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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

[REDACTED]

File: [REDACTED] Office: VERMONT SERVICE CENTER

Date: JUL 31 2003

IN RE: Petitioner:  
Beneficiary:

[REDACTED]

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:

[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 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 assistant pastor. 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 additional evidence intended to establish the beneficiary's qualifying experience.

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 April 30, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as an assistant pastor for two years immediately prior to that date. The petition indicated that the beneficiary last entered the United States on November 9, 1998 as a visitor.

██████████ the petitioner’s parish council president, states that the beneficiary “has been performing the duties of assistant pastor in this church from April 1999 until the fall of 2000. Since fall of 2000, he has been named administrator of the parish.” The Very Reverend Father ██████████ chancellor of the Romanian Orthodox Archdiocese in America and Canada, states “[s]ince the resignation of the parish priest in Fall of 2000, [the beneficiary] has been named as administrator of the parish, pending the confirmation of his appointment as Pastor by the Archdiocesan Council that meets semi-annually.”

The director instructed the petitioner to submit detailed information about the beneficiary’s claimed work throughout the two years preceding the filing date, including “[a] list of any and all jobs the beneficiary has held” and “[a]n explanation as to how the beneficiary has supported himself and his family financially from April 1999 to present.”

In response, the petitioner has submitted an affidavit from the beneficiary, stating that the beneficiary received “\$400.00 per week for my living expenses, which included in part some donations from parishioners,” but that he never received Form W-2 Wage and Tax Statements and never filed income tax returns. The beneficiary asserts that he “never held any non-religious jobs” during the period in question, and that his spouse and child still reside in Romania and support themselves through his spouse’s employment there.

The petitioner has submitted copies of financial documents such as bank statements and photocopies of canceled checks (to payees other than the beneficiary), but no evidence to corroborate the claimed weekly payments of \$400.00. V. Rev. Fr. ██████████ states that the petitioner “is currently providing [the beneficiary] with an apartment and a salary commensurate

with the guidelines of our Archdiocese” but he does not explain why these payments apparently do not appear in the financial records submitted. In a joint letter, several officials of the petitioning church state that, because the beneficiary “has not gained the right to work, we, the community, have donated material support until his legal status will clear. At that time, we will offer [the beneficiary] employment in accordance to the guidelines of the Romanian Archdiocese.” The officials do not explain why there is, apparently, no contemporaneous documentation at all of this “material support.”

The petitioner has also submitted a “weekly schedule of activities,” as follows:

**SUNDAY**

8-10 AM	Prepare Church for Mass Communications and Confessions
10-12:30 AM	Divine Liturgy
12:30-2:30 PM	Social Time with Parishioners

**MONDAY**

AM & PM	Visit Ill and Older Parishioners
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**TUESDAY**

AM & PM	Visit Ill and Older Parishioners
7-9 PM	Council Meeting

**WEDNESDAY**

4-5 PM	Social Hour
5-6:15 PM	Children Bible Study
6:30-8:30 PM	Adult Bible Study

**FRIDAY**

5-6 PM	Prepare Church
6-8 PM	Vesper Service Holy Unction

**SATURDAY**

10-12 AM	Divine Liturgy; Memorial Service
2-6 PM	Baptisms; Weddings
7-9 PM	Vesper Service

All **Orthodox Holidays** Church will be open as follows:

**AM: 9:00 to 12:00**

**PM: 5:00 to 9:00**

Confessions and Communion will take place.

Estimated: 36-42 Hours per Week

The director denied the petition, stating “[t]he record does not establish that the beneficiary was a full-time religious worker from April 1999 to April 2001.” With regard to the above schedule, the director stated “[t]he schedule does not indicate whether it is a future schedule or a past schedule.” On appeal, several church officials state in a joint letter that the above schedule reflects the beneficiary’s past and present duties.

Counsel maintains that the beneficiary “was remunerated by both [the petitioner] and by parishioners’ donations.” The petitioner has submitted no documentary evidence such as canceled checks issued to the beneficiary, bank statements reflecting regular withdrawals, or other documentation that would predictably be generated by regular payments to the beneficiary. The petitioner has never specified the amount of these payments that came from the petitioning church, and the witnesses who claim to have offered financial support have not produced corroboration either. Thus, the claim that the beneficiary has received remuneration for his services is vague and unsubstantiated. The petitioner has failed to provide a satisfactory explanation for the absence of primary documentation as required by 8 C.F.R. 103.2(b)(2)(i).

The petitioner submits a series of documents, collectively labeled as the beneficiary’s weekly work schedule from April 1999 to September 14, 2002. It is not clear when the individual pages of the schedule were printed. The individual pages do not show the beneficiary’s name or any other identifying information. The cover page submitted with the schedule shows the beneficiary’s name, but this undated page is on paper that differs noticeably, in texture and color, from the paper used for the pages of the actual schedule itself. There is no reason to believe that the schedule, with a cover sheet apparently added after the fact, constitutes persuasive, contemporaneous evidence of the beneficiary’s work. The petitioner has not shown not submitted any documentation at all from the qualifying period that bears the beneficiary’s name, let alone unambiguously establishes the beneficiary’s full-time work as a priest.

The petitioner submits several letters from parishioners who attest to the beneficiary’s work as a priest during the period claimed. The parishioners assert that the beneficiary officiated at numerous weddings, funerals, and other services during that time, but the only contemporaneous documents attached to any of these letters are marriage certificates respectively dated June 30, 2002 and July 26, 2002. If the petitioning church routinely executes certificates of this kind, then similar certificates ought to exist for the critical 1999-2001 qualifying period. The collection of letters also includes two photographs said to have been taken during 2000, but the photographs do not include printed dates from the photo finishing lab or internal evidence to conclusively date the photographs. The letters and ancillary materials do not explain the apparent lack of any financial records to show payments to the beneficiary, baptismal or wedding certificates executed by the beneficiary on behalf of the church, or other direct, first-hand documentary evidence during the relevant two-year period.

The petitioner submits a letter from a local Roman Catholic official, who asserts that the petitioner needs the beneficiary’s continued services. The official, however, claims no personal

knowledge to corroborate the petitioner's key factual claims. The letter is only a general expression of support for the petition.

The petitioner acknowledges that it had previously filed another petition on this beneficiary's behalf, which was denied and the ensuing appeal was dismissed. As part of that first petition, [REDACTED] president of the petitioner's church council, stated "[t]he only salaried person is the parish priest. . . . The parish priest holds other employment as well (outside the church). . . . He works as an independent contractor." The letter does not identify this "parish priest" and is somewhat ambiguous as to whether he is in fact the beneficiary. If the parish priest is the beneficiary, then this letter raises grave questions because the statute requires the alien to work solely as a priest. If the parish priest is not the beneficiary, then the beneficiary does not hold a salaried position.

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 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.