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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
WAC 07 199 53628

Office: CALIFORNIA SERVICE CENTER

Date: OCT 16 2008

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:

SELF REPRESENTED

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.

A handwritten signature in black ink that reads "Mau Johnson".

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 a pastor. The director determined that the petitioner had not established that it qualifies as a tax-exempt religious organization or 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, the petitioner states that the beneficiary received love offerings for his support prior to receiving authorization to work in the United States. The petitioner submits additional statements 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 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.

The petitioner submitted no evidence of its tax exempt status with the petition. On September 7, 2007, the director issued the petitioner a request for evidence (RFE), citing the above regulation and requesting evidence of the petitioner's tax-exempt status. In response, the petitioner submitted a copy of a March 1, 2006 State of California Franchise Tax Board letter indicating that the petitioner was exempt from tax under the California statute. The petitioner also submitted a copy of its bylaws.

On appeal, the petitioner submits a January 12, 2008 declaration from its church accountant, in which she states that she has submitted the church's request for recognition as a tax-exempt organization to the Internal Revenue Service (IRS), but that it will take several weeks for the IRS to respond. The accountant states that the information would be provided to Citizenship and Immigration Services (CIS), as soon as it is received. To date, the AAO has not received the requested information. The accountant further notes that instructions for IRS Form 1023 note that churches are automatically tax-exempt under section 501(c)(3) of the Internal Revenue Code (IRC).

The accountant is correct in that 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 evidence to CIS to 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 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 its bylaws; however the document does not contain the dissolution clause required by the IRS. The petitioner submitted copies of its church brochures, but did not submit a copy of IRS Form 1023 or the accompanying Schedule A.

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

The second 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.” 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 June 22, 2007. Therefore, the petitioner must establish that the beneficiary was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

In a May 15, 2007 letter, the petitioner stated that the beneficiary had been working as an ordained minister with the petitioner since March 2, 2005. The petitioner submitted no documentary evidence to corroborate the beneficiary’s employment. 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 her September 7, 2007 RFE, the director instructed the petitioner to:

Provide evidence of the beneficiary’s work history beginning June 22, 2005 and ending June 22, 2007 only. Provide a breakdown of duties performed in the religious occupation for an average week. Include the employer’s name, specific job duties, number of hours worked per week, remuneration, level of responsibility and who supervised the work.

Ideally, this evidence should come in a way that shows monetary payment. Documentation showing the withholding of taxes is good evidence. However, you may also show payment through other forms of remuneration. If any work was on a volunteer basis, provide evidence to show how the beneficiary supported himself or herself (and family members, if any) during the two-year period or any other activity with which the beneficiary was involved in that would show support.

In response, the petitioner provided a schedule indicating that the beneficiary worked in excess of 60 hours per week, and that he had served as pastor and minister of the petitioning organization since 2004. This date is inconsistent with the petitioner's previous statement that the beneficiary became pastor of the church on March 2, 2005, and with other evidence in the record (a January 15, 2007 letter from the senior pastor of the beneficiary's church in the Philippines and a copy of his visa) indicating that the beneficiary did not arrive in the United States until 2005. 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. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The petitioner also provided a declaration from the beneficiary, in which he stated that he moved to California in March 2005 and was offered the position of full-time minister with the petitioning organization, but the church was "not authorized" to pay him a salary because he did not have a work permit. The beneficiary stated that a church member provided him with "free home and board" and the church provided him with love offerings. The beneficiary stated that he received his work permit in April 2006 and the petitioner began paying him a salary. The petitioner submitted copies of canceled checks indicating that, in 2007, it paid the beneficiary \$2,000 on May 7, June 10, June 30, July 30, and September 30. The petitioner also submitted a copy of what appears to be a carbon of a check issued to the beneficiary for \$2,000 on August 30, 1987, and a copy of an unprocessed check issued to the beneficiary for \$2,000 on October 30. The petitioner also provided a copy of the beneficiary's IRS Form 1040, U.S. Individual Income Tax Return, for the year 2006, on which he reported \$24,000 in self-employment income. This tax return and the checks for 2007 suggest that the petitioner paid the beneficiary \$2,000 per month; however, we note that the beneficiary declared that the petitioner did not begin paying him until April 2006. The petitioner provided no copies of canceled checks or an IRS Form 1099-MISC, Miscellaneous Income, showing how much it compensated the beneficiary in that year. The petitioner submitted no documentation to corroborate any compensation received by the beneficiary in 2005, nor did it submit any documentary evidence to verify any other financial support received by the beneficiary during that period.

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).

Section 101(a)(27)(C)(iii) of the Act provides 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.

On appeal, the petitioner submits a June 12, 2008 declaration from [REDACTED] in which he states that when the beneficiary arrived in the United States in January 2005, he provided him with “free house and Board,” and that after the beneficiary became pastor of the church in March 2005, he continued to provide the support because the beneficiary had “no source of income at that time.” We note, however, that the beneficiary stated that he did not move to California until March 2005, at which time he was provided with free room and board by [REDACTED]. *Matter of Ho*, 19 I&N Dec. at 591. Furthermore, the petitioner submits no additional documentation on appeal to corroborate [REDACTED]’s statement that he provided the beneficiary with lodging and submits no documentation verifying that it provided the beneficiary with love offerings to help him financially. *Matter of Soffici*, 22 I&N Dec. at 165.

The evidence of record is not sufficient to establish that the beneficiary was compensated for his services throughout the qualifying period, or that he was otherwise able to support himself financially without engaging in secular employment. The evidence therefore does not establish that the beneficiary was solely working as a minister and continuously engaged in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition.

Beyond the decision of the director, the petitioner has not established that it 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.

According to the schedule provided by the petitioner, the beneficiary currently works in excess of 60 hours per week. However, the petitioner did not indicate how the beneficiary would be compensated for his services. Therefore, it has not stated how the beneficiary will be solely carrying on the vocation of minister. Accordingly, the petitioner has failed to establish that it has extended a qualifying job offer to the beneficiary.

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.