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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

CI

[REDACTED]

File: [REDACTED]

Office: VERMONT SERVICE CENTER

Date: NOV 13 2003

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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 N. Gomez  
for  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director of the 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 (the Act), 8 U.S.C. § 1153(b)(4) in order to be employed as an associate pastor for Kingdom Life Ministries International, Inc.

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

On appeal, counsel submits a statement. Counsel indicated that he would submit a brief within 30 days of the filing date of the petition. To date, no brief or additional evidence has been received by the AAO. Therefore, the record must be considered complete.

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).

Pursuant to 8 C.F.R. § 204.5(m)(1):

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 issue to be addressed in this proceeding is whether the petitioner has established that he was continuously engaged in a qualifying religious vocation or occupation throughout the two-year period immediately preceding the filing date of the petition.

The director noted that the petitioner had been employed as a building superintendent during the requisite two-year period. The director, therefore, determined that the petitioner had not shown that he was continuously engaged in a qualifying religious vocation or occupation throughout the two-year period immediately preceding the filing date of the petition.

Pursuant to 8 C.F.R. § 204.5(m)(1):

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 27, 2001. Therefore, the petitioner must establish that he was continuously performing in the capacity of a religious worker from April 27, 1999 to April 27, 2001.

The petitioner states that he first entered the United States as a visitor on July 1, 1998, with stay authorized to December 31, 1998. The petitioner states that he has served Kingdom Life Ministries International, Inc., in Brooklyn, New York, as a minister since April 1999. In response to the director's request for additional evidence, the petitioner stated that he supported himself financially during the two-year qualifying period by working as a superintendent at his apartment building.

On appeal, counsel asserts that the director abused his discretion by requiring the petitioner to provide evidence that he had served in the vocation of a full-time salaried minister during the two-year qualifying period. Counsel contends that case law with regard to religious workers supports a finding that voluntary experience is sufficient to qualify as experience in the vocation during the requisite two-year period. Simply going on record without supporting documentary evidence is not sufficient for meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Additionally, it was held in *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988) and *Matter of Ramirez-Sanchez*, 17 I&N Dec. (BIA 1980) that the assertions of counsel do not constitute evidence.

The legislative history of the religious worker provision of the Immigration Act of 1990 reflects that a substantial amount of case law has 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 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).

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).

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 find otherwise would be outside the intent of Congress.

In this case, the evidence of record does not support a finding

that the petitioner was engaged continuously in a qualifying religious vocation or occupation throughout the two-year period immediately preceding the filing date of the petition. The record contains a letter dated April 17, 2002, from [REDACTED] owner of [REDACTED] Mr. [REDACTED] stated that the petitioner had worked as a building superintendent at his apartment building located at [REDACTED] 1999. Clearly, the petitioner was not solely carrying on the vocation of a minister during the two-year qualifying period. The beneficiary supported himself financially by working as an apartment building superintendent throughout the entire two-year qualifying period. The petitioner's employer has not provided any evidence to show that the petitioner was a full-time, salaried religious worker during the requisite period. In view of the foregoing, it is concluded the petitioner has not established that he was continuously engaged in a qualifying religious vocation or occupation throughout the two-year period immediately preceding the filing date of the petition. Therefore, the petitioner has not overcome the director's objection, and the petition is denied.

Beyond the director's decision, the petitioner has also failed to establish that his employer, Kingdom Life Ministries International, Inc., is a bona fide nonprofit religious organization. The tax exemption notice contained in the record is addressed to Kingdom Life Ministries at 148 45 Hillside Ave., Suite 200, Briarwood, New York 11435. This address differs from the address reflected on a letter dated April 17, 2001 from Kingdom Life Ministries: 40 Kenilworth Place, Brooklyn, NY 11210. Both of these addresses differ from the address reflected on another letter from Kingdom Life Ministries dated April 29, 2002: P.O. Box 152, 4611 Church Avenue, Brooklyn, New York 11203 • 770-774 Park Place, Brooklyn, New York 11216. Rev. Peter Bonadie of Kingdom Life Ministries International, Inc., stated in a letter dated April 17, 2001 that the beneficiary has been selected to serve as minister for a new church to be established in Queens, New York, but Rev. Bonadie did not provide the address at which the new church would be located. The record does not contain a tax exemption notice from the IRS recognizing the new church to be established in Queens, New York, as a bona fide tax exempt religious organization, and the IRS tax exemption notice contained in the record does not indicate that a blanket tax exemption has been granted for the various churches founded by Kingdom Life Ministries in the New York City area. In view of the foregoing, the petitioner has not

established that his employer, Kingdom Life Ministries International, Inc., is a bona fide nonprofit religious organization.

Additionally, the petitioner has not established that his employer, [REDACTED] has the ability to pay him the proffered salary. [REDACTED] has not furnished copies of its annual reports, federal tax returns, or audited financial statements. Indeed, a representative of the accounting firm that prepared the financial statement contained in the record specifically stated in a letter dated February 22, 2002:

We have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or any other form of assurance on them.

Management has elected to omit substantially all of the disclosures required by generally accepted accounting principles. If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the Company's financial position, results of operations, and cash flows. Accordingly, these financial statements are not designed for those who are not informed about such matters.

Therefore, the financial statement contained in the record of proceeding is not sufficient to show that Kingdom Life Ministries has the ability to pay the petitioner the proffered salary.

The petitioner has also failed to establish that his employer has extended a valid job offer to him. Pursuant to 8 C.F.R. § 204.5(m)(4), each petition for a religious worker must be accompanied by a qualifying 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 the terms of payment for services or other remuneration. In this case, the beneficiary's employer has provided contradictory information regarding the amount of the petitioner's salary. In a letter dated April 17, 2001, Rev. Bonadie stated that the beneficiary would be paid \$2,000 per month, or \$24,000 per year. In another letter, dated April 7, 2002, Rev. Bonadie stated that the beneficiary would be paid \$18,000 per year. Rev. Bonadie has not provided any explanation for these discrepancies in the

stated amount of the beneficiary's annual salary. Doubt cast on any aspect of the petitioner's proof 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, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

Another issue not raised by the director is whether the petitioner has established that he is qualified for the position within the religious organization. The record shows that the beneficiary was ordained as a minister by Rhema Fellowship Ministries in Barataria, Trinidad, on October 25, 1993. Although Rev. Bonadie stated in a letter dated April 27, 2001, that he was providing a copy of the petitioner's certificate of completion of a Bible theology course and a letter from Rev. Elmore Anthony of Rhema Fellowship Ministries attesting to the beneficiary's work as a minister in Trinidad, neither of these documents is contained in the record of proceeding. The record contains no evidence to show that the beneficiary's ordination certificate from Rhema Fellowship entitles him to serve as a minister for Kingdom Life Ministries International, Inc. The issuance of a document entitled "certificate of ordination" by a religious organization does not conclusively establish that an alien qualifies as a minister for immigration purposes. *Matter of Rhee*, 16 I&N Dec. 607, 610 (BIA 1978). Although Rev. Bonadie has previously stated that the petitioner is a well-qualified and experienced pastor, the record does not contain sufficient evidence to corroborate this statement.

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 alien in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of 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.