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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **AUG 04 2004**

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

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 (AAO) 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 (the Act), 8 U.S.C. § 1153(b)(4), to perform services 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 two full years immediately preceding the filing of the petition.

On appeal, counsel submits a letter 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, 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) echoes the above statutory language, and states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. 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 regulation indicates 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.”

The regulation at 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 July 11, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister throughout the two-year period immediately preceding that date.

The petitioner submitted evidence that the beneficiary received a Bachelor's of Theology degree in 1987 and a Master in Christian Studies in 1995. The beneficiary's duties with her church prior to joining with the petitioner in October 2001, consisted of "Sunday school teacher, choir member, greeter and . . . involve[ment] in [the] outreach mission." According to the petitioner, the beneficiary's duties with it, from October 2001 to March 2002, consisted of adult Sunday school teacher, family group leader, visitation and choir service.

The petitioner states that upon receipt of her R-1 visa in March 2002, the beneficiary began working as a minister for the petitioner church. In this capacity, she is responsible for "training church co-workers and Sunday school teachers; developing and advising sister fellowship; visiting church members . . . and helping [the pastor] to coordinate church programs, activities and other church administrative works."

The director determined that the petitioner had not established that the beneficiary had continuously worked as a minister for two full years preceding the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(2) defines minister as:

[A]n 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.

On appeal, the petitioner submits a copy of a June 19, 2003 "Certificate of Ordination" certifying that the beneficiary was ordained a minister in the petitioner church. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Further, the petitioner does not indicate that the beneficiary's duties changed upon her ordination, or that she will perform such traditional religious rites as performing marriage, baptism, or interment ceremonies.

The record does not establish that the beneficiary is a minister within the meaning of the regulation, or that she has been serving as a minister for two full years prior to the filing of the visa petition.

According to the petitioner, the beneficiary is qualified as a deacon within its denomination.

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. Rpt. 101-723, at 75 (Sept. 19, 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 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, 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 generally salaried. To hold otherwise would be contrary to the intent of Congress.

In the rare case where volunteer work might constitute prior qualifying experience, the petitioner must establish that the beneficiary, while continuously and primarily engaged in the traditional religious occupation, was self-sufficient or that his or her financial well being was clearly maintained by means other than secular employment.

The petitioner submitted copies of the beneficiary's investment portfolio summaries, which indicate that she was capable of supporting herself financially during the two-year period prior to the filing of the visa petition. However, the evidence does not establish that the beneficiary was continuously employed as a religious worker during the requisite two-year period.

According to the beneficiary's prior church, the Rowland Heights Community Christian Church, the beneficiary worked approximate eleven hours per week. The church identified the beneficiary's position as "volunteer" and the duties outlined by the church are no more than that of a regular dedicated member of the church.

According to the petitioner, from October 2001 to March 2002, the beneficiary's voluntary services with it comprised less than 25 hours per week. Consistent with the U.S. Department of Labor's Bureau of Labor Statistics definition and with other provisions of the immigration regulations, CIS holds that full time work is no less than 35 hours per week. Part-time volunteer participation in church activities, such as that performed by the beneficiary, does not qualify as work experience in a religious vocation or occupation for purposes of this visa petition.

On appeal, counsel states that during the relevant two-year period, the beneficiary was often in Taiwan carrying for her sick and hospitalized mother, who eventually died in January 2001. Counsel asserts that during that time, the beneficiary "spent a lot of time in evangelizing and preaching Gospels to the new believers and non-believers, in-house counseling, hospital visitation, helping the poor and disabled." Counsel further asserts that with this work, the beneficiary worked at least 35 hours per week during the period from July 2000 forward. Counsel submits no evidence to corroborate his statements regarding the beneficiary's work while in Taiwan. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Further, counsel's statements are inconsistent with other evidence of record.

The petitioner does not provide evidence of the nature of the duties to be performed by a deacon in its denomination. The record does not reflect that the beneficiary has been continuously employed as a deacon for two full years prior to the filing of the visa petition. The petitioner has not established that the beneficiary worked continuously in the religious occupation for two full years prior to the filing of the visa petition.

Beyond the decision of the director, the petitioner has not established that the beneficiary possessed the required two years membership in the denomination. This deficiency constitutes an additional ground for dismissal of the petition.

The petitioner states that it belongs to no denomination and is, in fact, an independent and pioneer church. The petitioner further states that the beneficiary became associated with it in October of 2001. Therefore, the beneficiary does not have the requisite membership in the denomination for the two years immediately preceding the filing of the visa 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.