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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

[redacted]

SEP 04 2003

File: [redacted] Office: VERMONT SERVICE CENTER Date:

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 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.

Cindy M. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is the [redacted] 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 Bible worker.

The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious occupation for the two-year period immediately preceding the filing date of the petition. The director also determined that the petitioner had not established that a qualifying job offer had been extended to the beneficiary. Finally, the director determined that the petitioner had not demonstrated that it had the ability to pay the beneficiary the proffered wage.

On appeal, counsel submits a brief 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).

Pursuant to 8 C.F.R. § 204.5(m)(1):

> 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 to be reviewed in this proceeding is whether the petitioner has established that it has the ability to pay the proffered wage.

Pursuant to 8 C.F.R. § 204.5(g)(2):

> 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 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 annual reports, federal tax returns, or audited financial statements.

On appeal, counsel states that the petitioner has sufficient revenue to pay the beneficiary's salary of $18,000 per year. In support of his statement, counsel submits a copy of the petitioning organization's audited financial reports for the years 1998 and 1999, a Statement of Net Assets and Financial Condition as of December 31, 2000, the petitioner's audited financial reports for the year 2001, and the petitioner's budget for the year 2002. After examination of the financial reports, it is

concluded the petitioner has shown it has the ability to pay the proffered wage. Therefore, the petitioner has overcome this basis for denial of the petition.

The second issue to be reviewed in this proceeding is whether the petitioner has extended a qualifying job offer to the beneficiary.

Pursuant to 8 C.F.R. § 204.5(m)(4), each petition for a religious worker must be accompanied by a qualifying job offer from an authorized official of the religious organization at which the alien will be employed in the United States. The official must state the terms of payment for services or other remuneration.

In this case, the petitioner stated in a letter that accompanied the initial I-360 petition that it wishes to engage the beneficiary's services as a Bible worker "because of the continuing substantial growth of our conference." The petitioner indicates the beneficiary will be offered a salaried position on its regular employee payroll. The petitioner has not, however, provided a list of the individuals it currently employs as "Bible workers" or stated how many additional "Bible workers" it needs to hire because of the expansion. Furthermore, the petitioner has not provided any evidence showing that it has experienced substantial growth that would require the hiring of additional "Bible workers" to serve its member churches. In view of the foregoing, it is concluded the petitioner has not provided sufficient evidence to establish that it has extended a valid job offer to the beneficiary.

The third issue to be reviewed in this proceeding is whether the petitioner established that the beneficiary had been engaged continuously in a qualifying religious occupation for the two-year period immediately preceding the filing date of the petition.

The current petition was filed on July 24, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing in the occupation from July 24, 1999 to July 24, 2001.

The beneficiary has been continuously employed, in part, as a full-time salesperson of religious literature on a commission basis since 1997. Although the petitioner states that the beneficiary will be paid an annual salary of $18,000, the evidence of record does not support this statement. The beneficiary's federal income tax returns for the years 2000 and 2001 indicate that she was a self-employed salesperson. She did not file Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, as an employee of the Seventh-day Adventist Church, but rather, IRS Form 1099 MISC, as a self-employed individual. There is no evidence in the record to show that the beneficiary has ever been paid wages on a regular basis by the petitioning organization. Rather, the evidence of record indicates that the beneficiary has been a door-to-door salesperson and evangelist

who was paid on a commission basis based on her volume of sales.

The selling of goods on a commission basis is considered a secular activity inconsistent with a religious occupation. *Matter of Hall,* 18 I&N Dec. 203 (BIA 1992). In view of the foregoing, it is concluded that the petitioner has not shown that the beneficiary has had the requisite two years of experience in a qualifying religious occupation during the two-year period immediately preceding the filing date of the petition.

Beyond the director's decision, the petitioner has not shown that the offered position qualifies as a religious occupation. The petitioning organization initially filed a Form I-360 special immigrant religious worker petition on behalf of this beneficiary on April 28, 1999. In that proceeding, the petitioner identified the offered position as literature evangelist. The director denied that petition on March 24, 2000. The petitioning organization subsequently filed the current petition on behalf of the same beneficiary. The petitioning organization now identifies the offered position as Bible worker.

In a letter that accompanied the original I-360 petition, the petitioner described the beneficiary's duties as follows:

1. Proselytizing.
2. Door-to-door Canvassing.
3. Leading Bible studies.
4. Working as an evangelist to help the local pastors secure candidates for baptism.

In a letter that accompanied the current petition, the petitioner provided the following description of the beneficiary's duties:

> [C]onducting religious worship and giving sermons; explication and discussion of Church literature programs and its publication; leading Bible study programs; visiting communities located within the Conference to offer membership and encourage Church visits; enrolling interested persons in Bible Study programs; and, promoting the growth and development of our literature evangelism program to meet the needs of the people in our communities. Her duties and weekly schedule will be as follows:
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> | | |
> |---|---|
> | Evangelism and Teaching | 40 hours per week |
> | Orientation and on-going training | 3 hours per week |
> | Coordinating missionary activities | 6 hours per week |

A thorough review of the evidence of record discloses that the dudties of the offered position of *Bible worker* are, in fact, identical to those of the position referenced in the initial proceeding -- that of *literature evangelist* (also identified as *Bible instructor.*)

This conclusion is supported by the petitioner's statement in a letter that accompanied the current I-360 petition:

> Missionary [redacted] has been a continuous member of the [redacted] since her baptism in July, 1974. *She has worked as a Bible Worker since June 1, 1997.* [Emphasis added.]

Clearly, although the beneficiary has been performing the same duties since 1997, the petitioner has changed the title of the position from literature evangelist to Bible worker.

In support of the original petition, the petitioner submitted a copy of the employment contract, or "Understanding of Employment", commonly issued to literature evangelists by the Seventh-day Adventist Church. The Bureau notes the following statements from this employment agreement:

> WHEREAS, a part of the spiritual ministry of the [redacted] involves the sale and distribution of literature designed and published by church publishing houses; and
>
> WHEREAS, the conference employs the services of Literature Evangelists to assist in the carrying out of this work of God; and
>
> WHEREAS, the purpose of this agreement is not to change but to describe the employer-employee relationship between the Conference and the Literature Evangelist:
>
> NOW THEREFORE, the parties hereby agree as follows:
>
> * * *
>
> 4. The Literature Evangelist will be compensated for his/her efforts in this ministry according to the applicable written policy of the Seventh-day Adventist Church.
>
> 5. The parties of this agreement also acknowledge that the Literature Evangelist will not be treated as [an] employee for federal income and employment tax purposes. For such purpose, the Literature Evangelist shall be treated as a direct seller under I.R.C. Section 3508. The Literature Evangelist agrees to make the required income tax and self-employment tax estimated payments.

In support of the previous petition, the petitioning organization also submitted material from a publication entitled *Publishing*

 [redacted]

Department Policies and Guidelines of the North American Division, General Conference of Seventh-day Adventists, Washington, D.C. 20012, revised January 1988. At section I 75, "Literature Evangelist," this document described a licensed literature evangelist as follows:

> To be eligible for a license, a beginner shall have worked 420 hours within the limits of three consecutive months and shall have demonstrated success in salesmanship to the point of being able to earn a livelihood in the literature evangelist field. The account of the literature evangelist as well as the general record shall be satisfactory. The renewal of the license shall be conditional upon the worker's qualifying as a regular literature evangelist, working a minimum of 1,680 hours a year, and sales of denominational literature as set by the HHES/FHES.

The employment agreement and the policy document of the [redacted] make it clear that literature evangelists are employed by the church, in part, to sell religious literature on a commission basis. The selling of goods on a commission basis, regardless of the type of goods, is considered a secular activity inconsistent with a religious occupation. *Matter of Hall*, 18 K&N Dec. 203 (BIA 1982). Accordingly, a position that involves the selling of goods and/or the solicitation of funds, in any form, is ineligible for consideration as a qualifying religious occupation within the meaning of section 101a(a(27)(C) of the Act.

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.