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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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



File:  Office: VERMONT SERVICE CENTER

Date:

AUG 15 2003

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 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 employment-based 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 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, 8 U.S.C. § 1153(b)(4), to perform services as an associate minister. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as an associate minister immediately preceding the filing date of the petition.

On appeal, the petitioner submits affidavits from church members.

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) echoes the above statutory language, and states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file an 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. 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 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.”

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 June 5, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as an associate minister throughout the two-year period immediately preceding that date.

Reverend [REDACTED] senior pastor of the petitioning church, states:

Since mid 1999 [the beneficiary] has worked within the church by distributing food and clothing to those in need in the community and also in the church. She has also worked in the area of raising funds for Missions and different ministries by leading different drives. Lately, she has been appointed to work and lead different activities in the Women Ministries of the church. Some of the areas she covers are, Bible Studies, programming and promoting activities.

Also for the last 2 years, she has been studying at the Spanish Eastern Bible Institute of the Assemblies of God in Freeport. There she has been acquiring biblical and ministerial knowledge.

Among other documents submitted with the petition, the petitioner has submitted a Form G-325A Biographic Information sheet completed by the beneficiary. The form is dated March 30, 2001. The form requests information regarding the alien’s employment during the previous five years, i.e. 1996 to 2001. The beneficiary stated her occupation as “cleaning sv.,” and identified three employers, none of which are the petitioning church. The beneficiary indicated that she has worked for R.A.M. Co. since February 1997.

The director instructed the petitioner to “[s]ubmit evidence that establishes that the beneficiary has the continuous two years full-time experience in the . . . religious work for the period immediately prior to June 5, 2001.” The director requested “evidence that the beneficiary’s primary duties . . . require specific religious training beyond that of a dedicated and caring member of the congregation.”

In response, Rev. [REDACTED] states “[s]ince January 1999, [the beneficiary] has been volunteering her time to the ministries of Bible Teaching (15 hours per week), Food Pantry Distribution (10 hours per week), Visitor’s Care (10 hours per week) and Lead Congregational Worship Services (8 hours per week).” Rev. [REDACTED] asserts that the beneficiary “is not an ordained minister but she has the authority to conduct worship services. . . . [S]he is a student at the S.E.D. Bible Institute.” With regard to the necessity of specific training, Rev. [REDACTED] asserts that the petitioner “has to have the necessary knowledge in biblical matters, church administration and dealing with people. . . . Everything she has learned and is still learning at the Bible Institute has and is being put to practice in her ministry.” Rev. [REDACTED] states that the beneficiary’s “title will be associate minister in the area of church and spiritual growth.” The prospective job duties for that title are similar to the beneficiary’s current duties as a volunteer.

The petitioner submits copies of certificates reflecting the beneficiary’s ongoing training at the Bible Institute, as well as a “Certificate of Service” issued by the petitioning church in December 1999, acknowledging the beneficiary’s “helpful participation.”

Rev. [REDACTED]’s assertion that the beneficiary “has been volunteering her time” “[s]ince January 1999” is not consistent with his previous statement that the beneficiary “has worked within the church” “[s]ince mid 1999.” Clearly Rev. [REDACTED]’s personal recollection is imprecise in this regard, but the petitioner offers no documentary evidence to establish the date more conclusively.

We note Rev. [REDACTED]’s assertion that the beneficiary’s work requires training that is still underway at the Bible Institute. Rev. [REDACTED] stated on April 25, 2001 that the beneficiary has been studying at the Bible Institute “for the last two years,” which would indicate that, according to the petitioner, the beneficiary’s training began at roughly the same time that she began volunteering at the church. The circumstances described by the petitioner, therefore, do not lead us to conclude that any training is necessary for the beneficiary to perform the duties described; otherwise, that training would necessarily have to have taken place before the beneficiary was able to begin these tasks. The petitioner has not shown that the tasks assigned to the beneficiary, such as food distribution, are traditionally performed by paid employees within the denomination to which the petitioner belongs.

The director denied the petition, stating that “there is no evidence that the beneficiary ever worked for the petitioner” and therefore “[t]he record does not establish that the beneficiary has the required two years of experience in the religious occupation.” On appeal, the petitioner submits four affidavits from church members. The affidavits are essentially identical, all printed in blue ink on gray paper and containing the same grammatical and spelling errors (e.g., “bone-fide” instead of “bona fide”). The four affidavits indicate that the beneficiary’s “religious vocation began on April 1992 at Shadai Church Assembly of God in Oyster Bay, N.Y.” The witnesses do not explain how all four of them have personal knowledge of the beneficiary’s work a decade ago at a different church.

The affidavits indicate that the beneficiary “has been working full time . . . as a religious minister for the last three years.” The affidavits are all dated July 28, 2002. Three years earlier would have been July 28, 1999, which is less than two years before the filing of the petition. The

petitioner has variously claimed that the beneficiary began working in January 1999 and “mid” 1999. The petitioner’s continued inability to provide a precise date suggests that the petitioner is unable to produce any contemporaneous, documentary records that would reliably establish a specific starting date.

With regard to the assertion that the beneficiary is a minister, the regulation at 8 C.F.R. § 204.5(m) states, in pertinent part:

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

The affidavits state that the beneficiary “is duly authorized to conduct religious worship and perform other duties related to.” The sentence ends there in all four affidavits. While the beneficiary is authorized to conduct services, the petitioner has indicated that the beneficiary is not ordained. The petitioner has submitted a copy of Rev. Mestizo’s “License to Preach,” but there is no evidence that the beneficiary holds such a license. There is no indication that the beneficiary is authorized to perform all the duties of Christian clergy, such as officiating at weddings. The above regulation specifically excludes lay preachers from the definition of “minister,” and the information in the record strongly suggests that the beneficiary is, at most, a lay preacher. The petitioner has also not shown that the beneficiary’s overall duties reflect a “reasonable connection” with the usual duties of authorized (i.e., ordained) clergy.

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).

The statute states at section 101(a)(27)(C)(iii) 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).

Later decisions on religious workers conclude 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. Com. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Com 1963).

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 salaried. To hold otherwise would be contrary to the intent of Congress.

The petitioner has indicated that the beneficiary has not been paid for her efforts on behalf of the petitioning church. The petitioner’s Form G-325A, executed on March 30, 2001, indicates that the beneficiary identified her occupation as “cleaning sv.” during the qualifying period. The evidence indicates that the beneficiary has supported herself as a housekeeper throughout the two years immediately prior to the filing date, and that her activities on behalf of the church have been the activities of a dedicated parishioner rather than a qualifying religious worker. Rev. Mestizo, on April 25, 2001, indicated that the beneficiary has also engaged in fund raising for the church, an activity specifically excluded from the definition of “religious occupation” at 8 C.F.R. § 204.5(m)(2).

Beyond the above, the petitioner has submitted no evidence of its ability to pay the wage that it intends to pay the beneficiary, as required by 8 C.F.R. § 204.5(g). The petitioner has offered little information about this wage except the assertion that it will not be below the minimum wage. The director had instructed the petitioner to submit recent financial information to establish this ability, but the petitioner’s response to the director’s notice did not include such information. The petitioner has submitted Forms W-2 showing that Rev. Mestizo, the petitioner’s only paid employee, has collected a salary since 1999, but these documents do not demonstrate or imply that the church’s resources are also sufficient to pay the beneficiary’s salary.

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.