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



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]

Office: TEXAS SERVICE CENTER Date: **SEP 23 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:

[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

for 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 (AAO) on appeal. The appeal will be dismissed.

The self-petitioner seeks classification 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 commentator, lector and teacher. The director determined that the petitioner had not established that she had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

On appeal, counsel submits a brief.

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 January 3, 2001. Therefore, the petitioner must establish that she was continuously working as a religious worker throughout the two-year period immediately preceding that date.

With the petition, the petitioner submitted an August 22, 2000 letter from the Ver [redacted] the priest and pastor of [redacted] who states, "I know [the petitioner] as a parishioner of mine ... She [works in my] parish as a [redacted] of Religious [sic] in our C.C.D., and special work in it[s] sanctuary ... we will pay [her] \$8.00 an hour." A certificate from the director of the [redacted] Colombia, indicates that for three years, the petitioner worked "in the work assigned by the Community like preaching and other apostolic works."

In response to the director's request for evidence (RFE) dated March 7, 2002, the petitioner submitted another certificate from the director of the Praise Community, in which he states that the petitioner worked with the organization for five years, preaching and evangelizing youth, and "collaborating" with the planning and organization of youth retreats. The director also states that the petitioner collaborated for more than 30 hours per week and was compensated bi-weekly in the amount of \$85,000.00 pesos. The director does not specify the time frame in which the petitioner worked.

The director of the "Minuto de Dios" Charismatic Corporation School of Evangelization in Bogotá certified that the petitioner worked for the school for over six years, and collaborated in the Ministries of Youth Counseling and the Ministry of Professional Orientation. The director also certified that the petitioner received a monthly "bonus" of \$120,000.00 pesos. The director does not state the time frame in which the petitioner worked. A letter from the pastor of the Parish of San Juan Eudes, which states the petitioner worked in the parish as a Eucharistic minister, also fails to state the time frame in which the petitioner worked.

The Form I-360, Petition for Amerasian, Widow or Special Worker, indicates that the petitioner arrived in the United States on November 30, 1999, on a B-2, temporary visitor for business or pleasure, visa. [redacted] does not state when the petitioner began working at the [redacted] her hours of employment or whether she was compensated for her services.

The statute and the regulation require the alien to have been working in the religious vocation or occupation for two full years prior to the filing of the visa petition. The petitioner has submitted no evidence that she was continuously engaged in the religious occupation for the two years immediately preceding the filing of the visa petition.

Further, 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. 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 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 salaried. To hold otherwise would be contrary to the intent of Congress.

The petitioner provides no evidence that she worked full time and no corroborating evidence that she was compensated for her services in any of her previous employment. The certifications from her various employers are not accompanied by contemporaneous evidence of her employment, such as pay vouchers or cancelled checks. 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 has not established that she has the requisite experience in the religious occupation during the two years immediately preceding the filing of the visa petition.

Beyond the decision of the director, the petitioner has not established that the San Lazaro Catholic Church, her prospective employer, is qualified as a bona fide nonprofit religious organization. The petitioner submitted a June 7, 1993 letter in which the Internal Revenue Service (IRS) notified the United States Catholic Conference of the group tax exemption granted to its agencies and instrumentalities, and educational, charitable and religious institutions that appeared in the 1993 Official Catholic Directory. However, the petitioner submitted no evidence that the San Lazaro Catholic Church appeared in the Official Catholic Directory for 1993 and thus is exempt from federal income tax under the group exemption granted to the Catholic Church. This deficiency constitutes an additional ground for dismissal of the appeal.

The petitioner must also demonstrate that a qualifying job offer has been tendered.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

Job offer. The letter from the 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, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

The letter from the pastor of the San Lazaro Catholic Church indicates the petitioner will be paid \$8.00 per hour. However, the letter does not indicate the hours that the petitioner will work or whether the position will provide full-time employment. Part time employment is not qualifying employment for the purpose of this employment visa petition. This deficiency also constitutes an additional ground for dismissal of the appeal.

Additionally, the petitioner has not provided evidence that the prospective employer has the ability to pay the proffered wage. The regulation at 8 C.F.R. § 204.5(g)(2), which states in pertinent part:

Ability of prospective employer to pay wage. 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 proffered 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 copies of annual reports, federal tax returns, or audited financial statements.

The petitioner submitted no evidence in support of this requirement. This deficiency is an additional ground for dismissal of the appeal.

According to the Form I-360, the petitioner entered the United States in November 1999 on a B-2 visa. The director stated that it could not be determined that the beneficiary's sole purpose in entering the United States was to work for her prospective employer.

We withdraw this statement by the director. The regulation does not require that the alien's initial entry into the United States to be solely for the purpose of performing work as a religious worker. "Entry," for purposes

of this classification, would include any entry under the immigrant visa granted under this category or would include the alien's adjustment of status to the immigrant visa.

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.