

**PUBLIC COPY**

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



U.S. Citizenship  
and Immigration  
Services

01

FILE: [REDACTED]  
EAC 04 043 50210

Office: VERMONT SERVICE CENTER

Date: DEC 14 2005

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:

SELF-REPRESENTED

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*

2 Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont 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 bishop. The director determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization or that it was a religious denomination with a bona fide nonprofit religious organization in the United States. The director further 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 the position qualifies as that of a religious worker, that the petitioner had extended a qualifying job offer to the beneficiary, or that it has the ability to pay the beneficiary the proffered wage.

On appeal, the petitioner submits additional documentation. The petitioner indicated on the Form I-290B that it would submit a brief and/or additional evidence within 30 days. As of the date of this decision, more than four months after the appeal was filed, no further documentation has been received by the AAO. Therefore, the record will be considered complete as presently constituted.

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 it qualifies as a bona fide tax-exempt nonprofit religious organization.

The regulation at 8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

(3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code (IRC) of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement, if applicable, and a copy of the organizing instrument of the organization, which contains a proper dissolution clause and which specifies the purposes of the organization.

The petitioner must either provide verification of individual exemption from the IRS, proof of coverage under a group exemption granted by the IRS to the denomination, or submit evidence to comply with the provisions of 8 C.F.R. § 204.5(m)(3)(i)(B) by submitting the documentation that the IRS would require to determine that the entity is a religious organization.

The organization can establish eligibility under 8 C.F.R. § 204.5(m)(3)(i)(B) by submitting documentation that establishes the religious nature and purpose of the organization, such as brochures or other literature describing the religious purpose and nature of the activities of the organization. The necessary documentation is described in a memorandum from [REDACTED] Associate Director of Operation for CIS, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003):

- (1) A properly completed IRS Form 1023,
- (2) A properly completed Schedule A supplement, if applicable,
- (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization, and
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The above list is consistent with the regulatory requirement at 8 C.F.R. § 204.5(m)(3)(i)(B), cited above. The memorandum specifically states that the above materials are, collectively, the "minimum" documentation that can

establish “the religious nature and purpose of the organization.” Thus, for example, a petitioner cannot meet this burden by submitting only its articles of incorporation. Also, obviously, it is not enough merely for the petitioner to *submit* the documents listed above. The *content* of those documents must establish the religious purpose of the organization.

In a request for evidence (RFE) dated January 24, 2005, the director instructed the petitioner to submit evidence of its tax-exempt status from the IRS or the documentation that the IRS would require to establish tax-exempt eligibility under section 501(c)(3) of the IRC. The petitioner failed to submit evidence of its tax-exempt status in response to the RFE.

On appeal, the petitioner submitted a copy of a July 2002 State of Connecticut “certificate of formation” for a new religious corporation or religious society, but submitted no other evidence to establish its tax-exempt status. The evidence submitted by the petitioner, therefore, does not establish that the petitioner is a bona fide nonprofit tax-exempt religious organization.

The second issue is whether the petitioner established that it is a religious denomination with a bona fide nonprofit religious organization in the United States.

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

[A] religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship and religious congregations, or comparable indicia of a bona fide religious denomination.

The petitioner submitted copies of certificates of ordination issued to the beneficiary by [REDACTED]. The petitioner also submitted a copy of a certificate of ordination issued to the beneficiary by the [REDACTED]. The petitioner did not indicate its relationship with these organizations and did not state the denomination with which it is associated.

On appeal, the petitioner submits a June 9, 2005 letter from [REDACTED]. [REDACTED] states that the beneficiary is “overseer” of the petitioning organization and under [REDACTED] leadership. The petitioner submitted no other evidence of its religious affiliation, no information regarding the religious denomination of [REDACTED] and no evidence that [REDACTED] is a bona fide nonprofit religious organization.

The evidence of record does not establish that the petitioner is a member of a religious denomination with a bona fide nonprofit religious organization in the United States.

The third issue on appeal is whether the petitioner 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 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 December 2, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a bishop throughout the two-year period immediately preceding that date.

The petitioner submitted a letter dated July 31, 2000 from [REDACTED] the presiding bishop of the [REDACTED], who stated that the beneficiary joined that organization in March 2000, and that he did not “receive any money payments for his services.” The petitioner submitted no corroborative documentary evidence of any work performed by the beneficiary during the two years immediately preceding the filing of the visa petition. 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 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.

On appeal, the petitioner submits a letter dated June 16, 2005, stating that the beneficiary is a full-time "dedicated member of the [ ] church." In his letter, [ ] states that the beneficiary has been affiliated with [ ] since July 2000. The petitioner also submits a list of the beneficiary's duties, which include teaching and preaching the gospel, ministering to the sick, performing baptisms, weddings, and funerals, and conducting a broadcast ministry.

The petitioner submitted no evidence of any compensation provided to the beneficiary and submitted no documentary evidence such as canceled checks, pay vouchers, verified work schedules or other documentary evidence to corroborate the beneficiary's employment. *Matter of Soffici*, 22 I&N Dec. at 165. Additionally, the petitioner submitted no evidence that the beneficiary was not dependent on secular employment for his financial support during the qualifying two-year period.

The evidence submitted is therefore insufficient to establish that the beneficiary was continuously employed as a minister or bishop for two full years preceding the filing of the visa petition.

The fourth issue on appeal is whether the petitioner established that the position qualifies as that of a religious worker.

Pursuant to 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work in a religious occupation. To establish eligibility for special immigrant

classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions would reasonably be expected to perform services directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

Citizenship and Immigration Services (CIS) therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

The proffered position is that of "bishop." The petitioner submitted certificates of ordination for the beneficiary indicating that he was authorized to preach and perform baptisms.

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.

On appeal, the petitioner states that, as a minister, the beneficiary will teach and preach the gospel and perform baptisms, weddings and funerals. These are duties traditionally performed by members of the clergy. Therefore, the record sufficiently establishes that the position qualifies as that of a religious worker within the meaning of the statute and regulation.

The fifth issue is whether the petitioner 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 dependent on supplemental employment. Therefore, the petitioner has not established that it has tendered a qualifying job offer to the beneficiary.

The sixth 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.

The petitioner initially submitted no evidence of its ability to pay the beneficiary the proffered wage. On appeal, it submits a copy of a year 2004 Form 990, Return of Organization Exempt from Income Tax. The return reflects net assets of \$2,231, and contains no indication that it has been filed with the IRS. The petitioner did not identify the terms of employment that it was offering to the beneficiary. However, the Form 990 does not establish that the petitioner had the ability to pay the beneficiary a livable wage in 2004. The petitioner submitted no evidence of its financial status for 2003.

The evidence therefore does not establish that the petitioner has the continuous ability to pay the beneficiary the proffered wage.

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.