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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

File: WAC 01 161 54913 Office: CALIFORNIA SERVICE CENTER Date: AUG 29 2003

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 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of 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 project coordinator and director of the petitioner's overseas mission. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for the two years immediately preceding the filing date of the petition. The director also determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization.

On appeal, the petitioner submits a statement and additional evidence.

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, 2003, 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, 2003, 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 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).

8 C.F.R. 204.5(m)(1) states, in pertinent part:

> 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 alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or 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. All three types of 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.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

The first issue raised by the director to be discussed in this proceeding is whether the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing date of the petition.

The petition was filed on April 3, 2001. Therefore, the petitioner must establish that the beneficiary was working continuously as a religious worker from April 3, 1999 until April 3, 2001. The petitioner indicated on Form I-360, Petition for Amerasian, Widow, or Special Immigrant, that the beneficiary last entered the United States on October 19, 1999, and that he has never worked in the United States without permission. A copy of the beneficiary's visa issued by the U.S. consulate in [redacted] indicates that the beneficiary was issued a non-immigrant L-2 visa on November 28, 1995.

The petitioner stated that the beneficiary worked on a volunteer basis during the requisite period and that his spouse supported him. The petitioner also submitted the beneficiary's Internal Revenue Service (IRS) W-2 forms for 2000, indicating that he worked for [redacted] earning $4,868.77, and that he also

worked for the [redacted]" earning $736.95 at that company. No additional information regarding these positions is included in the record.

On appeal, the petitioner asserts that the beneficiary was not paid a wage during the requisite timeframe because he did not have permission to work in the United States. The petitioner also submits copies of evidence already contained in the record.

The record lists some duties of the position and includes a weekly chronology of the beneficiary's activities for the petitioner. The duties identified indicate that virtually all of the beneficiary's time is spent performing general administrative duties, various liaison activities, and program preparation for the petitioner. Duties identified indicate that the majority of the work performed by the beneficiary is of a secular nature. Further, during 2000, two employers (other than the petitioner) paid the beneficiary a wage; thus, precluding a finding that the beneficiary continuously performed the duties of a religious worker for the petitioner since April 1999. The petitioner has not provided sufficient evidence to establish that the beneficiary was continuously performing the duties of a qualifying religious vocation or occupation throughout the two-year period immediately preceding the filing date of the petition. Therefore, the decision of the director is affirmed and the petition is denied.

Another issue raised by the director that shall be discussed in this proceeding is whether the petitioner qualifies as a bona fide nonprofit religious organization as stated in 8 C.F.R. § 204.5(m). This section 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 section 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 section 501(c)(3) of the Internal Revenue Code

of 1986 as it relates to religious organization;

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) as it relates to religious organizations, is required.

In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement that applies to churches, and a copy of the organizing instrument of the church which contains a proper dissolution clause and which specifies the purposes of the organization.

The petitioner submitted a letter dated August 28, 2001, from the IRS, indicating that the petitioner is not recognized under section 501(c)(3) as a religious organization, and instructing the petitioner how application for this status can be made. The petitioner also submitted a poor facsimile of an exemption letter dated March 1, 1987, from the State of California Franchise Tax Board, and portions of its articles of incorporation and amendments with a proper dissolution clause.

The petitioner has not submitted evidence to comply with either the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A) or (B) regarding its tax exempt status as a bona fide nonprofit religious organization. The submissions do not meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A) or (B). Thus, the petition also must be denied for this reason.

Beyond the decision of the director, the petitioner also has not established that the beneficiary is qualified to perform the duties of a religious worker. The petitioner has submitted a "certificate" from the Diponegoro University, Semarang, Indonesia, indicating the completion of programs of studies in Business Economics in 1965 and 1969. Other than the petitioner's assertions, no other evidence of the beneficiary's qualifications as a religious worker is included in the record. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In addition, the petitioner has not submitted sufficient evidence to establish that the beneficiary has been presented with a valid job offer, or that the petitioner has had the ability to pay the beneficiary the proffered wage since the filing date of the petition. As the appeal will be dismissed on the grounds

discussed, these issues need not be examined further.

In reviewing an immigrant visa petition, the Bureau must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.