

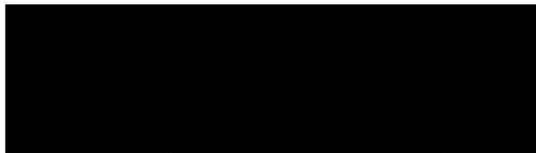
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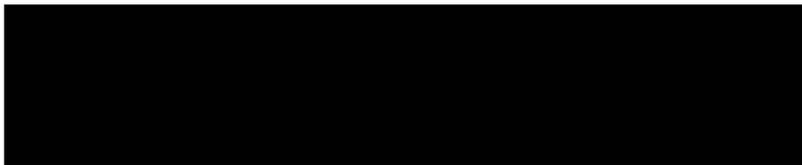


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **JUN 18 2008**
WAC 06 279 52085

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 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 an administrative assistant. The director determined that the petitioner had not established that it qualifies as a tax-exempt religious organization, that the position qualifies as that of a religious worker, 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, or that it has the ability to pay the proffered wage.

On appeal, the petitioner submits additional statements.

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 on appeal is whether the petitioner has established that it is a bona fide nonprofit religious organization.

The regulation at 8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

(3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

In its June 6, 2006, letter accompanying the petition, the petitioner stated that it was a subunit of Zoe Christian Fellowship of Cerritos. The petitioner submitted a copy of a June 28, 1990 letter from the Internal Revenue Service (IRS) addressed to Zoe Christian Fellowship of Cerritos in Cerritos, California. The letter notified the organization that it was exempt from federal income taxes as an organization described in sections 509(a) and 170(b)(1)(A)(i) and 509(a) (1) of the Internal Revenue Code (IRC). The letter does not state that the exemption applies to any subordinate units of Zoe Christian Fellowship of Cerritos.

In an undated letter submitted with the petitioner's response to the director's April 24, 2007 Request for Evidence (RFE), ██████████ Chief Operations Officer of Zoe Christian Fellowship of Cerritos, stated that the petitioner is an extension of that organization and falls under the same tax exemption status as the Cerritos organization. On appeal, ██████████ submits another undated statement in which she states that Zoe Christian Fellowship of Cerritos moved to its new location as authorized by its bylaws, and is now known as Zoe Christian Fellowship of Whittier. While ██████████ asserts that the petitioner shares its tax-exempt status under the certification from the IRS to the Cerritos organization, as discussed above, the IRS letter granting the organization tax-exempt status does not refer to any subordinate units. There is no evidence that the Cerritos organization sought or obtained a group exemption. Therefore, the organization's assertion that the petitioner shares its tax-exempt status as designated by the IRS is without merit.

Under IRS regulations, churches that meet the requirements of section 501(c)(3) of the IRC are automatically considered tax exempt and are not required to obtain recognition of its tax-exempt status from the IRS. Nonetheless, the petitioner must provide establish its tax-exempt status for the purpose of this visa petition. The petitioner can do this pursuant to 8 C.F.R. § 204.5(m)(3)(i)(B) by submitting the documentation that the IRS would require to determine it is a tax-exempt religious organization. The necessary documentation is described in a memorandum from William R. Yates, Associate Director of Operation for Citizenship and Immigration Services (CIS), *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003):

- (1) A properly completed IRS Form 1023,
- (2) A properly completed Schedule A supplement, if applicable,
- (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization, and
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The above list is consistent with the regulatory requirement at 8 C.F.R. § 204.5(m)(3)(i)(B), cited above. The memorandum specifically states that the above materials are, collectively, the “minimum” documentation that can establish “the religious nature and purpose of the organization.” Thus, for example, a petitioner cannot meet this burden by submitting only its articles of incorporation. Also, obviously, it is not enough merely for the petitioner to submit the documents listed above. The content of those documents must establish the religious purpose of the organization.

The petitioner submitted a copy of the articles of incorporation for Zoe Christian Fellowship of Cerritos. These articles of incorporation do not address any subunit of the organization nor do they grant the organization the authority to establish such units. The petitioner submitted none of the documentation specified in the Yates memorandum and no other documentation required by 8 C.F.R. § 204.5(m)(3)(i)(B) to establish that it is exempt from taxation as a religious organization.

The evidence submitted therefore does not establish that the petitioner is a bona fide nonprofit religious organization.

The second issue presented on appeal is whether the petitioner has established that the position qualifies as that of a religious worker.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation, which is defined at 8 C.F.R. § 204.5(m)(2) as follows:

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

CIS therefore interprets the term “traditional religious function” to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

The petitioner did not specifically identify the duties of the position that it was offering the beneficiary. However, in its June 1, 2006 letter accompanying the petition, the petitioner stated that, since 2005, the beneficiary had provided the church with a variety of duties as an administrative assistant, including teaching in the School of Leaders, School of Teachers, and in Encounters (spiritual retreats). Other duties performed by the beneficiary included secretarial and administrative work and encounter coordinator. The petitioner stated that the beneficiary would receive a biweekly salary of \$200 plus housing, transportation, and meal allowance, “if any.”

In an RFE dated December 11, 2006, the director instructed the petitioner to provide a detailed description of the work to be performed, including the job duties, number of hours per week to be spent performing each duty, and

the remuneration for the position. In a letter dated February 23, 2006,¹ submitted in response to the RFE, the petitioner reiterated the information provided in its June 1, 2006 letter, and stated that the beneficiary worked from 9 AM to 5 PM, Monday to Friday and from 9AM to 3 PM on Saturday. However, the petitioner also stated that the applicant was off on Wednesdays and Sundays. The petitioner stated that the applicant's salary would be \$400 biweekly, and that she would be provided with housing, transportation and meal allowance, "if any."

In a second RFE dated April 24, 2007, the director requested additional information regarding the position being offered to the beneficiary. Specifically, the director instructed the petitioner to provide the job title of the proffered position and a detailed description of the work to be performed, including specific job duties, remuneration, and a daily and weekly schedule. The director further instructed the petitioner to explain how the duties of the position related to a traditional religious function.

In response, the petitioner submitted an undated letter signed by [REDACTED] of the Zoe Christian Fellowship of Cerritos. According to [REDACTED], the petitioner's pastor "was doing the administration for the church on his own and that the workload had become too much for him." The petitioner requested that the applicant, who was visiting at the time, remain in the United States as a missionary to assist the pastor in "all affairs of the church." [REDACTED] stated that the beneficiary is presently working as a volunteer. In another undated letter, [REDACTED] stated that the beneficiary would be compensated at the rate of \$200 biweekly and provided with housing, transportation and meal allowance, "if any." However, in a February 6, 2007 letter, Gil Oleyere, the finance manager from Zoe Christian Fellowship in Whittier, California, stated that the beneficiary received a stipend of \$800 from April to December of 2005. Additionally, in another undated letter, [REDACTED] outlines the \$800 "monthly budget" for the beneficiary.

In denying the petition, the director noted that the duties of the position appear to involve primarily secular secretarial work, reception, finances, and administration duties.

On appeal, the petitioner states that the beneficiary's duties are not "solely administrative," and provides the following as the beneficiary's work hours:

Monday to Friday – 7:30 am to 5:30 am [sic] office work/administrative/minister of the gospel
Monday – 7:30 pm – 10:00 pm house reunion (cell group) participates as a listener
Thursday – 7:30 pm – 10:pm house reunion (cell group) Teach and leads a group of women
Saturdays depend on what church activities are taking place
Sunday – 12:00 noon to 6:00 pm church (making sure that all ministries within the church are functioning) providing any needs the Pastor needs in relationship to the church, and teaching in the school of Leaders, Schools of Teachers or Post-Encounter Class

First, it must be noted that the weekly hours listed on appeal do not appear to be correct. The beneficiary most likely does not work 22 hours a day (7:30 am to 5:30 am). Second, the hours listed on appeal are not at all similar to the hours first listed. For example, the petitioner claimed in its February 23, 2006 letter that the beneficiary worked from 9 am to 5 pm Monday through Friday and 9 am to 1 pm on Saturday, with Sunday and Wednesday off. However, on appeal, the petitioner claims that the beneficiary works from 7:30 am to 5:30 "am" and as

¹ The date of the letter appears to be a typographical error and should be February 23, 2007.

needed on Saturday. The petitioner also now states on appeal that the beneficiary works on Wednesday and Sunday.

The majority of the beneficiary's working hours are involved in doing office work, administrative work, and as a "minister of the gospel." The petitioner, however, has not provided a detailed description of what that work entails or how much time the beneficiary spends in performing her administrative and office work and how much she spends in performing ministerial duties.

The petitioner has submitted no evidence that the proffered position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination. The evidence does not indicate that the position of administrative assistant is a compensated position within the petitioning organization or that it existed in the organization prior to the beneficiary assuming the role. Further, the petitioner stated that the position was established to allow the beneficiary to assist the pastor with his administrative workload. The regulation reflects that positions that do not qualify as religious occupations are those whose duties are primarily administrative or secular in nature. There is no evidence that this work performed by the beneficiary is directly related to the creed and practice of the petitioner's religion. In his June 1, 2006 letter accompanying the petition, the petitioner's pastor stated that the beneficiary will be compensated at the rate of \$200 biweekly plus housing, transportation and meals. This salary was also stated in the undated letter of [REDACTED] submitted in response to the director's April 24, 2007 RFE. However, in his letter dated February 23, 2006, the pastor stated that the beneficiary will be compensated at the rate of \$400 biweekly plus housing, transportation and meals. This conflicting information brings into question the valid nature of the proffered position. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Accordingly, the petitioner's evidence does not establish that the proffered position is a religious occupation within the meaning of the statute and regulation.

The third issue 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. 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 September 25, 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 June 1, 2006 letter accompanying the petition, the petitioner stated that the beneficiary had been performing service for the church as an “administration assistance” since April 2005. The petitioner described the beneficiary’s duties to include work in the area of administration, secretarial work, finances, Bible teacher, pastor’s daughter and accountant for her home church, as well as mission trips. The petitioner also submitted a **May 5, 2005 letter from Living Water Teaching, in which its founder, [REDACTED], stated that the beneficiary had been a missionary with the organization for the past four years, and that she had “opened the work” for the organization in Cuba. Ms. [REDACTED] stated that the beneficiary “fulfilled various responsibilities” with the organization’s Bible school, and “was very good with computers, worked on special projects, quality development and worked with finances.”** Although in its letter the petitioner identified specific duties that the beneficiary had performed with Living Water Teaching, [REDACTED] does not confirm these duties in her letter. 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)).

In response to the director’s December 11, 2006 RFE, the petitioner again stated that the beneficiary had performed a variety of duties for the petitioner since April 2005. As discussed previously, the petitioner also stated that the beneficiary was a regular volunteer for the organization from April to December 2005 and received a stipend for her services.

In an undated letter, [REDACTED] from Living Water Teaching, stated that the beneficiary had worked with the organization in its Bible institute as a missionary since 2004, and that her daily responsibilities consisted of supervising the administrative areas, including the computing laboratory, library, cleaning, audio reproduction and publicity. [REDACTED] stated that the beneficiary also supervised student campaigns and taught different subjects at night and on Saturdays and Sundays. [REDACTED] stated that the beneficiary worked at least 40 hours a week, and that, in 2004, she received financial support from different people and churches that sent her offerings through Living Water Teaching. [REDACTED] included copies of reports that she stated reflects the financial support, in the amounts of approximately \$4,300 and \$1,300, received on behalf of the beneficiary during 2004 and 2005, respectively.

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.

The record indicates that the work performed by the beneficiary during the immediate two years preceding the filing of the petition was primarily administrative in nature, consisting of supervising the administrative areas of Living Water Teaching and performing office and administrative work with the petitioner. As discussed above, work that is primarily administrative in nature is not qualifying work for the purpose of this visa petition. Further, the petitioner has not established that the beneficiary was compensated for her work throughout the two-year qualifying period. The petitioner stated that it provided the beneficiary with a stipend from April to December 2005. However, the petitioner provided no documentary evidence to confirm payment of this stipend. The petitioner’s unsupported statement is not sufficient to meet its burden of proof. *See Matter of Soffici*, 22 I&N Dec. at 165. In a February 6, 2007, statement the petitioner’s pastor and his wife certified that they have provided financial assistance to the beneficiary in the form of rent, food, clothes and medical expenses since January 2006. The couple did not state that they were reimbursed in any way for their financial assistance to the beneficiary. However, on appeal, [REDACTED] provides a statement in which she states that she received housing allowance from Zoe Christian Fellowship on behalf of the beneficiary. The petitioner again failed to submit corroborative documentary evidence of this support that it provided to the beneficiary.

Further, the petitioner provided conflicting information regarding the hours worked by the beneficiary. In his letter dated February 23, 2006, the petitioner’s pastor stated:

Her schedule of work is as follows Monday to Friday from 9:00 a.m. to 5:00 p.m. Saturday from 9:00 a.m. to 3:00 p.m. Wednesday and Sundays is her off day.

As the director noted in her decision, however, the petitioner leases its premises from Bethany Presbyterian Church, and the 2007 lease submitted by the petitioner gives the petitioner access to the sanctuary, fireside

room, kitchen, restrooms and two classrooms on a limited basis. The lease authorizes the petitioner to use these facilities as follows:

Sunday	Main Building from 1:00 pm to 5:00 pm Two classrooms from 1:30 pm to 4:30 pm
Tuesday	Main Building from 7:00 pm to 9:00 pm
Thursday	Main Building 7:00 pm to 9:00 pm
Friday	Main Building 6:00 pm to 9:00 pm
Saturday	Main Building 12:00 pm to 2:00 pm

The lease agreement does not authorize the petitioner use of any other facility of Bethany Presbyterian Church. The hours of the petitioner's authorized use under the lease does not correspond to the hours the petitioner alleged that the beneficiary works.

On appeal, the petitioner submits a new schedule of the beneficiary's working hours and now states that the beneficiary begins her weekly work day at 7:30 a.m. and works until 5:30 "a.m." The petitioner submits a September 26, 2007, letter from Bethany Presbyterian Church signed by Reverend [REDACTED], however, in which he states that the beneficiary works in the church office from Monday through Friday from 8:00 a.m. to 5:00 p.m., "with flexibility to work other days as required." The petitioner submits no objective documentary evidence to explain this inconsistency. *See Matter of Ho*, 19 I&N Dec. at 591-92.

The evidence therefore does not establish that the beneficiary was continuously engaged in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition. Not only was the nature of her primarily administrative, the petitioner submitted no evidence that she was compensated for her work with the petitioning organization and provided contradictory information about her working hours.

The final issue on appeal is whether the petitioner has 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.

The petitioner has made contradictory statements as to the amount of remuneration for the stated position. In one statement, the petitioner indicates that it will pay the beneficiary \$400 biweekly plus housing and other expenses. In another, it indicates that it will pay the beneficiary \$200 biweekly plus housing and other expenses. The petitioner submitted no evidence that it has previously compensated the beneficiary for her work and offered no explanation as to the two different plans for compensation.

As evidence of its ability to pay either of the stated wages, the petitioner submitted a copy of the 2006 budget for Zoe Christian Fellowship of Whittier. The petitioner submitted no evidence of actual income, either in the form of federal tax returns or audited financial statements. Therefore, the petitioner has failed to establish that it has the ability to pay the beneficiary either of the stated wages.

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.