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**U.S. Citizenship
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Services**

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FILE:

WAC 04 020 52673

Office: CALIFORNIA SERVICE CENTER

Date:

AUG 25 2005

IN RE:

Petitioner:

Beneficiary:

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.

Mari Johnson

S Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) 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 a youth 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, that it had the ability to pay the beneficiary the proffered wage, or that it had extended a qualifying job offer to the beneficiary.

On appeal, counsel submits 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 first issue on appeal is whether the petitioner established that the beneficiary had been continuously employed in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(1) 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 October 28, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a youth pastor throughout the two-year period immediately preceding that date.

In his letter dated August 20, 2003, the petitioner's pastor, [REDACTED] stated that the beneficiary had served as the full-time youth pastor with the petitioning organization since January 2000. According to [REDACTED] as of the date of his letter, the youth ministry was comprised of "three active praise and worship teams," the Jubilee Voices, Power Generation and Spiritual Fire. [REDACTED] stated that the beneficiary was active in the Jubilee Voices and Power Generation, "where she sings, counsels, and offers her valuable ideas to these young people. She also counsels and is attentive to the group Spiritual Fire." Reverend [REDACTED] also stated that the beneficiary has "open discussions" with the church youth on Wednesday nights and leads Bible studies and teaches a discipleship class on Saturdays. The petitioner submitted no evidence to corroborate the work performed by the beneficiary during the qualifying two-year period. 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)).

[REDACTED] stated that, as compensation, the beneficiary received \$200 per month plus her annual college tuition of \$4,000. The petitioner submitted no evidence of any compensation that it provided to the beneficiary. *Id.* The record contains a copy of the beneficiary's May 10, 2002 Associate in General Studies Degree certificate from the Scottsdale Community College and a copy of a transcript from Arizona State University indicating that the beneficiary was enrolled in the school as of the spring semester, taking six courses totaling 11 semester hours. In his letter of August 20, 2003, [REDACTED] stated that the beneficiary "has attended a seminar for the last two years as ongoing training held for ministers every Monday night entitled "How to be Prepare [sic] for Ministry."

In a request for evidence (RFE) dated September 25, 2004, the director instructed the petitioner to:

Provide evidence of the beneficiary's work history beginning October 28, 2001 and ending October 28, 2003 only. Provide a breakdown of duties performed in the religious occupation for an average week. Include the employer's name, specific job duties, the number of hours worked, remuneration, level of responsibility and who supervised the work. Ideally, this evidence should come in a way that shows monetary payment, such as W-2 forms, pay stubs, or other items showing the beneficiary received payment. Documentation showing the

withholding of taxes is good evidence. However, you may also show payment through other forms of remuneration. If any work was on a volunteer basis, provide evidence to show how the beneficiary supported him or herself (and family members, if any) during the two-year period or what other activity the beneficiary was involved in that would show support.

In response, the petitioner submitted a December 9, 2004 letter from [REDACTED] in which he stated that the beneficiary's duties as youth pastor consist of the following:

(1) Pastoring and leading bible studies for the youth ministry. (2) Coordinating all the youth programs and activities; such as concerts, youth evangelism and Easter and Christmas, concerts, and youth fellowship plays presented on special days. (3) Providing youth counseling for the youth ministry. At the present time [she] has been working an average of 30 hours a week. Full employment for this position will be no less than 40 hours.

The petitioner submitted no evidence, such as canceled checks, pay vouchers, pay receipts, or other documentary evidence to corroborate the beneficiary's employment or the compensation that she received from the petitioner. *Matter of Soffici*, 22 I&N Dec. at 165. [REDACTED] also stated that the beneficiary was "ordained as Youth Pastor in the year 2000 after attending Bible Training held for ministers entitled 'How to be Prepared for Ministry.'"

The regulation at 8 C.F.R. § 204.5(m)(2) defines minister as:

[A]n individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

Although the petitioner stated that the beneficiary was ordained, the record contains no evidence of such ordination or the requirements for becoming ordained within the petitioner's denomination. The record contains a copy of a January 2000 certificate for "minister's credentials" authorizing the beneficiary to preach and a copy of a June 3, 2002 certificate recognizing her completion of the "Bible Institute Training for Ministers." These certificates conflict with [REDACTED] statements that the beneficiary was "ordained" after completing the training. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Further, the evidence does not establish that the beneficiary is authorized to perform the typical duties normally performed by members of the clergy. The evidence establishes that, at best, the beneficiary is a lay minister.

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 appeal, the petitioner submitted a copy of its December 28, 1999 minutes, indicating that the board passed a resolution to pay the beneficiary, as youth pastor, \$50 per week plus her college tuition. The petitioner also submitted copies of documents with the beneficiary's name, a date, and "offering" of \$50. The documents are dated weekly beginning on January 2, 2005 through February 27, 2005. It is unclear from the documents whether they represent offerings made to or by the beneficiary.¹ Furthermore, as they are subsequent to the filing date of the petition, they are not probative of the beneficiary's prior work experience.

Additionally, according to [REDACTED] the beneficiary worked 30 hours per week in the proffered job, and that full-time employment in the position is at least 40 hours per week. Consistent with the requirements of the U.S. Department of Labor's Bureau of Labor Statistics and other regulations pertaining to employment based visa petitions, Citizenship and Immigration Services (CIS) holds that employment of less than 35 hours

¹ In his March 23, 2005 cover letter, counsel states that these documents are "[c]opies of offering envelopes where beneficiary received her \$50.00 weekly." However, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

per week is not full time employment. Part-time employment is not qualifying experience for purposes of this employment-based visa petition.

The evidence does not establish that the beneficiary was continuously employed as a youth pastor for two full years prior to the filing of the visa petition.

The second issue to be discussed is whether the petitioner established that it has the ability to pay the beneficiary the proffered wage.

The regulation at 8 C.F.R. § 204.5(g)(2) 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.

With the petition, the petitioner submitted copies of its unaudited financial statements for the years 2000 through 2002. In his RFE, the director instructed the petitioner to submit evidence of its ability to pay the proffered wage as of 2003, the year the petition was filed. The petitioner submitted no additional evidence in response to the director's RFE. On appeal, the petitioner submitted copies of January and February 2005 bank statements for Latin American Christian Fellowship Ministries at 9814 S. 26th Lane in Phoenix, Arizona. Although the petitioner stated that it is a "DBA" (doing business as) entity of the Latin American Christian Fellowship, it submitted no evidence of the relationship between it and the organization at this address.

Further, 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 primary evidence.

Accordingly, the evidence does not establish that it had the continuing ability to pay the proffered wage as of the date the petition was filed.

The third issue in this case is whether the petitioner has established that it has extended a qualifying job offer to the beneficiary.

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.

In this case, the petitioner has not identified the terms of remuneration or shown that the alien would not be solely dependent on supplemental employment for her support. Therefore, it has not tendered a qualifying job offer.

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. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.