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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536

[REDACTED]

File:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

NOV 19 2003

IN RE:

Petitioner:

[REDACTED]

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:

[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 M. Gomez for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The 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 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 employ him as a pastor.

The director denied the petition finding that the petitioner had not demonstrated that the beneficiary had been continuously employed as a minister throughout the two-year period immediately preceding the filing date of the petition.

On appeal, counsel argues that the beneficiary does have the required two years of experience.

The issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary had been continuously employed as a minister for at least the two years preceding the filing 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;

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

Regulations at 8 C.F.R. § 204.5(m)(1) state, in pertinent part, that:

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.

Regulations at 8 C.F.R. § 204.5(m)(3) state, 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.

(B) That, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested

The petition was filed on April 30, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a minister from April 30, 1999 until April 30, 2001.

The record contains a letter dated May 6, 2002, in which the petitioner's reverend states, in pertinent part, that:

desires to work with Reverend but is waiting for the final release of his 'green card.' Rev. has been a member of a non-denominational Christian church since his birth, and has been an active member since the age of 15 when he started teaching Sunday school classes. Rev. is currently pursuing his Master of Divinity degree at Regent University. He graduated in 1983 from Elim Bible Institute, Lima, New York, and has been working as a Pastor with different ministries since 1984. In 1989, Rev. founded Mission Hope Ministry in Nairobi, Kenya where he worked as a Minister until the end of 1998. In January of 1999, upon his entry into the U.S. Rev. Odongo started his studies at Lael College and Graduate School, St. Louis, Missouri, until June of 2000. Rev. Odongo began attending New Covenant Church in June of 2000 and has been serving here in different capacities.

On appeal, counsel argues that "for the two-year period immediately preceding the filing of the petition, namely April 1999 to April 2001, the Beneficiary has been actively ministering to the congregation of which he is a part." Counsel contends that the beneficiary, despite not working the standard 35-40 hours a week, has still ministered to his parishioners in a way that "is appropriate for his occupation." Counsel further contends that the beneficiary's two years of experience may be demonstrated by ways other than financial compensation in the form of a salary. Counsel states that many full-time ministers view the compensation they receive as "transcending money and instead receive spiritual satisfaction for their work." Counsel further states that the regulations contain no requirement that the beneficiary must work for the petitioner.

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

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); *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 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 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.

The evidence contained in the record fails to demonstrate that the beneficiary had been engaged in a full-time salaried religious occupation during the two-year qualifying period. By the petitioner's own submissions, the beneficiary, during part of the qualifying period, was a student. The petitioner also states that the beneficiary did not begin attending its church until June 2000, this would preclude a finding that the beneficiary was working for the petitioner during the requisite period. Further, counsel states that the beneficiary has not worked for the petitioning organization. It can only be assumed that the beneficiary provided services to the petitioning organization on a voluntary basis. The record contains no documentary evidence to demonstrate that the

beneficiary has received any wages from any religious organization for the performance of any religious work during the qualifying period. For these reasons, the petition may not be approved.

Beyond the decision of the director, the petitioner has not established that a valid job offer had been extended to the beneficiary. The petitioner also has not established that it qualifies as a bona fide nonprofit religious organization. As the appeal will be dismissed on the ground discussed, these issues need not be examined further.

In reviewing an immigrant visa petition, the CIS 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. 1966); Matter of Semerijian, 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 petition has not sustained that burden.

ORDER: The appeal is dismissed.