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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

[redacted]

File: [redacted] Office: CALIFORNIA SERVICE CENTER Date: DEC 23 2003

IN RE: Petitioner: [redacted]
Beneficiary:

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 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.

Cindy M. Gomez for
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 on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a church.[1] 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), in order to perform services as a Christian education coordinator at an annual salary of $12,000.[2]

The director determined that the petitioner had not established that: (1) the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for the two-year period immediately preceding the filing date of the petition; (2) it has had the ability to pay the beneficiary the proffered wage since the filing date of the petition; and, (3) it has extended a qualifying job offer to the beneficiary.

On appeal, counsel for the petitioner states that the director's decision was reached in error. In support of the appeal, counsel submits a letter from the petitioner's senior pastor, Steve Adarkwa, and three cancelled checks issued by the petitioner to the beneficiary in August and September, 2002.

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

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[1] The petitioner variously notes its name as "Church of the Living God," "Church of the Living God Full Gospel Ministry," and "Church of the Living God (Full Gospel Ministries), Inc."

[2] The petitioner variously notes the title of the position offered as "Christian Education Coordinator" and "Director of Sunday school."

 [redacted]

> (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 beneficiary is a native and citizen of Ghana who was last admitted to the United States as a nonimmigrant visitor for pleasure on March 29, 1990. The date of expiration of the beneficiary's authorized period of admission is not noted in the record. The record indicates that the beneficiary has remained in the United States in an unlawful status since the expiration of her authorized period of admission. The Form I-360, Petition for Amerasian, Widow, or Special Immigrant, states that the beneficiary has not been employed in the United States without authorization.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

The director determined that the petitioner had not established that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for the two-year period immediately preceding the filing date of the petition.

The regulation at 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 October 5, 2001. Therefore, the petitioner must establish that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for the two years beginning on October 5, 1999.

With the initial filing of the petition, Pasto[redacted] submitted a letter, dated August 20, 2001, stating that the beneficiary had been serving the petitioner as a Christian education coordinator "for the past three years." In response to the director's request for additional information and documentation concerning the beneficiary's employment history, Pastor Adarkwa submitted a letter, dated July 16, 2002, stating that the beneficiary works

about 35 hours per week for the petitioner as its director of Sunday school. As previously noted, on appeal, counsel submits three cancelled checks issued by the petitioner to the beneficiary in August and September, 2002.

The legislative history of the religious worker provision of the Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 (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 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 or she had been "continuously" carrying on the vocation of minister for the two years immediately proceeding 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).

The term "continuously" is also 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 studies. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he or 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).

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 or 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.

Here, the petitioner has stated that the beneficiary has performed services for the petitioner since 1998. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

A review of the documentation submitted in support of the petitioner's assertion merely establishes that the beneficiary received payments from the petitioner during the two years preceding the filing date of the petition totaling $200 in 1999, $1,250 in 2000, $1,050 in 2001, and $2,250 in 2002. Such evidence does not support the petitioner's claim that the beneficiary was a full-time salaried employee during the required two-year time period. Based on the above discussion, the AAO concludes that the evidence submitted is insufficient to establish that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation during the two years immediately preceding the filing date of the petition. For this reason, the appeal will be dismissed.

The director also determined that the petitioner had not established its ability to pay the beneficiary the proffered wage.

The regulation at 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 record contains audited financial statements from the petitioner's "mother" church in Maryland for the years ending 1999 and 2000, and the petitioner's unaudited income statement for January 2002 through June 2002. The petitioner states on appeal that the salaries of its workers are paid by the "mother" church. However, the petitioner's unaudited income statement indicates that only 50% of the senior pastor's salary is paid by the mother church. Furthermore, the unaudited income statement reflects that the petitioner's net income in 2002 was less than $10,000.

Discrepancies encountered in the evidence presented pertain to whether the petitioner has had the ability to pay the beneficiary the proffered since the filing date of the petition. These discrepancies in the petitioner's submissions have not been explained satisfactorily. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

Based on the documentation submitted, it is concluded that the petitioner has not established its ability to pay the beneficiary the proffered wage. For this reason as well, the appeal will be dismissed.

The director further determined that the petitioner had not established that it has extended a qualifying job offer to the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

> *Job offer*. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

In the instant case, the petitioner has not clearly indicated that the beneficiary will not be solely dependent on supplemental employment or the solicitation of funds for support. Based on the evidence submitted (of the payments the beneficiary has received from the petitioner to date), it cannot be concluded that the beneficiary will be able to support herself without supplemental employment.

Beyond the decision of the director, the petitioner has failed to establish that the beneficiary is qualified to engage in a religious vocation or occupation, and that the position offered by the petitioner is a qualifying religious vocation or occupation. As the petition will be denied for the reasons stated above, these issues need not be examined further at this time.

In reviewing an immigrant visa petition, the AAO 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 beneficiary in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of B. 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.