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

PUBLIC COPY

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[REDACTED]

FILE:

[REDACTED]
WAC 07 007 53369

Office: CALIFORNIA SERVICE CENTER

Date: **SEP 23 2008**

IN RE:

Petitioner:
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:

[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.

Maura Deadrick
for 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 "charitable mission 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 a pastor. 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 and that the petitioner has extended a qualifying job offer to the beneficiary.

On appeal, counsel asserts that the requirement by Citizenship and Immigration Services (CIS) that the qualifying experience must be full-time and compensated is unreasonable and erroneous, and conflicts with religious freedom. Counsel also asserts that the director erred in determining that the petitioner had not extended a qualifying job offer to the beneficiary.

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 6, 2006.¹ Therefore, the petitioner must establish that the beneficiary was continuously working as a pastor throughout the two-year period immediately preceding that date.

In its September 20, 2006 letter, the petitioner stated that the beneficiary was ordained as a pastor by the Filadelfia Fellowship Church of India in 1994 and received a certificate of ordination from the Canadian Fellowship of Churches and Ministers in 2005, both of which are organizations affiliated with the petitioner. In a June 23, 2006 letter, ██████████, who identified himself as the petitioner’s Chairman of the Board of Directors, stated that the beneficiary began his ministry with the petitioning organization in April 2000 as a missionary field director affiliated pastor. ██████████, senior pastor of New Hope Community Church in London, Ontario, Canada stated in a June 19, 2006 letter that the beneficiary began his ministry with the Ontario church as an affiliated pastor with the petitioner’s Canadian organization. ██████████ stated that he served on the petitioner’s Board of Directors in Canada with the beneficiary, who was the Chief Executive Officer (CEO), and that he accompanied the beneficiary on short-term mission trips “both teaching and holding leadership conferences and seminars.” ██████████ letter is unclear as to the dates of the beneficiary’s ministry at the church, his specific responsibilities with the church, or the beneficiary’s service as CEO of the petitioner’s organization in Canada.

The beneficiary’s résumé indicates that he served as mission director of the Native Missionary Movement (NMM) in Canada beginning in 2000. The petitioner submitted several documents signed by the beneficiary in 2004 as director of the NMM. The beneficiary appeared to have been in India at that time. The petitioner further stated that the beneficiary “obtained his R-1 visa in 2005 to assume pastoral and directorial roles for our ministry, and continues to administer his duties to date.” Although the petitioner stated that the beneficiary would be paid \$24,000 for his services, it did not indicate any compensation received by the beneficiary during the two years immediately preceding the filing of the visa petition.

In a request for evidence (RFE) dated December 11, 2006, the director instructed the petitioner to:

Provide evidence of the beneficiary’s work history for the years 2004, 2005 and 2006.
Provide experience letters written by the previous and current employers that include a breakdown of duties performed in the religious occupation for an average week. Include

¹ Although the director stated in her decision that the petition was filed on October 11, 2006, the stamp-dated receipt on the Form I-360 indicates that it was filed on October 6, 2006.

the employer's name, specific dates of employment, specific job duties, number of hours worked per week, form and amount of compensation, and level of responsibility/supervision. In addition, submit evidence that shows monetary payment, such as pay stubs or other items showing the beneficiary received payment. If any work was on a volunteer basis, provide evidence to show how the beneficiary supported himself during the two-year period or what other activity the beneficiary was involved in that would show support.

In its February 16, 2007 letter submitted in response, the petitioner certified that it had employed the beneficiary as a missions pastor since May 5, 2005, and that prior to that, the beneficiary served as mission coordinator with the NMM, Canada from January 2002 until May 4, 2005. The petitioner outlined the beneficiary's average weekly duties as missions pastor as follows:

Bible Study Preparation – 8 hours

1. Prepare sermons for the speaking engagement
2. Translate Bible verses to different languages according to people [sic] group.
3. Prepare prayer requests for the prayer meetings
4. Create Power point presentations etc.

Outreach and Evangelism – 6 hours

1. Plan and conduct door-to-door evangelism.
2. Personal evangelism and one-on-one fellowship.
3. Conduct social activities like car wash and other community programs.
4. Equip people for evangelism.
5. Collecting reports from the mission field.
6. Organize short-term mission trips.
7. Collecting missionary updates
8. Preparing child sponsorship forms

Conduct Bible Studies – 8 hours

1. Conducting Bible studies in different stations, which include house churches and fellowship among college students.
2. Assist senior members to develop their skills and lead Bible studies.
3. Writing mission articles for the newsletter.
4. Teaching weekdays Bible Study.
5. Conducting mission prayer meetings.

Visitation – 4 hours

1. Visit homes of believers and minister to them.
2. Pray and encourage people who are hospitalized.
3. Provide advice and assistance to the new members.
4. Assist new members in developing their spiritual skills.
5. Assist elders in developing their spiritual skills in reaching out to evangelize the lost and bringing Christians closer to Jesus.

Equip people for evangelism and Mission – 4 hours

1. Equipping people for evangelism by using different Tools and methods.

2. Assist people in developing their skills in reaching out to evangelize the lost and helping believers come closer to God.
3. Challenging Churches for mission activities.

Counseling – 6 hours

1. Counseling teenagers and help them in truth and reality.
2. Biblical counseling to couples/individuals having problems in their marriage and reconcile them.
3. Assist the elderly, encourage them and give them moral and emotional support.

Discipleship and mission classes for different congregations- 4 hours

1. Speak at Men's Breakfast and various church events.
2. Provide advice and assistance to believers to develop moral values.
3. Select appropriate Bible stories pertaining to daily life and encourage them.
4. Co-ordinate services, strategic planning with Mission Chairman and other letters

In a February 10, 2007 letter, Reverend Wyton from the New Hope Community Church, certified that the beneficiary worked with the church from 2002 to 2004 as its "fulltime Missions Coordinator in respect to [the church's] partnership with NMM." Reverend Wyton stated that the beneficiary's job responsibilities averaged 40 hours per week and included leading mission trips to Asia and the following:

1. Conducting prayer meeting
2. Small group leadership/Bible study
3. Organize mission trips
4. Outreach events
5. Collecting field reports
6. Serve as a liaison with pastors and churches
7. Pastoral Care and Counseling
8. Bringing mission awareness in different congregations
9. Preparing missionary updates
10. Preparing mission newsletters/annual reports
11. Coordinating mission projects
12. Lead church teaching sessions

Neither the petitioner nor [REDACTED] indicated the beneficiary's compensation for his services. However, the petitioner submitted copies of pay stubs indicating that it paid the beneficiary \$2,000 per month from July to September 2006 and \$2,500 per month thereafter. The beneficiary's unsigned and undated Form 1040, U.S. Individual Income Tax Return, for the year 2005 indicated \$13,000 in self-employment income, and the beneficiary indicated his business or profession as that of pastor. The beneficiary's 2006 Form W-2 shows that the petitioner reported wages of \$13,500 for the beneficiary, and the beneficiary's unsigned and undated Form 1040 showed wages of \$13,500 for the year 2006.

The petitioner also submitted a February 8, 2007 sworn statement from the beneficiary in which he certified that, as of the date of the statement, he had in excess of \$116,117 in various bank accounts. The beneficiary also provided documents confirming his accounts at various financial institutions, including a February 5, 2007 letter from Tim Lanphere, who identified himself as a personal banker with Chase Coit & Campbell, and certified that the beneficiary opened an account with JPMorgan Chase on July 17, 2006,

and that his current balance was \$84,000. All of the financial documents provided by the beneficiary indicate that his accounts were opened in mid-2006.

In response to a second RFE dated April 24, 2007, the petitioner submitted, inter alia, a copy of a Community Volunteer Income Tax Program Summary for the 2004 Tax Year and a copy of a 2005 Tax Return Summary, which counsel identifies as the beneficiary's Canadian tax returns. The 2004 return shows income of approximately \$402 and the 2005 return reported no income.

The beneficiary provided a June 29, 2007 affidavit in which he stated that he was employed by the petitioner on a full-time basis during 2005, but that "during this time, I elected not to be compensated as initially contemplated, until our organization was up-and-running." In a June 28, 2007 letter, [REDACTED] who identified himself as a board member for the petitioning organization, certified that the petitioner provided the beneficiary with a house as part of his remuneration. However, the petitioner submitted no documentary evidence to support [REDACTED]'s statement. Additionally, although the petitioner submitted copies of a 2006 certificate of title for a vehicle, it submitted no documentary evidence that the vehicle was provided to the beneficiary for his use. Further, as the title to the vehicle was issued in 2006, it does not provide evidence of the beneficiary's use of a car during the qualifying period. 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 director denied the application on August 8, 2007, finding that the petitioner had not submitted sufficient evidence to document the beneficiary's employment during 2005, and that as such, it is presumed that the beneficiary worked on a voluntary basis.

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.

On appeal, counsel asserts that, in 2005, the beneficiary entered into “a formal agreement for his full-time personal services” with the petitioner. Counsel further asserts that the fact that the beneficiary chose to forego part of his compensation for 2005, did not abrogate the agreement, which was fully enforceable by both sides. Counsel argues that the “clear expectation or promise of compensation” undermines the director’s position that the beneficiary’s service was voluntary. The petitioner submits a copy of a document dated May 5, 2005 confirming the beneficiary’s appointment as a full-time missions pastor. The document sets forth the duties of the position and provides a “base salary” of \$24,000 yearly, plus a car and a housing allowance.

Nonetheless, the issue is not whether either of the parties could have enforced an agreement, the issue is whether or not the beneficiary worked full time during the qualifying period. Although the petitioner has provided documentation showing that the petitioner agreed to pay the beneficiary \$24,000 per year from at least May 2005, the petitioner has never paid the beneficiary this amount. Further, it provided no documentary evidence to corroborate that it provided the beneficiary with a car, a housing allowance, or a house, as alleged by ██████████ in his June 2007 letter. Therefore, as the petitioner has not provided documentary evidence of the beneficiary’s employment, it has not met its burden of proof. *See Matter of Soffici*, 22 I&N Dec. at 165.

Further, even if the beneficiary chose to forego part of his salary in 2005, his 2006 tax returns reflect that he continued to receive approximately one-half of the \$24,000 promised to him. The petitioner has provided no explanation for this continued lack of salary. Given that the beneficiary entered the United States in May 2005 as an R-1 nonimmigrant, it is presumed that the May 2005 letter reflects the full promised salary.

If the beneficiary worked full time for the petitioner without compensation, the question arises as to how he was able to financially support himself and any dependents. The documentation provided indicates that the beneficiary’s reported income in 2004 was approximately \$400, and his reported income in 2005 was \$0. We note that the beneficiary provided documentation indicating that he had personal funds in 2006; however, the petitioner submitted no evidence that the beneficiary was financially independent in 2004 and 2005. Thus, while it appears that the beneficiary worked with the Canadian branch of the petitioning organization in 2004 and the earlier part of 2005, the record does not clearly establish that he worked full time as a pastor during that time and was not engaged in secular employment for his support.

Counsel asserts that by requiring the petitioner to demonstrate that the beneficiary’s qualifying employment by showing that he worked full time and was paid for his services, CIS “is essentially instructing [the petitioner] and [the beneficiary] on how they should exercise their religious faith” and is a violation of the petitioner’s religious freedom. Counsel further asserts:

The message conveyed by the Service is unsettling: To get a green card, you must devote at least 35 hours of your religious service per week and prove that your religious devotion is genuine by requiring full compensation. This “pay-per-prayer” policy is in contradiction

with the pervasive religious practices that are demonstrated by pure voluntary devotion unrelated to compensation or amount of time worked.

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 with CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978). This petition is for an employment based visa and the alien is already here on an employment based visa. Therefore, it is not unreasonable to expect the alien to be employed.

Further, the record is not clear that the work performed by the beneficiary in Canada and that in the proffered position are the same. The proffered position is that of missions pastor. The beneficiary stated in his résumé that he served as director of the NMM in Canada beginning in 2000. [REDACTED] in his letter of June 2006, also stated that the beneficiary served as CEO of the NMM in Canada. The record does not contain the duties and responsibilities of either position. Neither the beneficiary nor Reverend Wyton indicated that the beneficiary served as a missions coordinator. However, in his February 2007 letter, [REDACTED] stated that the beneficiary served as a full-time missions coordinator with the New Hope Community Church. That the beneficiary is a pastor and that the job of missions coordinator may require the services of an ordained minister (a requirement that is not specified in the record) does not automatically presume that the duties of the proffered position and that of missions coordinator are the same.

While the duties of missions pastor and missions coordinator appear to overlap, the letter from [REDACTED] does not indicate the hours that the beneficiary devoted to each of his duties as missions coordinator, and his list of the beneficiary's duties is not clear as to whether any pastoral duties were more than merely incidental to the beneficiary's job as missions coordinator. The duties of missions pastor outlined by the petitioner do not show a substantial amount of time dedicated to missions coordination. The statute clearly states that the alien must be seeking entry into the United States in order to work for the organization in a religious vocation or occupation and "has been carrying on *such* vocation, professional work, or other work continuously for at least the 2-year period" [Emphasis added] immediately preceding the filing of the visa petition. The regulation at 8 C.F.R. § 204.5(m)(1) states that the religious worker "must have been performing *the* vocation, professional work, or other work continuously . . . for at least the two-year period immediately preceding the filing of the petition." [Emphasis added.] Therefore, it is unclear as to whether the beneficiary's work during the qualifying period was in the same job as the proffered position.

Accordingly, the record does not contain sufficient information to establish that the beneficiary worked continuously as a pastor throughout the two-year period immediately preceding the filing of the visa petition.

The second issue on appeal is whether the petitioner 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.

The petitioner stated that the beneficiary will be expected to work at least 40 hours per week in the proffered position and that he would receive \$24,000 per year plus housing and a transportation allowance. There is nothing in the proffer that would indicate that it is less than a "legitimate" job offer.

Accordingly, we withdraw this statement by the director. Nonetheless, as the petitioner has not established that the beneficiary worked continuously as a minister throughout the qualifying period, the petition may not be approved.

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.