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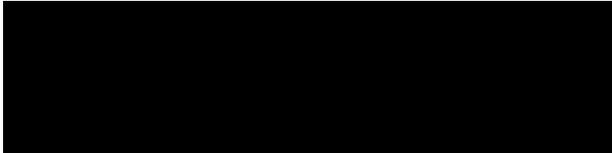
U.S. Department of Homeland Security

Citizenship and Immigration Services

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CA

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



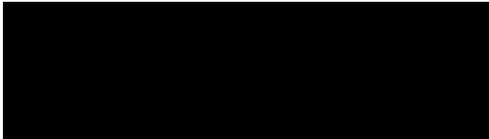
File: [REDACTED] Office: CALIFORNIA SERVICE CENTER

Date: **NOV 19 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:



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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California 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 a missionary. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous, qualifying work experience as a missionary immediately preceding the filing date of the petition.

On appeal, the petitioner submits copies of numerous documents pertaining to the petitioning church.

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).

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, 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 March 20, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as a missionary throughout the two-year period immediately preceding that date.

Re [REDACTED] pastor of the petitioning church, describes the beneficiary's past work and training:

[The beneficiary] completed four-years course of theology study and graduated from the Presbyterian General Assembly Theological College & Seminary in Seoul, Korea, in February 2001. She is enrolled for a Master of Divinity course from March 2001 at the same school and is expected to acquire the degree in June of 2002. The beneficiary has been in the United States in L-2 status since January 1998 to present. She has been a member of the petitioner church since January 1998 to present and has been serving the petitioner as Evangelist for world-wide region from February 1999 to present. . . .

As an Evangelist, [the beneficiary] will assist and coordinate my ministry. Specifically she will teach the Bible to various groups in the church, lead services and prayer meetings at church, homes, and businesses of the congregation. Further, she will preach and testify at special revival meetings in the U.S., Korea and other countries.

In a separate letter, the pastor asserts that the beneficiary "has . . . been serving our church without compensation as an Evangelist/Missionary since February 1999 to the present."

The petitioner submits documentation from the Presbyterian General Assembly Theological College & Seminary, indicating coursework through the second semester of 2000. The certificate of graduation, dated November 23, 2001, lists the beneficiary's address as being in Busan City, Korea. Another certificate from the same source, with the same date, provides the same Busan City address for the beneficiary and indicates that the beneficiary "is in attendance at a school PRESBYTERIAN GENERAL ASSEMBLY THEOLOGICAL COLLEGE & SEMINARY in Seoul, Korea." Given that the seminary is in Korea, it is not immediately clear how the beneficiary's studies were able to continue uninterrupted. There is no indication in the seminary's documents to indicate that the beneficiary took correspondence courses; the indication that the beneficiary "is in attendance" at the seminary seems to suggest the beneficiary's physical presence

at the seminary. The petitioner submits a transcript indicating that the beneficiary earned a Doctor of Theological Studies degree, via correspondence, from Bethany Bible College and Bethany Theological Seminary, following courses taken in fall 2001 and spring 2002. The beneficiary appears to have carried a full course load throughout the 2000-2002 qualifying period.

The beneficiary's passport, partially reproduced in the record, shows that the beneficiary entered the United States from abroad six times between December 22, 2000 and January 14, 2002. The petitioner submits materials indicating that the beneficiary participated at revival meetings in Korea in 2001, which may explain some of the beneficiary's international travel, but the nature of the beneficiary's seminary studies remains unexplained.

The director instructed the petitioner to submit evidence that the beneficiary was employed as a missionary full-time throughout the qualifying period. In response, counsel argues that the regulations do not use the word "employment," that "INS representatives agreed at an AILA/INS Liaison meeting that paid employment should not be [a] requirement," and that the Foreign Affairs Manual indicates that seminary study is "acceptable for fulfilling the 'two year 'experience' requirement.'" Counsel does not identify the "representatives" or provide any documentation, or even the date, of the "Liaison meeting."

While the interpretive note at 9 FAM §42.32(d)(1), N8, supports counsel's claim, the Foreign Affairs Manual is a publication of the Department of State and does not supersede CIS' interpretation of its own regulations. 8 C.F.R. § 204.5(m)(1) states that "religious workers must have been performing *the* vocation, professional work, or other work continuously," rather than "*a* vocation, professional work, or other work," indicating that the experience must be in the same occupation or vocation offered to the beneficiary, rather than some other form of religious activity. Furthermore, the Board of Immigration Appeals addressed the issue of seminary training in 1980, when it 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).

The petitioner submits an extensive list of churches that the beneficiary has visited in the United States and Korea. The list indicates that the beneficiary was at a church in Korea on February 6, 2002, although the petitioner had previously claimed on the I-360 petition form, signed and dated March 5, 2002, that the beneficiary had been in the United States since January 14, 2002. The schedules submitted by the petitioner show that the beneficiary visited churches in both Korea and California on the same day, September 15, 2001, a day when international air traffic in the United States was restricted following the September 11 terrorist attacks.

Whatever the exact dates of the beneficiary's travel, her passport shows that she traveled heavily during the qualifying period. The petitioner's financial documents do not contain any entries that clearly apply to the significant expense incurred in frequent international travel. The beneficiary's spouse's annual earnings of \$22,800 do not appear sufficient to cover this expense.

The director denied the petition, stating that the beneficiary's unpaid volunteer work and theological studies do not constitute qualifying experience. On appeal, counsel maintains that, while the beneficiary has worked without pay, she "generally works over 40 hours per week." Counsel lists the beneficiary's weekly activities, without taking into account the beneficiary's frequent international travels. Counsel offers no rebuttal to the director's assertion that unpaid volunteer work does not constitute qualifying experience.

The petitioner submits numerous documents about the petitioning church, which do not address the basis for the denial of the petition. The petitioner submits copies of numerous previously submitted documents, including the schedules that place the beneficiary in both the United States and Korea on September 15, 2001. 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. It is incumbent upon 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 (BIA 1988).

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. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963). The term "continuously" also is discussed in *Matter of Varughese, supra*.

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.