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CA



FILE: [REDACTED] WAC 06 263 51418

Office: CALIFORNIA SERVICE CENTER Date:

29 2008

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:

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.

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 youth 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 or that it has extended a qualifying job offer to the beneficiary.

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 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 August 31, 2006. 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 its August 15, 2006 letter accompanying the petition, the petitioner stated that the beneficiary had been working full time for the petitioner since 2004, and that he received “variable compensations” during the year. The petitioner stated that the beneficiary served as youth pastor and that his “activities” included “marriages, XV years, funerals, premarital counseling, preaching, counseling, and evangelizing house by house.”

The petitioner also submitted two other letters, both also dated August 15, 2006, signed by the beneficiary as youth pastor and [REDACTED] as general pastor, indicating that the beneficiary received \$11,015 in compensation for 2004 and \$12,875 in 2005. The petitioner provided copies of Internal Revenue Service (IRS) Form 1099-MISC, Miscellaneous Income, issued to the beneficiary by the petitioner, reporting nonemployee compensation of \$11,015 and \$12,875 in 2004 and 2005, respectively. The petitioner also submitted copies of the beneficiary’s IRS Form 1040, U.S. Individual Income Tax Return, for the years 2004 and 2005 on which he listed self-employment income in the amounts indicated on the IRS Forms-MISC. The tax returns indicated that they were copies and neither contained a signature or evidence that they were filed with the IRS.

On December 11, 2006, the director issued a request for evidence (RFE) in which she 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 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 hat other activity the beneficiary was involved in that would show support.

The director also instructed the petitioner to submit complete copies of the beneficiary’s IRS Forms 1040 and copies of IRS Forms W-2, Wage and Tax Statements, for the years 2004 through 2006. In its December 16, 2006 response, the petitioner stated that the beneficiary began preaching in the beginning

of 2004 after completing his ordination course. The petitioner provided a chart to illustrate the beneficiary's work during an average week. The chart indicated that the beneficiary did house to house preaching on Tuesday, Wednesday, Friday, Saturday and Sunday; Bible study and "praying and testimonial" on Tuesday; pre-marital counseling on Wednesday; house visitation and "gentlemen worship" on Friday; youth counseling and youth service on Saturday; and Sunday school and general worship on Sunday. The petitioner did not specify any particular hours that the beneficiary worked, and stated that although the time for the activities was not set, the activities occurred from morning to night. The petitioner resubmitted copies of the beneficiary's IRS Forms 1040, now signed by the beneficiary.

The director denied the petition, determining that the petitioner had submitted insufficient evidence to permit CIS to conclude that the beneficiary had worked full time during the qualifying period. The director noted that the petitioner should have been able to provide at least an estimate of the time the beneficiary spent engaged in each of his activities and that the compensation allegedly paid did not reflect full time work.

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 requires 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 reiterates that the beneficiary "has been working continuously for the two years required in this Ministry since 12/5/2007 as youth Pastor, youth Pastor has the responsibility to visit the house of this members as per their request the time to spend in the houses is variable." However, the

petitioner submitted no additional evidence to document that the beneficiary worked full time as a youth minister. 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 states for the first time on appeal, that the beneficiary's minimum wages are \$11,000 and that he received "a little bit more" in 2004 and 2005 because of bonuses.

The majority of the beneficiary's working hours appear to be dedicated to house-to-house preaching. However, the petitioner provides no evidence of the average number of homes the beneficiary visited or was expected to visit during his working hours. Additionally, the petitioner provided no documentation as to the amount of time the beneficiary was engaged in any of the other work he performed during the qualifying period. Although on appeal the petitioner stated that the beneficiary's minimum wages were \$11,000, the petitioner initially stated that the beneficiary received "variable compensations" for his services. The petitioner did not specify the nature of these "compensations" or the frequency with which the beneficiary received them. Thus, it cannot be determined if the beneficiary worked and was paid on a regular full-time basis or how he was otherwise able to provide for himself during periods when he was not paid or paid a minimum amount. The evidence 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.

The second issue on appeal is whether the petitioner has 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 did not initially indicate the terms of the beneficiary's employment. In her December 11, 2006 RFE, the director instructed the petitioner to:

Submit a job offer in the form of a letter from the authorized official of the religious organization in the United States. The letter must include the beneficiary's job title, a **detailed description** of the work to be done, including specific job duties level of responsibility/supervision, and number of hours per week to be spent performing each duty, and how the beneficiary will be paid for services. **Include the terms of payment for services or other remuneration.** Also, include a daily and weekly schedule for the proffered position. [Emphasis in the original.]

In response, the petitioner submitted a job offer dated December 14, 2006, in which it confirmed that it was offering the beneficiary a full-time position as youth pastor. The job offer did not specify the number of hours the beneficiary was expected to work and stated only that he would be compensated "on a monthly basis in cash without deduction." In its December 16, 2006 response to the RFE, the petitioner also stated:

This church considers that the workers of god must be fed from God. So we pay compensations in cash without deduction to [the beneficiary] to cover his living expenses . . . The church must become responsible of [sic] compensating to [the beneficiary] from his job in the church according to the possibilities.

As previously discussed, the petitioner, on appeal, states that the beneficiary's minimum annual wages are \$11,000. Also on appeal, the petitioner submits a March 2, 2007 offer in which it states that the beneficiary will receive \$1,072.91 per month for his services.

A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). It is clear from previous submissions that the proffered position had no set salary. Therefore, based on the evidence of record before the director, the petitioner had not established that the beneficiary would be employed in full time work and solely carrying on the vocation of a minister. Accordingly, the evidence before the director failed to establish that the petitioner had extended a qualifying job offer to the beneficiary.

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.