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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

FILE: [REDACTED] Office: TEXAS 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. Honey for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director of the Texas Service Center and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a 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 minister.

The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for the two years immediately preceding the filing date of the petition. The director further determined the petitioner had not established that it had the ability to pay the beneficiary the offered salary. Finally, the director determined that the petitioner had not extended a valid job offer to the beneficiary.

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 first issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for the two years immediately preceding the filing date of the petition.

The director noted that the beneficiary had worked approximately 40 hours a week for a personnel service during the requisite two-year period and, therefore, was not engaged continuously in a qualifying religious vocation or occupation during the two years immediately preceding the filing date of the petition.

On appeal, the petitioner states that the beneficiary has been serving the church as a full-time minister since January 1999, and has received remuneration from the church for his services as a minister since that date.

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 March 8, 2001. Therefore, the petitioner must establish that the beneficiary was engaged continuously in a qualifying religious vocation or occupation during the period from March 8, 1999 to March 8, 2001.

The record shows that the beneficiary entered the United States as a nonimmigrant visitor on six occasions between 1988 and 1993. He was granted change of nonimmigrant status from B-1/B-2 visitor to nonimmigrant R-1 religious worker valid from August 25, 1992 to August 25, 1994. The beneficiary served Prayer Mission Pentecostal Church as a minister from June 1992 to August 1994. He began serving East Bronx Apostolic Assembly as Superintendent of the Sunday School Department in November 1993. In January 1995, he became the church's music and choir director. He left that church in December 1996 and moved to Georgia.

In July 1997 the beneficiary joined New Life Assembly. The petitioner states that the beneficiary was: appointed to serve as a full-time minister on a trial basis in January 1999; officially ordained as a minister on November 14, 1999; and confirmed as a permanent, full-time minister in October 2000. The petitioner explains that the beneficiary's compensation is comprised of "a basic minimal salary plus part of the entire amount of monthly donations from the members of the congregation." The petitioner states that this is the manner in which ministers are normally compensated in its church.

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); *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.

Although the petitioner states that the beneficiary has been receiving compensation as a minister since January 1999, the evidence of record does not support this claim. 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). In fact, the beneficiary was working for a personnel service during the two-year qualifying period. The record contains the beneficiary's pay statements from Atlantic Personnel Services for work performed between September 1999 and October 2000. During this period, the beneficiary worked an average of approximately 31 hours per week. During 28 of those weeks he worked at least 35 hours per week, a sufficient number of hours to constitute full-time employment.

The petitioner has submitted copies of 18 unverified receipts for "ministerial services" during the period from January 10, 2001 to July 22, 2002. Only two of the receipts are actually dated during the two-year qualifying period (January 10, 2001 to March 2, 2001). As the beneficiary's name does not appear on any of the receipts, these documents do not show that the beneficiary received a portion of the monthly donations from the congregation during the qualifying period. The record does not contain any evidence to establish that the beneficiary was receiving even a minimal salary from the petitioning church during the period from March 12, 1999 to March 12, 2001. In view of the foregoing, it is concluded that the petitioner has not shown that the beneficiary had been engaged continuously in a qualifying religious vocation for the two-year period immediately preceding the filing date of the petition. Therefore, the petition must be denied for this reason.

The second issue to be addressed in this proceeding is whether the petitioner has shown that it has the ability to pay the beneficiary the proffered salary.

Pursuant to 8 C.F.R. § 204.5(g)(2):

Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form

of annual reports, federal tax returns, or audited financial statements.

On appeal, the petitioner provides financial statements that were purportedly audited by an accountant. Although the Table of Contents indicates that an accountant's report was included with the financial statements, no such report is contained in the record of proceedings. Therefore, the financial statements do not satisfy the regulatory requirement.

The AAO notes that there is an apparent discrepancy in the petitioner's claimed salary expenses in the financial statements. The petitioner states that the church has two full-time employees in addition to the beneficiary: the pastor and the assistant pastor, with annual salaries of \$45,000 and \$26,000 respectively. The petitioner indicates that the beneficiary has been offered an annual salary of \$18,000. According to the financial statements, the petitioner's total salary expense amounted to \$26,288 in 1999, \$52,565.94 in 2000, and \$33,800 in 2001. If the pastor and assistant pastor are paid a combined total of \$71,000, it does not appear the church has sufficient financial resources to pay their salaries, much less the beneficiary's salary. The listed expenses do not include any additional remuneration for the beneficiary or the pastor and assistant pastor. There is no evidence in the record to show that the petitioner pays the beneficiary even a minimal salary, much less a portion of the monthly donations from church members and guests. Therefore, the petitioner has not shown that it has the ability to pay the beneficiary the offered wage, and the petition also must be denied for this reason.

The third issue to be addressed in this petition is whether the petitioner has extended a valid job offer to the beneficiary. 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.

The director noted that the petitioner's job offer letter stated that the beneficiary would work an average of 30 hours per week. The director, therefore, determined that the petitioner had not established that it had offered a full-time, permanent job to the beneficiary.

On appeal, the petitioner stated that the previous listing of the beneficiary's weekly schedule included only "actual hours of service." The petitioner states that the beneficiary will spend at least 12 additional hours per week supervising choir rehearsals and performances and eight to ten hours additional per week preparing for adult education classes, a total of at least 40 hours per week. The petitioner has not, however, provided any independent evidence to corroborate its statement.

Furthermore, the petitioner has not provided any explanation as to why these additional duties were not reported initially. 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). The petitioner has not adequately established that the needs of the religious organization will provide permanent, full-time religious work for the beneficiary in the future. The petitioner has not established that it had extended a valid job offer to the beneficiary, and the petition may not be approved for this reason as well.

Beyond the director's decision, the petitioner has not shown that the offered job is a qualifying religious vocation or occupation. The majority of the beneficiary's duties appear to be secular in nature. For example, the beneficiary's duties include supervising student transportation; teaching adult Sunday school classes; conducting choir rehearsals and choir performances; and attending fellowship or dining activities. Those duties are often performed by qualified lay people within a church. Additionally, the petitioner has not established that the offered position is traditionally a religious occupation within the church or the denomination. As the appeal will be dismissed on the grounds discussed above, however, these issues need not be discussed further.

In reviewing an immigrant visa petition, the AAO must consider the extent of the documentation furnished and the credibility of that documentation a whole. The petitioner bears the burden of proof in an employment-based petition to establish that it will employ the alien in the manner stated. See *Matter of Izdebska*,

12 I&N Dec. 545 (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.