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and Beneficiary

U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: JUL 19 2004

FILE:

[Redacted]
WAC 99 042 52268

IN RE:

Petitioner:
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]

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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. A motion to reopen was granted, and the decision of the director was affirmed. The matter is now before the AAO on a motion to reconsider. The motion to reconsider will be granted, the previous decision of the AAO will be affirmed and the petition will be denied.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Citizenship and Immigration Services (CIS) policy. 8 C.F.R. § 103.5(a)(3). A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

On motion, counsel cites *St. John the Baptist Ukrainian Church v. Novak*, an unpublished 2000 decision of a federal district court in New York. Counsel asserts that the Immigration and Naturalization Service (now CIS) conceded that an alien's "voluntary employment" would satisfy the two-year work experience requirement of the statute and regulation. Counsel argues that if voluntary employment is acceptable, then the evidence submitted by the petitioner regarding the beneficiary's prior employment should be legally sufficient.

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 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.

On appeal, counsel argued that the evidence established that the beneficiary had worked from 1982 to 2000. The AAO held that no contemporaneous evidence existed to establish that the beneficiary had been continuously engaged in a religious vocation for the two years immediately preceding the filing of the visa petition.

On motion, counsel asserts that the court in *St. John the Baptist Ukrainian Church v. Novak* did not require contemporaneous documentation and that none exists in the beneficiary's home country. Counsel's argument is without merit. The petitioner in the present case does not assert that the beneficiary's prior employment was uncompensated. The petitioner submitted a document from the Korean Presbyterian Church labeled "Certificate of Career," in which the pastor of that church enumerated several positions held by the beneficiary from 1982 to 1998. The petitioner submitted no evidence to establish that the position was full-time, volunteer or salaried.

Moreover, *St. John the Baptist Ukrainian Church v. Novak* is an unpublished decision, and constituted nothing more than a stipulation and order of remand and dismissal. The court made no specific findings of fact and set no legal precedent. The stipulation required the petitioner to prove eligibility to CIS.

Counsel's assertions that the supporting documentation does not exist 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). CIS is not required to approve applications or petitions where eligibility has not been demonstrated. *Matter of M--*, 4 I&N Dec. 532 (A.G. 1952; BIA 1952). See also *Pearson v. Williams*, 202 U.S. 281 (1906); *Mannerfrid v. Brownell*, 145 F. Supp. 55 (D.D.C. 1956), affirmed 238 F.2d 32 (D.C. Cir. 1956); *Lazarescu v. United States*, 199 F.2d 898 (4th Cir. 1952); and *U.S. ex rel. Vajta v. Watkins*, 179 F.2d 137 (2nd Cir. 1950).

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. As no new evidence has been presented to overcome the grounds for the previous dismissal, and no reasons set forth indicating that the decision was based on an incorrect application of law, the previous decisions of the AAO and the director will be affirmed. The petition is denied.

ORDER: The AAO's decision of June 3, 2003 is affirmed. The petition is denied.