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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 Eye Street NW
Washington, DC 20536

[Redacted]

FILE: [Redacted] Office: VERMONT SERVICE CENTER

Date: **SEP 30 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]

PUBLIC COPY

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 is a non-denominational church. 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) in order to employ him as a religious instructor.

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

On appeal, counsel submits a statement and additional documentation.

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).

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 the beneficiary had been engaged continuously in a qualifying religious occupation for the two years immediately preceding the filing date of the petition.

The director noted that the beneficiary had earned \$7,072 from his employment for Clean Sweep Cleaning Systems in 2001. The director, therefore, determined that the petitioner had not shown that the beneficiary had been engaged continuously in a qualifying religious occupation for the two years immediately preceding the filing date of the petition.

On appeal, the petitioner explains that the beneficiary's work for Clean Sweep Cleaning Systems was part-time evening work and did not interfere with the full-time performance of the

beneficiary's religious duties during day-time hours. The petitioner asserts that the beneficiary has been and continues to be a full-time religious instructor.

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 30, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing in the capacity of a religious instructor from April 30, 1999 to April 30, 2001.

The record shows that the beneficiary first entered the United States as a nonimmigrant B-1 visitor on March 29, 1989. He joined [REDACTED] on October 5, 1997, and has served the church as a religious instructor on a voluntary basis since June 1998. The petitioner states that the beneficiary will be paid \$18,000 per year and will not become a public charge.

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. 612 (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 beneficiary was engaged continuously in a qualifying religious occupation for the two years immediately preceding the filing date of the petition. First, the beneficiary served the church as a religious instructor on a voluntary basis during the entire two-year period from April 30, 1999 to April 30, 2001.

Furthermore, it is not clear from an examination of the record that the beneficiary served in a full-time capacity during the qualifying period. The petitioner indicated in response to the director's request for additional evidence that the beneficiary served as a volunteer religious instructor for 34 to 42.5 hours per **month**. On appeal, the petitioner states that an error was made in the initial description of the beneficiary's weekly schedule. The petitioner now asserts that the beneficiary works a total of 35-36 hours per **week** and lists additional job duties that were not described in the original petition. Beyond

indicating that the discrepancy in the claimed number of hours the beneficiary works per month is an "error," the petitioner has not provided any explanation for its failure to list these claimed additional duties and hours worked per week in the original petition. 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).

Finally, the beneficiary's Internal Revenue Service (IRS) Form 1040A, U.S. Individual Income Tax Return, and his IRS Form W-2, Wage and Tax Statement, show him as an employee of Clean Sweep Cleaning Systems during the year 2001. While the petitioner claims on appeal that the beneficiary worked for Clean Sweep Cleaning Systems part-time and only at night, no evidence has been submitted to corroborate this claim. Clearly, the beneficiary was not employed solely as a religious instructor during the qualifying period. He earned \$7,072 working for a commercial cleaning service and therefore relied on supplemental employment while serving the church as a volunteer. In view of the foregoing, it is concluded that the petitioner has not established that the beneficiary was continuously performing the duties of a qualifying religious occupation throughout the two-year period immediately preceding the filing date of the petition. Therefore, the petitioner has not overcome the director's finding, and the petition is denied.

Beyond the decision of the director, the petitioner has failed to provide 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 as required under 8 C.F.R. § 204.5(m)(2). Nor has the petitioner shown that it has the ability to pay the beneficiary the proffered wage as required under 8 C.F.R. § 204.5(g)(2). Since the appeal will be dismissed on the grounds discussed above, these issues will not be examined further.

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.