



U.S. Citizenship  
and Immigration  
Services

U

[REDACTED]

FILE:

Office: TEXAS SERVICE CENTER

Date:

SEP 23 2004

IN RE:

Petitioner:

Beneficiary:

[REDACTED]

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.

*Mari Johnson*

*to* Robert P. Wiemann, Director  
Administrative Appeals Office

identifying data deleted to  
prevent disclosure of unwarranted  
invasion of personal privacy

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**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 (the Act), 8 U.S.C. § 1153(b)(4), to perform services as an associate pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as an associate pastor immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that the beneficiary entered the United States in order to perform qualifying religious work.

On appeal, the petitioner submits documentation regarding the beneficiary's work in Costa Rica, and the petitioner claims that the beneficiary has worked as a missionary since his arrival in the United States.

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) 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 January 13, 2003. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an associate pastor throughout the two years immediately prior to that date.

The beneficiary entered the United States on June 23, 2002, nearly seven months before the petition's filing date. In order to establish the beneficiary's continuous work as a minister or associate pastor during the

qualifying period, the petitioner must provide evidence regarding the beneficiary's work both in the United States and abroad between January 2001 and January 2003.

Senior pastor of the petitioning church, states that the beneficiary "has been appointed by our ministry to be an Associate Pastor at our church. He will begin performing his duties as an Associate Pastor once having received your approval and work permit." From the wording of this letter, it is evident that the beneficiary had not yet begun working as an associate pastor at the petitioning church; rather, he "will begin performing his duties" at a later time.

In a letter dated December 5, 2001, head pastor of Centro Cristiano Visión states that the beneficiary "has been an active minister since 1999 in our church." Pastor Aguero Camacho adds that the beneficiary "arrived in our congregation . . . in 1994 and has been attending same ever since," even though the beneficiary had left Costa Rica over five months earlier, in June 2002. This letter, already vague in its description of what the beneficiary had been doing in Costa Rica, does nothing to establish the beneficiary's activities in the United States from June 2002 to January 2003.

The director instructed the petitioner to "[s]ubmit a detailed description of the beneficiary's prior work experience" and supporting evidence including tax documents, relating to the two-year qualifying period.

In response, with regard to the beneficiary's activities between his June 2002 entry and the January 2003 filing date, counsel states that the beneficiary "has not worked in the United States and therefore the question does not apply." Counsel cites a new copy of a previously submitted accountant's certification, attesting to the beneficiary's income from October 2000 through September 2002, indicating "no sign that any taxes were charged to this income." Counsel states that this certificate "shows that [the beneficiary] has received a salary for his work as Pastor of the church from October 1, 2000 to September 30, 2002, a period of two years prior to the application being filed" (emphasis in original). To qualify, the petitioner cannot arbitrarily select any two-year period that predates the filing date. Rather, the regulations define the qualifying period as the two years immediately preceding the filing date. A given two years of experience as a pastor does not create a permanent entitlement to immigration benefits.

Even then, the accountant's certification did not identify the source of the income. Also, the certification does not indicate that the beneficiary was continually earning income from October 1, 2000 to September 30, 2002. Rather, the certification merely lists the beneficiary's total income for two periods, October 2000-September 2001 and October 2001-September 2002. The use of these dates does not prove or imply that the beneficiary was continuously earning throughout those periods. Indeed, the beneficiary left Costa Rica several months before September 30, 2002. Thus, the accountant's certification is of very limited value in this proceeding.

The director denied the petition, stating that the petitioner has not established that the beneficiary worked continuously as an associate pastor during the two years immediately preceding the filing date. On appeal, the petitioner provides a new accountant's report, discussing the beneficiary's 2000-2002 earnings in greater detail. As explained above, this material ignores the beneficiary's time in the United States.

Counsel states that, upon the beneficiary's arrival in the United States, the beneficiary "began carrying out his missionary ministry for this Church. During the entire time that [the beneficiary] has been in the United States, he has been exclusively carrying on as a missionary with the petitioning Church." This is not consistent with counsel's earlier stipulation that the beneficiary "has not worked in the United States."

██████████ appeal, states that the beneficiary “arrived in the United States on June 23 of 2002, with an invitation [from] the church. . . . during that time he has being [sic] in our church as a missionary.” Like counsel ██████████ did not mention this important information in the initial filing, instead describing the beneficiary’s duties in terms of what the beneficiary “will” do.

Assuming, for the sake of argument, that the beneficiary has been a missionary since June 23, 2002, such work is not qualifying experience as an associate pastor. The regulations at 8 C.F.R. § 204.5(m)(1) and (3)(ii)(A) require that the beneficiary must have carried on *the* vocation or occupation, rather than *a* vocation or occupation, indicating that the work performed during the qualifying period should be substantially similar to the intended future religious work. The underlying statute, at section 101(a)(27)(C)(iii), requires that the alien “has been carrying on such . . . work” throughout the qualifying period. An alien who seeks to work in occupation A has not been carrying on “such work” if employed in occupation B during the qualifying period.

The record contains numerous inconsistent claims and conflicting assertions, which tend to call into question the credibility of the petitioner’s claims. 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).

For the above reasons, we concur with the director’s finding that the petitioner has not established that the beneficiary worked continuously in the same occupation or vocation as the position offered, throughout the two years immediately preceding the petition’s filing date.

The other issue raised in the director’s decision concerns the beneficiary’s entry into the United States. Section 101(a)(27)(C)(ii)(I) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(I), requires that the alien seeking classification “seeks to enter the United States . . . solely for the purpose of carrying on the vocation of a minister.” In this instance, the beneficiary entered the United States as a B-2 visitor. Thus, the director concluded, the beneficiary did not enter the United States solely for the purpose of working as a minister.

This finding is not defensible. The AAO interprets the language of the statute, when it refers to “entry” into the United States, to refer to the alien’s intended *future* entry *as an immigrant*, either by crossing the border with an immigrant visa, or by adjusting status within the United States. This is consistent with the phrase “*seeks to enter*,” which describes the entry as a future act. We therefore withdraw this particular finding by the director.

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.