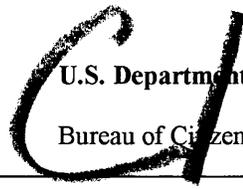


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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, D.C. 20536



AUG 21 2003

File: EAC 01 110 52713 Office: Vermont Service Center Date:

IN RE: Petitioner: [Redacted]
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.


Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner 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), in order to employ him as a bible teacher at an annual salary of \$15,600.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has been and will be employed in a religious occupation. The director further determined that the petitioner failed to provide sufficient evidence of its ability to pay the beneficiary the proffered salary.

On appeal, counsel for the petitioner submits a brief and additional documentation. Counsel concludes that: (1) the position of a bible teacher is a religious occupation; (2) the beneficiary has filled the position on a full-time basis; (3) the position requires religious training well beyond those functions performed routinely by other members of the petitioner's congregation; and (4) the petitioner had the financial ability to pay the beneficiary the offered wage at the time the petition was filed.

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 petitioner in this matter is a church of the Pentecostal denomination having 71 members. On appeal, the petitioner submits evidence that it has the appropriate tax-exempt status, however, the date that status was granted by the Internal Revenue Service is illegible on the documentation provided.

The beneficiary is a native and citizen of Nigeria who last entered the United States as a nonimmigrant visitor for pleasure (B-2) on March 28, 1992, with permission to remain until September 27, 1992. The beneficiary has remained in the United States in unlawful status since the expiration of his authorized period of admission. In addition, the Form I-360 indicates that the beneficiary has been employed in the United States without Bureau permission.

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 addressed in this proceeding is whether the proposed position constitutes a qualifying religious occupation for the purpose of special immigrant classification.

The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious

function" and instead provides a brief list of examples, including that of "religious instructor."

The Bureau interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed or beliefs of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

In a request for additional evidence, the director asked the petitioner to submit:

. . . evidence that the beneficiary's primary duties in the proposed job require specific religious training beyond that of a dedicated and caring member of the religious organization to establish that they are traditional religious functions above those performed routinely by members . . . copies of published material about [the petitioner] that shows which occupations are considered religious occupations within the organization, and what the occupation's qualifications are. . . .

In response, the petitioner described the beneficiary's duties as follows:

The beneficiary has been serving this Church as a "Bible Teacher" (i.e. responsible for teaching the Bible, Hymns, the Nigerian language and culture, and providing religious, moral and spiritual support and guidance to the children (and their parents) of the congregation) since February 1995 to the present. . . .

The petitioner also submitted a copy of its by-laws, originally promulgated on March 15, 1996. Article XI delineates the specific positions of local minister and church staff. "Church staff" includes the positions of pastor, elder, church text translator, Sunday school teacher, and pianist.

Article XII of the bylaws states:

The pastor shall appoint the superintendent of

the Sunday school from among the members of the church, this action to be ratified by the church. The pastor and the Sunday school superintendent shall have the right to appoint all officers, teachers, and other workers of the Sunday school, and in consultation with the workers of the school, determine all policies and programs of the school.

It is concluded that the petitioner has failed to submit sufficient documentary evidence to establish that the proffered position of bible teacher is defined and recognized by the governing body of the denomination, and that it is traditionally a permanent, full-time, salaried occupation within the denomination.

The next issue for consideration is whether the beneficiary had two years of experience in the proffered position prior to the filing of the petition.

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

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.

The petition was filed on February 20, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on the occupation of bible teacher since at least February 20, 1999.

The petitioner has stated:

While [the beneficiary] has been serving this Church on a full time, voluntary basis, he has been supporting himself in this country by selling real estate on a part time basis. . . .

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. 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. Comm. 1963); *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 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 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 be otherwise would be outside the intent of Congress.

The evidence of record reflects that the beneficiary has performed services for the petitioner as a spiritual youth counselor since 1995 on a voluntary basis and that he has supported himself by engaging in secular employment. For the reasons discussed above, such service does not constitute continuous experience in a religious occupation.

A petitioner also must demonstrate it has the ability to pay the proffered wage.

8 C.F.R. § 204.5(g)(2) states, in pertinent part, that:

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.

The petitioner has furnished an audited financial report for the three-year period ending December 31, 2000. The information provided indicates that, as of December 31, 1998, the petitioner had assets exceeding liabilities totaling \$16,805, and a net income of \$19,269. It is noted that the petitioner's assets and income increased in 1999 and 2000.

The petitioner has stated that it currently has no salaried employees. However, the petitioner has also stated that it has filed three additional petitions for religious workers, in April 1997, January 1998, and September 2001, all of which were approved by the Bureau. The salaries provided to these individuals, and any other employees the petitioner may have had at the time of filing the petition, are not included as line-item expenses in the financial documentation provided. It appears that if the petitioner was already employing two religious worker beneficiaries as of the date of filing the instant petition (i.e. the beneficiaries of the petitions filed in April 1997 and

January 1998), the modest assets and revenues shown for the period ending December 31, 1998 would not have covered the instant beneficiary's proffered wage.

When a job offer is the basis for immigration, there must be a high degree of certainty that the employment will not end or be modified because the employer is no longer able to meet the terms agreed upon in the job offer. It must be established, with some degree of certainty, that the petitioner is financially viable to the point where the beneficiary's employment will not end or change because the petitioner is unable to pay the proffered wage.

Based on the above, it is concluded that, in the instant case, the petitioner has not satisfactorily demonstrated that it had the ability to pay the beneficiary the proffered wage of \$15,600 annually as of the date of filing the petition on February 18, 1999.

For the reasons discussed above, the petition may not be approved.

Further, while the determination of an individual's status or duties within a religious organization is not under the Bureau's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with the Bureau. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

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.