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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:

[REDACTED]
LIN 00 265 51780

Office: NEBRASKA SERVICE CENTER

Date: AUG 13 2005

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)

[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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. On August 3, 2004, the AAO reopened the matter on motion pursuant to 8 C.F.R. § 103.5(a)(1)(ii), entered a new decision on November 24, 2004, and affirmed the director's decision denying the petition. On July 5, 2005, the AAO again reopened the matter on motion pursuant to 8 C.F.R. § 103.5(a)(1)(ii) for the purpose of entering a new decision. The decision of the service center director is affirmed, and the petition is denied.

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 pastor. 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.

The AAO noted at the time of its November 24, 2004, that counsel had not submitted a brief or other evidence on motion. A review of the present record reveals that counsel's brief was timely received by the AAO and now appears in the record. The AAO is reopened the matter on its own motion in accordance with 8 C.F.R. § 103.5(a)(1)(ii). Pursuant to regulation, counsel was provided 30 days in which to submit a brief. As of the date of this decision, no additional documentation has been received from counsel. Therefore, the record will be considered complete as presently constituted.

With his brief on motion, counsel submitted 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 a Form 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 September 15, 2000. Therefore, the petitioner must establish that the beneficiary was continuously working as a pastor throughout the two-year period immediately preceding that date.

The petitioner stated that the beneficiary had worked for the Seong Deok Presbyterian Church in Seoul, Korea from 1992 to March 2000, and in a voluntary capacity with the petitioning organization beginning in April 2000. The petitioner submitted no evidence such as canceled checks, pay vouchers, verified work schedules or similar documentary evidence 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 Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The AAO, therefore, affirmed the director’s determination that the petitioner had not established that the beneficiary was continuously employed in a qualifying religious occupation or vocation for two full years immediately preceding the filing of the visa petition.

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.

On motion, the petitioner submitted a copy of a May 1, 2003 letter from [REDACTED] who stated that the beneficiary had worked for the petitioning organization since April 2000, performing duties that included conducting worship services, providing guidance to church members and counseling. According to [REDACTED] the church offered the beneficiary a "little amount of money . . . for his apartment rent fee and gas" until he was approved for an R-1 visa on October 6, 2000. A letter from the beneficiary dated May 1, 2003 indicated that he had been working full time for the church since April 2000 and received money for his apartment rent and gas.

On motion, citing *St. John the Baptist Ukrainian Catholic Church v. Novak*, N.D.N.Y. 00-CV-745 (2000), an unpublished decision, counsel asserts that the beneficiary's voluntary work was "acceptable as experience in a religious occupation." In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. In addition, as the published decisions of the district courts are not binding on the AAO outside of that particular proceeding, the unpublished decision of a district court would necessarily have even less persuasive value.

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. In earlier stages of this proceeding, the petitioner's previous counsel asserted that the beneficiary had sufficient personal financial resources to support himself and his family. However, no evidence in the record supported counsel's statement. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

The evidence is insufficient to establish that the beneficiary was not dependent upon secular employment for his support. Additionally, the petitioner submitted no documentary evidence to corroborate the beneficiary's employment with the petitioning organization and submitted no corroborative evidence of the beneficiary's employment with the [REDACTED] *Matter of Soffici*, 22 I&N Dec. at 165.

The record does not establish that the beneficiary was continuously employed in a qualifying religious occupation or vocation for two full years preceding the filing of the visa petition.

The AAO also noted in its previous decision that beyond the director's decision, the petitioner had not established that it had the ability to pay the beneficiary the proffered wage. Counsel did not address this issue on appeal or on motion.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Accordingly, the previous decisions of the AAO and the director will be affirmed. The petition is denied.

ORDER: The petition is denied.