

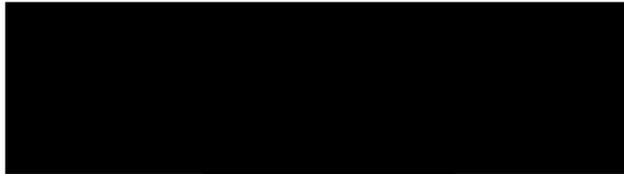
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: OCT 16 2007

WAC 06 250 55102

IN RE:

Petitioner:

Beneficiary:



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:



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.

for 
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a Presbyterian 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 assistant pastor of the petitioner's Capstone Chinese Fellowship. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as an assistant pastor immediately preceding the filing date of the petition.

On appeal, the petitioner submits a brief from counsel and various exhibits, some previously submitted.

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 regulation at 8 C.F.R. § 204.5(m)(1) 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." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on August 16, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an assistant pastor throughout the two years immediately prior to that date.

In a letter accompanying the initial filing of the petition, [REDACTED] Business Administrator of the petitioning church, stated that the beneficiary "has worked for our church for over 3 years as an assistant pastor with R-1 nonimmigrant status." [REDACTED] stated that the beneficiary's "salary shall be \$24,000.00/yr.," but did not specify the salary that the beneficiary had previously received.

A "Working Schedule for Capstone Chinese Fellowship" shows study sessions, office hours, meetings, and other functions totaling 52 hours per week. There was no indication as to whether this schedule coincides with the beneficiary's working hours, or else is simply a comprehensive accounting of activities by the Capstone Chinese Fellowship. The schedule does not show precise starting and ending times, instead dividing each day into "Morning," "Afternoon" and "Evening" and stating the number of hours devoted to each function.

Internal Revenue Service (IRS) Forms W-2 Wage and Tax Statements indicate that the petitioner paid the beneficiary \$9,000 in 2003 and \$18,000 per year in 2004 and 2005. The beneficiary's 2004 and 2005 income tax returns indicate no other earned income during those years. Visa documentation indicates that the beneficiary held R-1 nonimmigrant religious worker status beginning July 2, 2003, consistent with receiving half a year's pay in 2003.

Documents submitted with the petition indicate that the beneficiary studied for a Master of Divinity degree at San Francisco Theological Seminary during much of the two-year qualifying period, completing his degree requirements during the Fall 2005 semester.

On December 13, 2006, the director issued a request for evidence (RFE), instructing the petitioner to submit evidence relating to the beneficiary's employment history. In response, [REDACTED] evidently [REDACTED] successor as the petitioner's Business Administrator, stated that the beneficiary "has been an Assistant Pastor with our church from July 2, 2003 to the present." The petitioner submitted another copy of the "Working Schedule," but once again the petitioner did not specify whether the hours on that schedule correlate precisely with the beneficiary's working hours.

On March 7, 2007, the director issued a second RFE, requesting "evidence to establish that the beneficiary was employed by the petitioning church full-time . . . while he was attending school." In response, the petitioner submitted further copies of the beneficiary's IRS Forms W-2, and a newly available Form W-2 showing that the petitioner paid the beneficiary \$24,000 in 2006. In a letter dated March 20, 2007, [REDACTED] stated: "[i]hough [the beneficiary] is full-time with our church, he also takes classes at the Southern California extension site in Pasadena of San Francisco Theological Seminary. These classes are necessary for [the beneficiary] to become ordained in our denomination."

The director denied the petition on April 17, 2007, citing the beneficiary's ongoing studies and stating that there is no "evidence to establish that the beneficiary was employed by the petitioning church full-time" during the 2004-2006 qualifying period. The director stated "[i]t is unclear how the beneficiary was able to work 52 hours [per week] at [the petitioning] Church while also completing a semester of full-time graduate coursework."

On appeal, counsel states that the petitioner had submitted “overwhelming evidence that the Beneficiary had been employed by the Petitioner on a full-time basis” during the qualifying period. Counsel further states, “This evidence included the Beneficiary’s 2003 through 2006 W-2’s, tax returns and a letter from the Petitioner stating that the beneficiary had been employed for the period in question.” The tax documents are evidence of employment, but not necessarily of *full-time* employment. The director acknowledged the tax documents and never contested that employment of some kind took place.

Counsel adds: “[t]he Petitioner also provided the Beneficiary’s work and school schedules for the period in question, which demonstrated that the Beneficiary’s work and school schedules during the period in question did not conflict.” The petitioner, however, had never previously submitted a copy of the beneficiary’s “school schedule.” The academic transcripts previously submitted did not list specific class times, and the “Working Schedule” submitted previously never mentioned the beneficiary by name or by title.

The petitioner, on appeal, submits materials from the seminary, showing the times of the beneficiary’s classes. Work schedules (now bearing the beneficiary’s name) submitted on appeal generally match the previously submitted “Working Schedule,” except that they show reductions in the beneficiary’s working hours when class was in session at the seminary. Even then, the schedules consistently show full-time employment, with the beneficiary attending classes on weeknights and Saturdays.

Letters from seminary officials confirm the beneficiary’s enrollment and attendance, and as noted previously, the record contains tax documents confirming that the petitioner employed and paid the beneficiary. Because the petitioner’s prior submissions were often lacking in detail, the new information submitted on appeal amounts, in essence, to a refinement or clarification of the petitioner’s earlier claims, rather than outright revision or alteration of those claims.

The key elements of the petitioner’s claim have always been in place – the petitioner has never concealed the beneficiary’s status as a seminary student. We find the petitioner’s additional evidence, explanations and elaborations on appeal to be credible, persuasive, and consistent with prior claims and submissions. There is no indication that the petitioner has exaggerated or misrepresented the beneficiary’s past work in order to secure for him an immigration benefit to which he is not entitled.

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 met that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.