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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

[REDACTED]

File:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date:

SEP 29 2003

IN RE: Petitioner:
Beneficiary:

[REDACTED]

Petition: Immigrant 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]

PUBLIC COPY

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 Citizenship and Immigration Services (CIS) 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 employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is described as an “umbrella administrative organization” encompassing several regional Baptist churches. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as the pastor at Iglesia Bautista Renacer in Palmdale, California. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a pastor immediately preceding the filing date of the petition.

On appeal, counsel states that the director erred in finding that only salaried employment can satisfy the two-year experience requirement.

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).

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that “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.”

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 July 24, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a pastor for two years immediately prior to that date.

In a cover letter submitted with the petition, counsel states that, upon approval of the petition, the beneficiary “will assume full-time and permanent duties for our modest-sized house of worship.”¹ Counsel adds “[a] salary/honorarium of \$2,000.00 per month plus free housing and limited board shall be provided” to the beneficiary. Counsel indicates that the beneficiary “was employed as a Minister for a total of nearly 23 years in his native Brazil,” but counsel does not directly refer to the beneficiary’s work in the United States. Counsel states only that “we have been most impressed by the devotion and hard work of” the beneficiary. The petitioner indicates that the beneficiary has been in the United States since June 12, 1998, and therefore the beneficiary’s work in Brazil falls entirely outside the two-year qualifying period that began in July 1999.

Counsel describes the position offered to the beneficiary:

This offer includes standard religious service ministry involving leading the congregation in prayer, delivering of Scriptural readings, and preparation and delivery of sermons; running of adult and youth Bible Study groups mid-week and on weekends; a daily commitment to visit ill congregants and persons expressing need for individual spiritual counseling; direct missionary activities in the local community, on average occupying 10 hours per week; attendance at religious convocations, retreats, and seminars; authorship and translation into Spanish of religious tracts, church prayer bulletins, and related materials; mentoring of persons indicating a desire to enter the ministry; presiding at funerals, marriages, baptisms, and other special functions with religious significance; continuing education; participation in church fund-raising activities and special projects.

The petitioner submits translated letters and documents from Brazil, attesting to the beneficiary’s training and experience. Translator’s certificates in the record indicate that the translator is “fluent in the Spanish and English languages,” but the Brazilian documents are in fact written in

¹ Counsel’s consistent use of first-person plural pronouns with regard to the church implies that counsel is a member of that church.

Portuguese, as is evident from, for instance, the consistent use of the Portuguese suffix *-ção* rather than the equivalent Spanish suffix *-ción*.

The director instructed the petitioner to submit “evidence of the beneficiary’s work history beginning July 24, 1999 and ending July 24, 2001,” as well as “evidence to establish how the beneficiary has been supporting him or herself” in the United States. In response, Saúl Hernandez, board member of Iglesia Bautista Renacer, indicates that the beneficiary has worked over 40 hours per week at the church throughout the relevant two-year period. Mr. Hernandez states:

[The beneficiary] has received no money compensation for his work over the past years. He lives in church-subsidized housing. . . . He takes his meals in the rehabilitation dining room, or prepares his own food in the church kitchen from church supplies. . . . His minimal needs for clothing and personal articles are met from church petty cash derived from member contributions. Because I am in almost daily contact with him . . . I can also state without hesitation that he does not engage in any employment outside of the church.

Mr. Hernandez provides a weekly schedule, said to apply to the entire two-year period immediately prior to the filing of the petition. The schedule includes the following duties:

| | |
|----------------------|--|
| Mon.-Fri. 9am-12pm | Operate Christian Rehabilitation Center’s religious program: prayer and counseling, daily group Bible Study, home visits to families, administrative activities. |
| Mon.-Fri. 1pm-5pm | Preparation of sermons, writing messages for bulletin, individual religious counseling, home and hospital visitations, meetings, activity planning. |
| Monday 7pm-9pm | Prayer service |
| Wednesday 7pm-9:30pm | Bible study adult class |
| Thur., Sat. 7pm-9pm | Christian leadership training: orientation and instruction for missionary activity, Bible study, prayer services |
| Sunday 12pm-5pm | Conduct worship services, speak with congregants |

We note that Saúl Hernandez indicates that the beneficiary devotes fifteen hours a week to “our Christian Rehabilitation Center’s religious program,” although counsel’s initial description of the beneficiary’s duties did not even mention that this center existed at all. (Counsel states on appeal that the rehabilitation center “was discussed in the initial submission” but we can find no such reference to the center in the documents submitted prior to the director’s request for additional information.) There are other discrepancies between the descriptions provided by counsel and by Mr. Hernandez.

The petitioner has submitted copies of bulletins and fliers from the church, all from after the petition’s July 2001 filing date. The petitioner has also submitted photographs said to depict the beneficiary’s house, a rehabilitation center operated by the church, and other church-related sites

and activities. The materials submitted by the petitioner include no first-hand documentation to establish the beneficiary's claimed full-time work at the church prior to the filing date.

The director denied the petition, stating that unpaid volunteer work cannot constitute qualifying experience. On appeal, counsel cites *St. John the Baptist Ukrainian Church v. Novak*, the unpublished 2001 decision of a federal district court in New York. Counsel asserts that the Immigration and Naturalization Service (now CIS) conceded that an alien's "voluntary employment" would satisfy the requirement that he or she has performed the work for the two-year period prior to the filing of the petition. Counsel's assertion is not supported by the record as counsel has not provided a copy of the court's decision.² The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, however the analysis does not have to be followed as a matter of law. *Id.* at 719. In addition, as the published decisions of the district courts are not binding on the AAO outside of that particular proceeding, the unpublished decision of a district court would necessarily have even less persuasive value.

Counsel asserts that a policy requiring salaried employment discriminates against faiths that traditionally do not pay their clergy, as well as individual churches that cannot afford to pay their clergy. Case law relating to religious workers indicates that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963). The statute and regulations plainly state that an alien seeking special immigrant classification as a minister must work solely in the vocation of a minister.

The petitioner has not shown that its denomination traditionally utilizes unpaid clergy. Indeed, the petitioner has offered the beneficiary "[a] salary/honorarium of \$2,000.00 per month plus free housing and limited board." Therefore, the effect of CIS policy on denominations that do not pay their clergy is irrelevant to the fact pattern of this case.

With regard to counsel's argument that the director's decision discriminates against poor churches, we note that there are only two possibilities to discuss. Either the church in this matter can afford to pay the beneficiary \$2,000 a month, or it cannot. If the church in this particular instance can in fact afford to pay the wage, then counsel's claim of discrimination against churches that cannot pay is irrelevant to the matter at hand.

² The only documentation the petitioner has submitted relating to *St. John the Baptist Ukrainian Church v. Novak* is a one-page summary prepared not by the court or by any impartial body, but rather by counsel for the plaintiff in that case. That attorney acknowledged that the case established no "judicial precedent." The summary was followed by a disclaimer from the American Immigration Lawyers Association, indicating that summaries of this kind "do not necessarily represent the views of the American Immigration Lawyers Association, nor should they be regarded as legal advice."

If, on the other hand, the church cannot pay the wage offered, then it is highly relevant here to cite the regulation at 8 C.F.R. § 204.5(g)(2). That regulation states, in pertinent part:

Ability of prospective employer to pay wage. 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 proffered 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 copies of annual reports, federal tax returns, or audited financial statements.

There is nothing in the regulations to exempt religious institutions from this requirement, and it is the very opposite of discrimination to assert that this regulation applies to every prospective U.S. employer. If an employer, whether religious or secular, cannot afford to pay its employees, then the job offer cannot be valid because the employer cannot support the alien. Counsel speculates as to Congressional intent, but produces no evidence that Congress created the special immigrant religious worker classification not to provide workers for *bona fide* openings, but simply to reward aliens for having worked, in the past, as religious workers, without regard to whether there were realistic opportunities for them to continue doing so in the United States.

While the petitioner is not an individual church, but rather an “umbrella” organization, the regulations mandate that the prospective employer must be able to pay the beneficiary’s wage. Because, in this case, the beneficiary would be employed not by the petitioner but by Iglesia Bautista Renacer, the petitioner must establish that church’s ability to pay the remuneration offered to the beneficiary.

The record contains no documentation of the church’s ability to pay the \$2,000 per month (or \$24,000 per year) offered to the beneficiary. The absence of this required evidence would, by itself, fully warrant the denial of the petition, regardless of the other grounds discussed above.

Apart from the issue of payment, we also note that the record contains no contemporaneous documentary evidence of the beneficiary’s claimed full-time work at Iglesia Bautista Renacer during the two-year qualifying period that began in July 1999. Some documents, such as flyers and pamphlets, are dated during this period and identify the beneficiary as the pastor of the church, but the mere mention of the beneficiary as the church’s pastor does not establish full-time work to the exclusion of outside employment.

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

ORDER: The appeal is dismissed.