

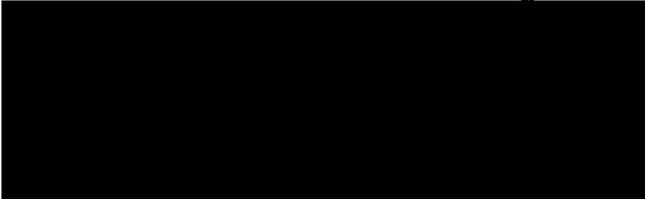
SECURITY AND DATA PROTECTION

STATION

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



U.S. Citizenship  
and Immigration  
Services



FILE:



Office: TEXAS SERVICE CENTER

Date:

JUN 15 2004

IN RE:

Petitioner:



Beneficiary:

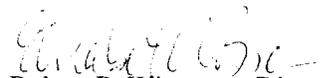
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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, 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 pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a pastor immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that it had made a qualifying 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 August 29, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a pastor throughout the two years immediately prior to that date.

8 C.F.R. § 204.5(m)(4) requires that an authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration). The petitioner must show that the terms of employment fall within accepted guidelines.

[REDACTED] of the petitioning entity states that the beneficiary has been "assisting the Spanish-speaking people in our area since October 2001," the month that the beneficiary entered the United States. [REDACTED] did not, initially, provide any information about the beneficiary's job title or the nature of the beneficiary's work. The petitioner's initial submission contained no information about the beneficiary's activities prior to October 2001. The initial submission also includes an ordination certificate that the petitioner issued to the beneficiary on August 21, 1998.

On April 3, 2003, the director instructed the petitioner to provide further evidence about the beneficiary's past work and intended future duties, as well as terms of employment such as salary. The director also requested tax records to demonstrate the beneficiary's receipt of such salary. On June 25, 2003, Dr. Seebran replied:

[The beneficiary] was the assistant [REDACTED] Medellin, Colombia, for a period of 2 years. At the present time he is employed with [the petitioner] and he is paid a salary of \$350.00 dollars per week. He works approximately 30 hours a week. . . .

He Pastors our Spanish Congregation which is comprised of 75 people. . . . At the present time he is pursuing a Masters Degree, at Logos [REDACTED], of Jacksonville Florida.

[REDACTED] adds that the beneficiary is the petitioner's only employee, and that the beneficiary has not worked with any other employer in the United States. The petitioner provides a copy of the beneficiary's [REDACTED] issued by the petitioner, as well as a copy of another ordination certificate. This certificate is largely identical to the initially submitted certificate, except it is dated August 21, 2001, rather than August 21, 1998. The petitioner does not explain why it was evidently necessary to ordain the beneficiary more than once.

The beneficiary's 2002 income tax return, a joint return filed with his spouse, lists \$18,200 in gross receipts from the petitioner, consistent with the claimed salary of \$350.00 per week. The return identifies his occupation as "minister." The petitioner also submits copies of canceled checks issued to the beneficiary, along with corresponding bank statements. The bank statements show that the checks issued to the beneficiary (and one issued to his spouse) were the only checks presented against the petitioner's account during the months represented (January 2003 through April 2003).<sup>1</sup>

The tax documents and checks pertain to 2002 and 2003, and therefore they do not establish the beneficiary's activities in 2000 or 2001.

<sup>1</sup> The bank statements also show that the account carried a minimal balance, often below forty dollars, with many of the beneficiary's checks being preceded by deposits just sufficient to cover those checks. For example, the February 2003 statement reflects the following activity:

2/1	Starting balance	\$37.31	2/18	Deposit	\$219.00
2/3	Deposit	310.00	2/19	Check 183	220.00
2/4	Check 181	310.00	2/24	Deposit	292.00
2/11	Deposit	370.00	2/26	Check 184	300.00
2/11	Check 182	370.00	2/28	Ending balance	28.31

The nature of this evidence suggests that the petitioner maintains this account for the sole purpose of paying the beneficiary; the petitioner uses the account for no other demonstrable purpose, and the balance is just sufficient to cover the beneficiary's paychecks.

The director denied the petition on July 2, 2003, stating that the petitioner has not established that the beneficiary has the required two years of experience immediately preceding the petition's filing date, or that the petitioner has extended a *bona fide* job offer to the beneficiary. The director added that the beneficiary's stated work schedule of 30 hours per week is not considered full-time, the minimum threshold being 35 hours per week.

On appeal, filed July 29, 2003, [REDACTED] states that the beneficiary "work [sic] 40 hours per week in 2003, was paid 550.00 per week." Only weeks earlier, in a letter dated June 25, 2003, [REDACTED] had asserted that the beneficiary "is paid a salary of \$350.00 per week. He works approximately 30 hours per week." Dr. [REDACTED] fails to explain these contradictory assertions. The checks issued to the beneficiary between December 2002 and April 2003 vary in amount between \$219 and \$370, and they contradict the new claim that the beneficiary "was paid 550.00 per week" "in 2003." 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, 586 (BIA 1988).

The petitioner submits a letter from [REDACTED] - Medellin, indicating that the beneficiary worked there from July 1996 to October 2001. We cannot discern other information in the letter, because the petitioner has not submitted any translation of this Spanish-language document. Any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3).

The petitioner submits a quarterly tax return, stating that the petitioner paid the beneficiary \$6,600.00 during the first quarter of 2003. The petitioner had previously submitted copies of the beneficiary's paychecks from this same period, totaling \$3,785.00 paid between December 31, 2002 and March 31, 2003. The petitioner does not explain the significant discrepancy between these amounts. We note also that, according to the quarterly tax return, the beneficiary was the petitioner's only paid employee between January and March of 2003, yet the petitioner had previously submitted a copy of a canceled check, payable to the beneficiary's spouse, in the amount of \$320.00. The check is dated January 14, 2003, which falls within the period covered by the quarterly return. A notation on the lower left corner of the check reads "Income." The bank statements from the first quarter of 2003 do not list any additional checks, or a sufficient balance to pay the \$2,815 difference between the sum of the paychecks and the amount reflected on the quarterly tax return. The "Taxpayer ID" number on the bank statements does not match the Employer Identification Number on the quarterly tax return.

The petitioner has submitted contradictory information regarding the beneficiary's work during 2003, minimal documentation of the beneficiary's work up to October 2001, and no documentation at all regarding the beneficiary's work from October 2001 to December 2001. The petitioner has also indicated that the beneficiary worked 30 hours a week, changing that number only after learning that we do not consider a 30-hour week to be full-time employment.

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." 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 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).

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.

Upon consideration, we concur with the director's finding that the petitioner has not adequately demonstrated that the petitioner has and will employ the beneficiary as a pastor on a full-time basis. Conflicting statements and contradictory evidence have raised questions of overall credibility that we cannot ignore.

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).

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.