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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, DC 20536

NOV 12 2003

File:

Office: VERMONT SERVICE CENTER

Date:

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:

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. Honey for
Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a religious organization. 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), to perform services as a "Senior Pastor" at its affiliated church, [REDACTED]

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

On appeal, counsel asserts "the work of the petitioner [sic] as a full-time volunteer during the requisite period fully satisfies the statutory requirement under 8 C.F.R. § 204.5(m)(1)." Counsel further asserts that "the Service's decision is therefore erroneous as a matter of fact and law." Counsel indicated that a brief and/or additional evidence would be submitted in support of the appeal within 30 days from the date the appeal was filed. To date, no brief or additional evidence has been received by this office. Therefore, the record must be considered complete.

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

The sole issue raised by the director to be addressed in this proceeding, is whether the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing date of the petition.

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 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).

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

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 alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or 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. 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 August 7, 2001. Therefore, the petitioner must establish that the beneficiary was engaged

continuously as a religious worker from August 7, 1999 until August 7, 2001. The petitioner indicated that the beneficiary last entered the United States on November 9, 1995, as a B-1 visitor with authorization to remain in the United States until December 8, 1995. Copies of the passport and Form I-94 were not submitted. It is noted that the petitioner made reference in two letters, dated July 16, 2001 and May 17, 2002, to the fact that the beneficiary has worked with the church "since her arrival in American [sic] in September 1997."

The requisite two-year period during which the beneficiary must have been continuously engaged in religious work occurs during the timeframe in which the beneficiary was working for the petitioner in California. The petitioner states in a letter dated July 16, 2001, that the beneficiary worked since 1997 as an "Evangelist/Pastor" and "performed the duties that are normally performed by members of the clergy." The petitioner's letter dated May 17, 2002, states "in July 1999, Christ International Church [sic] was established as an affiliated church, wherein Pastor Ekeke was appointed as that church's leader." It is noted, however, that the record contains a "Certificate of Church Affiliation," dated November 6, 1999, certifying that the "Christ Covenant International Church" is affiliated with the petitioner. The record also contains an announcement for a "Church Dedication" dated December 5, 1999, and a letter dated November 26, 2000, from the beneficiary announcing the "Christ Covenant International Church 1st Year Anniversary" to be held on December 3, 2000. The Articles of Incorporation of the church, and other objective evidence to confirm the date that the church was established, were not submitted.

These variations in the record call into question the date of the establishment of the church and the timeframe in which the beneficiary could have performed her duties as a Senior Pastor. The weight of the documentation provided would appear to indicate that the onset of work in the capacity of Senior Pastor for the church, began after August 8, 1999, the requisite date necessary to establish eligibility as a religious worker for this petitioner. In addition, the record does not establish that the beneficiary's former position as "Evangelist/Pastor" encompassed the same set of duties as the position offered in the petition.

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 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).

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. 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 (BIA) 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 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 hold otherwise would be contrary to the intent of Congress.

In this case, the record reflects that the beneficiary was engaged in secular employment during the two-year period prior to the filing date of the petition. The record also reflects that her religious work until September 2001 was on a volunteer basis. The paid employment beginning in September 2001, falls outside the two-year time frame prior to the date the petition was filed. In light of the discussion above, the petitioner has not established that the beneficiary worked continuously in a religious occupation during the required timeframe. Therefore, the petition must be denied.

Beyond the decision of the director, the record does not reflect that the beneficiary received a qualifying job offer. 8 C.F.R. § 204.5(m)(4) states that each petition for a religious worker must be accompanied by a job offer from an authorized official of the religious organization at which the alien will be employed in the United States. The official must state how the alien will be solely carrying on the religious vocation and describe the terms of payment for services or other remuneration.

The letters of the petitioner provide conflicting information concerning the job offer. The petitioner's letter of July 16, 2001, indicates "[T]his church will provide her room and board also [sic] give her a monthly remuneration of fifteen hundred dollars (1,500) for her services." The petitioner's letter of May 17, 2002, states:

From September 1997 to September 2001, Pastor Ekeke performed the functions of a Pastor without monetary compensation. However, non-monetary compensation in the form of a one-bedroom apartment was provided to her during that time. Since September 2001 to the present, Pastor Ekeke is receiving remuneration in the amount of \$4,000 per month... She will continue to receive this salary for her Services as a Pastor.

The record does not reflect an explanation for the significant change in salary that occurred in the approximately six-week period between the July letter and the date in September when the beneficiary began receiving a higher salary.

Furthermore, the petitioner writes in a letter dated May 17, 2002, "Pastor Ekeke has operated a clothing store where she designed, sawed [sic], and sold African clothes. Prior to receiving remuneration for her pastoral duties, this provided the means of payment for expenses, other than the housing accommodations that

were provided to her." The letter further states that the beneficiary began receiving remuneration from the petitioner in September 2001.

Also related to the issue of the qualifying job offer, is whether the petitioner has established its ability to pay the beneficiary's proffered wage of \$4,000 per month.

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

Ability of prospective employer to pay wage. 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 proffered 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 copies of annual reports, federal tax returns, or audited financial statements.

The initial filing contained no evidence of the petitioner's ability to pay the beneficiary the proffered wage. In response to the director's request for more evidence, the petitioner submitted copies of five earnings statements for the year 2001, indicating that the Christ Covenant International Church issued \$1,500 to the beneficiary on October 3; and \$2,000 on each date of November 3, November 20, December 15, and January 7, 2002. This would be generally consistent with twice-monthly payments equivalent to the proffered wage of \$4,000 per month minus deductions. The beneficiary's earnings statements appear to correspond to the Bank of America, Business Checking Statement, "Christ Covenant Int. Church, Payroll Account," also submitted by the petitioner. The statements for the Payroll Account, however, fail to indicate that any deposits were made, or that any checks were issued during the periods ending March 25, 2002 and April 24, 2002.

In addition to the "Payroll Account", the petitioner also submitted Bank of America statements for a "Business Interest Maximizer" account in the name of the church, and statements for a "Business Checking Account," also in the name of the church. A letter from the bank official indicates the Business Checking Account was opened in November 1999, and that it holds an average balance of \$18,781.82. The bank official notes that the Business Interest Maximizer account was opened in September 2001 and holds an average balance of \$100,145.65. While these balances would

appear adequate to cover the beneficiary's proffered wage of \$4,000 per month, or \$48,000 per year, the petitioner has not submitted annual reports, federal tax returns, or audited financial statements that would illustrate the liabilities of the church and permit a conclusive determination on the church's ability to pay the proffered wage in accordance with 8 C.F.R. § 204.5(g)(2).

Another issue not raised by the director, that will be discussed is whether the petitioner submitted sufficient evidence to establish that its affiliate church is a bona fide nonprofit religious organization.

8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

- (3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:
 - (i) Evidence that the organization qualifies as a nonprofit organization in the form of either:
 - (A) Documentation showing that it is exempt from taxation in accordance with § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or
 - (B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations...

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement which applies to churches, and a copy of the organizing instrument of the church which contains a

proper dissolution clause and which specifies the purposes of the organization.

The record contains a copy of the IRS letter dated October 26, 1967, granting the petitioner, United Evangelists Association, tax-exempt status as a religious organization, and a letter from the IRS dated August 26, 1999, recognizing the subordinates whose names were provided to the IRS. In response to the director's request for evidence to establish that Christ Covenant International Church is recognized as one of the subordinate tax-exempt organizations, the petitioner submitted a list, "United Evangelists Association Church/Ministry Affiliation." The list, dated May 1, 2002, includes 24 churches, and is signed by the petitioner, Reverend Opal Booth, Chairperson of the United Evangelists Association. The record also contains a Certificate of Affiliation issued by the United Evangelists Association to the church in November 1999. As previously discussed, the date of establishment of the Christ Covenant International Church is unclear, but would appear to have occurred after the petitioner submitted a list of churches to the IRS in order to obtain its August 1999 letter granting the named subordinates tax-exempt status. The petitioner did not submit the list referred to as recognized by the IRS in its August 26, 1999 letter.

The record does not include a letter of recognition issued by the IRS to Christ Covenant International Church, nor does it include a listing, other than the petitioner's own, of the church's recognition as an approved subordinate operating under the umbrella of the United Evangelists Association granted tax exempt status in 1967, or its subordinates recognized in August 1999. The record does not include a completed IRS Form 1023, the Schedule A supplement which applies to churches, or a copy of the organizing instrument of the church which contains a proper dissolution clause and which specifies the purposes of the organization. The submissions do not meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A) or (B).

Discrepancies encountered in the evidence presented call into question the petitioner's ability to document the requirements under the statute and regulations. The 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).

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.