

**PUBLIC COPY**

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to  
prevent clear: ~~unwarranted~~  
invasion of persons: ~~religiosity~~

**CI**

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: [REDACTED]  
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 seeks classification 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 a pastor at Yonkers International Church of God. The director determined that the petitioner had not established that he had the requisite two years of continuous work experience as a pastor immediately preceding the filing date of the petition.

On February 1, 2002, the director informed the alien “[y]ou can not file a petition in your own behalf for Special Immigrant Religious Worker. . . . The church or organization offering you the position . . . must sign and file the petition.” The petitioner subsequently submitted a new Form I-360 petition signed by a church official. The director, however, was in error. 8 C.F.R. § 204.5(m)(1) 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.” The alien was, in fact, entitled to file on his own behalf. We shall therefore disregard the second petition form (submitted without a separate filing fee). The director issued the denial notice not to the church, but to the alien himself, thus acknowledging that the alien is properly considered to be the petitioner.

On appeal, the petitioner submits documentation of his employment from 1999 onward, and an affidavit from a church official.

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 “[s]uch 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 he was continuously working as a pastor throughout the two-year period immediately preceding that date.

Reverend [REDACTED] states “[w]e wish to employ [the petitioner] as a ‘Pastor’ on a permanent, full time basis at the annual salary rate of \$16,000.00. . . . [The petitioner] has been serving our ministries as a pastor on a full time (35+ hours/week), voluntary basis since October 1998.” His first letter on the petitioner’s behalf is on the letterhead of Christian Prayer Ministries International, Inc., of which Rev. [REDACTED] is the president. The petitioner has since submitted a second letter from Rev. [REDACTED] on the letterhead of Yonkers International Church of God. Rev. [REDACTED] is again identified as president, and the printed letterhead identifies the beneficiary as the church’s associate pastor. The pastor is identified as “Rev. [REDACTED] who may be the same person as Rev. [REDACTED]

Regarding the petitioner’s qualifications, the record contains the following certificates:

- Certificate of Ordination from All Faith Chapel Gospel Mission International, Inc., issued September 16, 1994.
- General Certificate in Theology from Faith Bible College and Seminary, Lagos, Nigeria, issued October 1, 1994.

- Ordination certificate from the American Evangelical Christian Churches, issued January 30, 2001.
- Certificate of Membership stating that the petitioner “has been received into full membership” in the American Evangelical Christian Churches “on this 1<sup>st</sup> day of February, in the year of our Lord 2001.”
- Bachelor of Christian Ministry degree issued by Chesapeake Bible College on June 24, 2001.

According to the above certificates, the petitioner was ordained as a minister of the American Evangelical Christian Churches two days before he was formally admitted into membership. It is not clear whether the American Evangelical Christian Churches constitutes a religious denomination (in which case the petitioner was not a member for at least two years prior to the filing date, as the statute and regulations require).

The director denied the petition, stating “[t]he beneficiary has a Social Security Number, however, without W-2s and copies of the beneficiary’s tax return, there is no evidence that the beneficiary ever worked for the petitioner. The record does not establish that the beneficiary has the required two years of experience in the religious occupation.”

On appeal, the petitioner submits a notarized statement from Rev. [REDACTED] reaffirming that the petitioner “has been serving the Christian Prayer Ministries International Inc. on a full-time [basis] (36+ Hours per Week) Voluntarily since October 1998” and that the beneficiary began performing the same duties “with Yonkers International Church of God when it was registered in 2000.” Rev. [REDACTED] further asserts “Christian Prayer Ministries International Inc. and Yonkers International Church of God are two autonomous affiliated recognized religious ministries registered in the United States of America by me.”

The petitioner also submits employment and tax records. [REDACTED] human resource secretary for Daughter of Jacob Health Services, states “Daughters of Jacob employed [the petitioner] on September 22, 1997. His current position is full-time Certified Nurse Assistant (Orderly).” The petitioner’s 2001 Form W-2 Wage and Tax Statement reflects \$25,459.51 in wages from that employer. A second Form W-2 shows that DAOR Security, Inc., paid the beneficiary \$17,991.64 in 2001. These two amounts add up to \$43,451.15. On his 2001 income tax return, the petitioner claimed \$43,452 in wages, corresponding roughly to the above total. The petitioner also claimed \$623 in business income. Further tax documents from 2001 show that the petitioner claimed this \$623 as net profit from a sole proprietorship, but the petitioner left blank the line where he was instructed to identify the “principal business or profession.” For the Principal Business or Professional Activity Code, the petitioner entered “999999,” corresponding to “Unclassified establishments (unable to classify).” The source of this income is therefore unexplained, but because the church is not the petitioner’s sole proprietorship, the church can be ruled out.

Tax records show that the petitioner was also employed by both Daughters of Jacob and DAOR Security in 1999 and 2000, hence throughout the two-year qualifying period. The salary amounts

for 1999 and 2000 are comparable to the above totals for 2001. The copies of the tax returns in the record are unsigned and the line for the taxpayer's occupation has been left blank.

The record does not specify the petitioner's position at DAOR Security, or his weekly hours. We note that the Department of Labor's *Occupational Outlook Handbook*, 2002-2003 edition, indicates on page 352 that "[m]edian annual earnings of security guards were \$17,570 in 2000." This figure is very close (within one-quarter of one percent) to the \$17,531.40 that DAOR Security reported on the petitioner's Form W-2 in 2000.

The petitioner has thus submitted strong evidence that he worked full-time as a nurse assistant, and at least part-time for a security firm, throughout 1999, 2000 and 2001, and in 2001 the petitioner also earned a nominal amount of "business income" from an unidentified source. Against this contemporaneous, documentary evidence, we have the word of a single witness who claims, without any supporting evidence, that the beneficiary also volunteered over 35 hours per week at Christian Prayer Ministries International. This unsupported claim lacks credibility in the face of the documentation submitted.

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). In the instant matter, the petitioner has taken up at least two other occupations during the two-year qualifying period. The current statute, cited above, requires that the alien seeks to enter the United States "solely" to carry on the vocation of a minister.

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.