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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



File: WAC 01 217 55206

Office: CALIFORNIA SERVICE CENTER Date:

**DEC 23 2003**

IN RE: Petitioner:  
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: SELF-REPRESENTED

**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. Somen* 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. 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 director of youth religious Christian education at a monthly salary of \$1,400.

The director determined that the petitioner had failed to establish 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 director also determined that the petitioner had failed to establish its ability to pay the beneficiary the proffered wage.

On appeal, an official of the church, Reverend [REDACTED] submits a brief asserting that the petition should be approved because the beneficiary has met the statutory requirements. Reverend Chung notes that religious workers frequently do not receive compensation in a traditional sense. He states that if the beneficiary appears at the church on a regular basis and renders religious services to the church, the director should be satisfied that the beneficiary qualifies as an employee of the church.

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 petitioner is described as a non-denominational Christian church. The size of its congregation and number of employees are not noted in the record.

The record reflects that the beneficiary, a native and citizen of Korea, last entered the United States on April 10, 1997. On September 19, 1997, the beneficiary was granted a change of status to that of a nonimmigrant student (F-1), with authorization to remain in the United States for the duration of her studies. The Form I-360, Petition for Amerasian, Widow, or Special Immigrant, indicates that the beneficiary has not been employed in the United States without permission.

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 failed to establish that the beneficiary had been continuously engaged in a qualifying religious occupation or vocation for the two years 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 April 25, 2001. Therefore, the petitioner must establish that the beneficiary had been continuously engaged in a qualifying religious occupation or vocation for the two-year period beginning on April 25, 1999.

With the initial filing of the petition, the petitioner submitted letters stating that the beneficiary had been a member of the church since April 1997, had been serving the church as director of youth religious Christian education since that date, and had been offered the position full-time at a monthly salary of \$1,400.

In response to the director's request for additional information

and evidence concerning the beneficiary's employment history during the two years immediately preceding the filing date of the petition, the petitioner submitted a letter, dated January 22, 2002. The petitioner stated that the beneficiary "is being paid" a monthly salary of \$1,400, but failed to specify the date that the monthly payments began. The petitioner also stated that the beneficiary received support from her family in Korea from 1998 through December 2001, and submitted the following documentation:

Photocopies of the beneficiary's IRS Forms W-2, Wage and Tax Statements, indicating income from the petitioner of \$10,400 in 2000 and \$15,600 in 2001.

The beneficiary's bank statements, from [REDACTED] Los Angeles, California, dating January 1, 1998 through December 31, 2001.

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 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).

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.

A review of the record reveals discrepancies in the evidence presented pertaining to the beneficiary's employment history during the requisite two-year time period. The petitioner has asserted that it has paid the beneficiary a monthly salary. At the same time, the petitioner indicates on the Form I-360 petition that the beneficiary has never been employed in the United States without permission; however, the record contains no evidence that the beneficiary was ever granted employment authorization by CIS. The record is also not clear as to specifically when the beneficiary's full-time salaried employment with the petitioner began. Furthermore, the record reflects that the beneficiary's status in the United States since September 1997, has been that of a full-time nonimmigrant student. These discrepancies call into question the petitioner's ability to document the requirements under the statute and regulations and 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).

In this case, it is concluded that the petitioner has failed to submit sufficient evidence to establish that the beneficiary had been continuously employed by the petitioner in a full-time salaried position during the two-year period dating from April 25, 1999 through April 25, 2001. Absent a detailed description of the beneficiary's employment history in the United States, sufficiently supported by consistent corroborating evidence, the AAO is unable to conclude that the beneficiary had been engaged in any particular occupation, religious or otherwise, during the two-year qualifying period. For this reason, the appeal will be dismissed.

The director also determined that the petitioner had failed to

establish 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.

Here, the petitioner has failed to submit its annual reports, federal tax returns, or audited financial statements. For this reason as well, the petition may not be approved.

Beyond the decision of the director, the petitioner has failed to establish that: the beneficiary is qualified to engage in a religious occupation or vocation; the beneficiary's activities for the petitioning organization require any religious training or qualifications; and, the position offered is a qualifying religious occupation or vocation. As the petition will be denied for the reasons stated above, these issues need not be examined further in this proceeding.

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.