the petitioner provided no evidence, other than unsupported statements of church leaders, that the beneficiary was compensated by the church in the form of housing, subsistence and clothing. Each of the churches at which she worked indicated that though they expended funds on behalf of the beneficiary. However, none could account for the money spent, either in the nature of canceled checks, vouchers, or any other evidence of disbursement to or on behalf of the beneficiary. 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 petitioner submitted no corroborative documentary evidence that the beneficiary was compensated in any capacity for her work as a minister and therefore the evidence is insufficient to establish that the beneficiary worked solely as a minister throughout the qualifying period. Accordingly, the petitioner has not established that the beneficiary worked continuously in a qualifying religious vocation or occupation for two full years preceding the filing of the visa petition.

The second issue presented on appeal is whether the petitioner has extended a qualifying job offer to the beneficiary. The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

The petitioner submitted a February 20, 2007 letter offering the beneficiary a permanent position as associate minister with the church in the United States. The letter outlines the general duties of the position and advises the beneficiary that she would not receive a salary for the position but that the church would provide her with suitable accommodations and all of her “necessary living expenses.”

The letter from the church does not set forth number of hours that the beneficiary is expected to work and while it states that the church would take care of the beneficiary’s “necessary living expenses,” it does not explain what those expenses will be or the rate at which those expenses will be compensated. In other documentation, the petitioner indicated that it also provided the beneficiary with clothing. However, it submitted no evidence of having done so. The petitioner therefore has not established that the beneficiary will be solely caring on the vocation of minister because it has never explained how the beneficiary will be paid or otherwise compensated for the requested employment.

Accordingly, the documentation is insufficient to establish that the petitioner has extended a qualifying job offer to the beneficiary.

Finally, the director determined that the petitioner has not established that it 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.

First, as previously discussed, the petitioner states that the proffered position is unsalaried and the beneficiary’s needs will be met by the church. The petitioner has never explained what it considers the beneficiary’s needs to be, nor has it submitted any evidence that it had provided the beneficiary with this in-kind compensation in the past. Second, the petitioner has stated variously that it will provide the beneficiary with housing, subsistence, clothing and necessary living expenses. The petitioner did not specify the form of the housing, such as an allowance or a physical structure, to be provided to the beneficiary, or the substance and monetary value of what it considers to be necessary living expenses. As the petitioner has not explained what these various expenses would entail, it has not clearly indicated what the proposed compensation will be.

The petitioner submitted a partial copy of its December 2006 monthly checking account statement for its overseer’s account and a copy of its balance sheet for its overseer’s account for December 31, 2006. On

appeal, the petitioner also submits a copy of its Statement of Support and Revenue, Expenses, and Changes in Net Assets for the year ended December 31, 2006, accompanied by an accountant's compilation report.

As the compilation is based primarily on the representations of management, the accountant expressed no opinion as to whether they fairly present the financial position of the petitioning organization. In light of this, limited reliance can be placed on the validity of the facts presented in the financial statements that have been submitted. No further supporting documentation is included in the record to reflect the assertions made by the accountant in the financial documentation, or contained within the unaudited financial statements.

The petitioner submitted none of the documentation required by the regulations, such as a federal tax return or an audited financial report. Therefore, the petitioner has not submitted sufficient documentation to establish that it has the ability to pay the proffered wage or compensation.

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.