

C1

U.S. Department of Homeland Security
Citizenship and Immigration Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



File: [Redacted] Office: VERMONT SERVICE CENTER

Date: SEP 30 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)

PUBLIC COPY

ON BEHALF OF PETITIONER: SELF-REPRESENTED

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, Vermont 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 pastor. The director determined that the petitioner had not established its tax-exempt status, that the beneficiary's position is a qualifying religious occupation, or that the beneficiary had the requisite two years of continuous work experience in the position immediately preceding the filing date of the petition.

On appeal, the petitioner submits letters and copies of documents, many of them previously submitted.

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 first issue in the director's denial concerns the petitioner's failure to establish its tax-exempt status. 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 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 section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

The petitioner overcomes this issue on appeal establishing its relationship with a parent organization (the [REDACTED] and documenting that parent organization's recognition as a tax-exempt religious organization. This recognition is a blanket recognition covering "subordinate organizations" such as the petitioner.

The remaining two issues are somewhat interrelated and shall, therefore, be examined together. These issues are (1) whether the beneficiary's position amounts to a qualifying religious occupation, and (2) whether the beneficiary worked continuously in this position for at least two years immediately preceding the filing of the petition.

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 February 5, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a pastor throughout the two-year period immediately preceding that date. In addition, the petitioner must establish that the beneficiary's past and future work falls under one of the definitions listed in the regulations at 8 C.F.R. § 204.5(m)(2):

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious

calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed and practice of the religion.

CIS therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

Further, while the determination of an individual's status or duties within a religious organization is not under CIS's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

The petitioner indicates that the beneficiary is a pastor, but there is no evidence that the beneficiary is ordained or otherwise authorized to perform the full range of duties of authorized clergy in the petitioner's denomination. Pursuant to the above regulations, a lay preacher is specifically excluded from the regulatory definition of a "minister."

The petitioner submits the beneficiary's "ministerial résumé," which lists the following experience and training in his native Venezuela:

1991-93 Assistant pastor, El Salvador Church

1993-94 Pastoral collaborator, Getsemani Church
1994-98 Youth teacher & auxiliary pastor, God Be Praised Church
1997-2000 Student at Guayana Biblical Institute, a theological seminary

Translated documentation from the Guayana Biblical Institute indicates that the beneficiary "was a Saturday student of Theological Studies, during the academic period of 1997-1999." The documentation shows that the beneficiary took eight courses per semester for five semesters, numbered II through VI, with no explanation as to the missing semester I. An accompanying "Record of Study" signed by the director of the Institute states that the beneficiary "has satisfactorily completed his studies of Theology, which lasted for three consecutive years, divided into six semesters, on a Saturday schedule." The Institute awarded the beneficiary a "Diploma in Basic Theological Studies" in February 2000. The beneficiary's receipt of this diploma at such a late date implies that his duties before February 2000 did not require even "Basic Theological Studies."

While the beneficiary is said to have studied only "on a Saturday schedule," it remains that the beneficiary's résumé does not list any other activity after 1998. The initial submission does not show that the beneficiary has worked in the same occupation since no earlier than February 1999, or that the beneficiary's intended future duties for the petitioner are essentially the same as those that the beneficiary undertook during the qualifying period.

The director instructed the petitioner to submit further evidence regarding the beneficiary's work during the 1999-2001 qualifying period. In response, the petitioner has submitted various letters and documents. The beneficiary states that he cannot submit copies of income tax returns "because I am not, and have not, been working. I receive assistance for 100% of my necessities from the [petitioner]." The beneficiary asserts that, if the petition is approved, he will work solely for the petitioning church.

Rev. [REDACTED] superintendent of the petitioner's District of Puerto Rico, states that the beneficiary's work "will start as soon as the Immigration Service approves his case." He repeatedly refers to the beneficiary's work in the future tense, and never states that the beneficiary is already performing these functions. This is consistent with the beneficiary's own assertion that he has "not been working."

In another letter, the beneficiary describes his earlier work, stating "[f]or the years 1998 and 1999, I was in charge of a youth group . . . one day a week, specifically on Tuesday nights from 7:00 P.M. until 9:00 P.M." He states that he became "the Local Minister" at the Free Methodist Church in Maturin, Venezuela in March 1998, and traveled with other church members to the petitioning sister church in Puerto Rico on September 4, 1998. The other members returned to Venezuela after less than a week, but the beneficiary states that he and his spouse remained in Puerto Rico until October 23, 1998 "to work on a recording, her first musical production as a singer." The beneficiary states that, since October 31, 2000, he has assisted the petitioning church "in different areas such as: Teachings, Preaching, Music, Adoration and visits to the confined in the prisons, etc." Neither the petitioner nor the beneficiary explains why this work was not listed

on the "Ministerial Résumé" that the petitioner has repeatedly submitted. The beneficiary's claim in this letter is not consistent with his claim that he has "not been working" since his arrival in the United States, unless we assume that the listed activities are considered more or less routine duties of volunteer church members rather than "occupations" within the church.

In denying the petition, the director found that the petitioner had not established that the beneficiary's past or future duties amount to a qualifying religious occupation, or that the beneficiary had worked in the qualifying occupation continuously throughout the two-year qualifying period.

On appeal, Rev. [REDACTED] asserts that the beneficiary "has special qualifications to work [on] a Special Project . . . to prevent family problems and child abuse." In a separate affidavit, Rev. Reynoso elaborates upon this project, "*Sanando Corazones Heridos*," and asserts that the beneficiary "has fulfill[ed] a special intensive training of Interior Healing." A new proposed weekly work schedule shows that the beneficiary's time would be devoted almost exclusively to "pastoral counseling." The initial petition contained no mention of this project or training. A training certificate submitted on appeal shows that the beneficiary completed this training in October 2002, long after the filing of the petition and only days before the filing of the appeal. This revision of the beneficiary's proposed duties cannot retroactively establish the beneficiary's eligibility as of the February 2001 filing date. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. *Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998). See also *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Immigration and Naturalization Service (now CIS) held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

Regarding the beneficiary's past work, Rev. [REDACTED] of the beneficiary's previous church in Maturin, Venezuela, states in a translated letter that the beneficiary "has been working as minister laic [*ministro laico* in the original Spanish] in the year 1998 to 2000." *Webster's Ninth New Collegiate Dictionary* defines "laic" as "of or relating to the laity." This letter thus confirms that the beneficiary worked as a lay minister, rather than an ordained or authorized clergyman. By regulation, he cannot qualify under the regulatory definition of a minister.

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 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).

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). When Congress revised the statute in 1990, it retained the requirement of “continuous” experience, with no indication that the meaning of this term had changed. Given that the beneficiary’s only reliably documented activity during 1999 consists of “Basic Theology Studies,” this issue is highly germane to the instant proceeding.

Other 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).

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 record does not show that the beneficiary was consistently employed full-time, with pay, throughout the two-year qualifying period. The beneficiary’s work as a lay minister does not constitute experience in the vocation of a minister as the regulations define that term, and the only formal religious or theological training that the petitioner has documented was unfinished until well into the qualifying period. We concur with the director that the petitioner has not shown that the beneficiary has worked at least two years in a qualifying religious occupation during the period immediately prior to the filing of the petition.

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.