U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

C1

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: AUG 19 2004

IN RE: Petitioner: [redacted]
Beneficiary:

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:

[redacted]

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.

Elizabeth O'Brien
Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, 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 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 minister. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that it had made a *bona fide* job offer to the beneficiary.

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) 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." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate 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 October 21, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a minister throughout the two years immediately prior to that date.

Although the Form I-360 petition requires the petitioner to specify the beneficiary's date of entry into the United States, and the beneficiary's current nonimmigrant status, the petitioner left those items blank on the petition form.

The petitioner's senior pastor, Rev. Francisco Ramalho, states that the beneficiary "has worked faithfully and diligently in this ministry for at least two years preceding the filing of this petition," having been "ordained in

May 1998." [redacted] states that the petitioner is "offering [the beneficiary] a position as full-time minister. [The beneficiary] will work at least forty hours per week" and earn $2,000 per month.

The petitioner provided few details, and no actual evidence, of the beneficiary's past work. The director, therefore, requested "a detailed description of the beneficiary's prior work experience" and any available tax documentation such as Forms W-2. In response, Rev. Ramalho states that the beneficiary "has been continuously working" since his 1998 ordination. Rev. Ramalho states that the beneficiary entered the United States as an R-1 nonimmigrant religious worker on October 8, 2000, and has therefore been in the United States throughout the two-year qualifying period. Rev. Ramalho adds "[i]n 2001 he transferred his immigration's process [sic] from Assembleia de Deus em Marietta to our church and has been with us since then." The record contains nothing from this other church to corroborate the beneficiary's employment during that time. The joint federal tax returns filed by the beneficiary and his spouse reflect "business income" of $500 in 2000, $5,988 in 2001 and $6,892 in 2002. The petitioner does not explain why none of these amounts approaches the promised salary of $24,000 per year.

The director denied the petition, in part because the evidence submitted was not sufficient to establish the beneficiary's continuous work as a minister throughout the 2000-2002 qualifying period. On appeal, counsel asserts that the director was not justified in finding the petitioner's evidence insufficient, but counsel does not identify any persuasive evidence that the director had failed to consider.

Counsel states that the statute "does not state whether [qualifying] employment should be full time or part time . . . what must be proven and has been is that the individual . . . must have been continuously carrying on said religious work for at least 2 years." This argument is not persuasive, because case law tells us that part-time work is not "continuous" for the purposes of the statute. 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).

The beneficiary has been lawfully present in the United States under an R-1 nonimmigrant visa, and has filed tax returns for each year of the relevant period. It is highly significant that, rather than produce records to explain why the beneficiary's compensation has been so low, the petitioner has instead argued (through counsel) that the beneficiary need not have worked full-time. At no time does counsel claim, let alone prove, that the beneficiary did in fact work full-time (and therefore continuously) throughout the entire two-year period.

The petitioner submits several "Affirmation[s] of Acquaintance & Affiliation," signed by parishioners of the petitioning church. These are identical "form" documents in which the declarants have filled in blank spaces. These documents lack critical details and have minimal probative value. All of the "Affirmations" indicate that the beneficiary "has been a pastor for 6 years," but none of the witnesses claim to have known the beneficiary for more than three years. Without documentation, these witnesses are not in a position to attest to what the beneficiary was doing before he ever met them; any such attestations would be, at best, hearsay repetition of claims they themselves had heard.

[redacted] had previously indicated that the beneficiary joined the petitioning church in 2001, after working with a different church in the same denomination. [redacted] does not state that he has access to the records of the other church, nor does he otherwise explain how he is in a position to attest to the beneficiary's work at a different church. This is one example of the missing details that preclude a finding that the beneficiary has worked continuously as a minister since October 2000.

The next issue is whether the petitioner seeks to employ the beneficiary full-time as a minister. The regulation at 8 C.F.R. § 204.5(m)(2) defines a "minister" as 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.

While the determination of an individual's status or duties within a religious organization is not under the purview of Citizenship and Immigration Services (CIS), the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within 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).

Rev. Ramalho has indicated that the beneficiary's "duties will include preaching and teaching the word of God, leading home fellowship and other duties as required by ministry." In a later submission, [redacted] has stated that the beneficiary's "duties will include preaching and teaching the Word of God, leading evangelism, directing Sunday School classes, and other duties as required by the ministry." [redacted] also states that, in addition to his own position as senior pastor, the church has an associate pastor and five ministries: [redacted] an associate pastor and five [redacted]. Each of these ministries has one head, with the exception of [redacted] which has two individuals at its head. The associate pastor and five of the six ministry heads are identified as "Volunteers." [redacted] identifies all of these individuals, none of whom are the beneficiary.

The director also stated "[t]he petitioner has failed to establish that the beneficiary is authorized to perform sacerdotal rights [sic] and traditions as well as evidence that the beneficiary will be solely carrying on the vocation of a minister." The director asserted that the beneficiary's past theological training does not prove that the beneficiary will, in the future, work solely as a minister.

On appeal, the beneficiary states, in an affidavit, that he has "assisted the [redacted] with the pastoral duties of the church, such as preaching the word of God, supervising Sunday school and assisting teachers in their duties." As noted above, the regulations contemplate "lay preachers," and the educational activities are not inherently ministerial. The minimal descriptions of the beneficiary's duties do not show that the beneficiary's work represents the duties of a minister, rather than those of a worker in a religious occupation. Ideally, the director should have addressed the question of whether the beneficiary has worked and will work in a religious occupation (which is separate from the vocation of a minister), but because the decision rested on other factors as well, the absence of such a discussion is not fatal to the decision.

The director concluded, "[i]t cannot be determined that this is a permanent job offer," but the foundation for this finding is not clear. The director also stated, "the beneficiary, as far as the record evidences, has not been receiving a salary for services previously rendered while in the United States as the beneficiary has not been added to the petitioning organization's payroll." The foundation for this finding appears to be [redacted] list of paid church staff, which does not include the beneficiary's name, coupled with the lack of Forms W-2 issued to the beneficiary by the petitioner. We acknowledge that Rev. Ramalho discussed the beneficiary's compensation only in terms of what the church *will* pay him, as opposed to what it *has* paid him.

On the other hand, as counsel notes on appeal, the beneficiary has reported income, as a minister or religious worker, on all his federal tax returns. Counsel states that the tax returns establish that the beneficiary was a

salaried worker. The term "salary," however, implies regular payments, whereas the tax records reflect payments significantly below the proffered amount. The tax returns are circumstantial evidence of some kind of payment, but the returns do not identify the *source* of the payments to the beneficiary. Given these discrepancies, some type of payroll records from the church would be invaluable as a means of determining both the source of the beneficiary's income and the extent of the beneficiary's work for the petitioner. For this reason, we cannot dismiss, as counsel does, the director's observation that nothing directly ties the beneficiary's minimal income to the petitioner.

The record shows that the beneficiary possesses theological training and has been ordained as a minister. He has been performing some functions for the petitioning church, and has received a small amount of income from some source. The available evidence, however, is insufficient to demonstrate that the beneficiary worked *continuously*, or that that these duties were truly the duties of a minister (i.e., duties reserved for the clergy). The beneficiary has never received his full pay, despite an R-1 visa that would present no legal impediment to paying the beneficiary his full salary, and the church is staffed with several individuals who, despite the title "pastor," are unpaid volunteers. All these factors cast doubt on the petitioner's intent to employ the beneficiary full-time as a minister at the salary claimed.

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.