

CI

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



U.S. Citizenship
and Immigration
Services

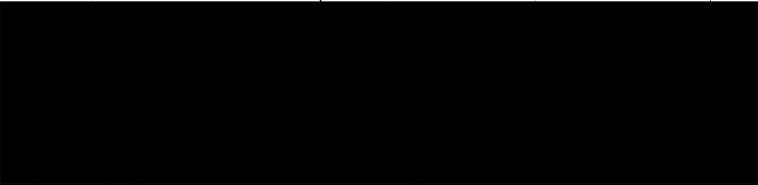


FILE: WAC 00 181 50959 Office: CALIFORNIA SERVICE CENTER Date: NOV 17 2004

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.

Maif Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

PUBLIC COPY

Identifying data deleted to
prevent unauthorized
invasion of personal privacy

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. In a subsequent appeal to the Administrative Appeals Office (AAO), the petition was remanded to the service center for issuance of a new decision. The director denied the immigrant visa petition and certified his decision to the AAO. The director's decision will be affirmed.

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 music director/conductor. The director determined that the petitioner has not established that the beneficiary possessed the required two years membership in the denomination. 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, or that it had the ability to pay the beneficiary the proffered wage.

On certification, counsel submitted no brief or 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 Revenue 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 an 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 May 31, 2000. Therefore, the petitioner must establish that the beneficiary was a member of the denomination and continuously working in the religious occupation throughout the two-year period immediately preceding that date.

The petitioner’s pastor, Kap Sik Chung, stated that the beneficiary was a choir conductor from February 1992 to July 1998 with the Hanil Presbyterian Church. The petitioner submitted a document that purports to be a “certificate of employment” from the [REDACTED]. However, the translation accompanying the document does not comply with the provisions of 8 C.F.R. § 103.2(b)(3) in that the translator is not identified, did not certify that the translation was complete and accurate, and did not certify that he or she is competent to translate from Korean into English. Therefore, the document has little evidentiary value.

In another “certificate of employment”, the petitioner states that the beneficiary has been a music director with the petitioning organization since August 1998. Although the petitioner does not specifically state that the beneficiary is one of its members, we will accept as fact that he is. However, as the petitioner has not submitted evidence of the beneficiary’s membership in a denomination prior to August 1998, it has not established that the beneficiary was a member of its denomination for two full years preceding the filing of the visa petition.

The petitioner relies upon the same evidence discussed above to establish that the beneficiary was employed as a music director/conductor during the two years prior to filing the petition. In his statement of October 20, 2000, Reverend [REDACTED] states that the beneficiary was working full time for the petitioner as a volunteer, but that the church helps him with a scholarship while he attends school.

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.

According to Reverend [REDACTED] the beneficiary was employed full time and paid a salary with the [REDACTED]. However the petitioner provided no competent evidence of this employment. As discussed above, the translation of the "certificate of employment" from the [REDACTED] does not meet the requirements of the regulation and therefore has no evidentiary value in these proceedings. Further, the petitioner did not submit any contemporaneous evidence, such as pay vouchers or canceled checks, to corroborate the beneficiary's employment. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner submitted a statement from the registrar of the Bethesda Christian University, certifying that the beneficiary was accepted as a full time student at the school and was scheduled to complete the Master of Divinity program in May 2001. The petitioner stated that it contributed \$1,700 in scholarship funds to the beneficiary. It provided no evidence of payment of these funds either to the beneficiary or the school. The petitioner also indicated that the beneficiary was attending school "only 2-3 times a week."

The evidence does not establish that the beneficiary was continuously engaged in a religious occupation for the two years preceding the filing of the visa petition. The record does not indicate how the beneficiary supported

himself financially during the period he was in school. It cannot be determined from the record if he relied upon secular employment for his support. Further, the petitioner submitted no evidence to establish the hours worked by the beneficiary. It cannot be determined, especially with his status as a student, that the beneficiary was employed full time with the petitioner. *See Matter of Varughese*, 17 I&N Dec. 399.

A petitioner must also demonstrate its ability to pay the proffered wage.

The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part, that:

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.

The petitioner proposes to pay the beneficiary \$1,500 or \$1,700 per month.¹ To establish its ability to pay the proffered salary, the petitioner submitted copies of its bank statements for the months of January 2002 to August 2002, a statement indicating that it had a certificate of deposit valued in excess of \$21,000 in May of 2000, copies of documents labeled "Annual Expense" for the period of December 2000 to November 2001 and the period of December 1999 to November 2000.

The above-cited regulation states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of evidence.

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 director's decision will be affirmed and the petition will be denied.

ORDER: The director's August 27, 2003 decision is affirmed. The petition is denied.

¹ In its letter accompanying the petition, the petitioner stated it would pay the beneficiary \$1,500 per month. However, in response to the director's request for evidence dated August 18, 2000, the petitioner stated the salary would be \$1,700 per month.