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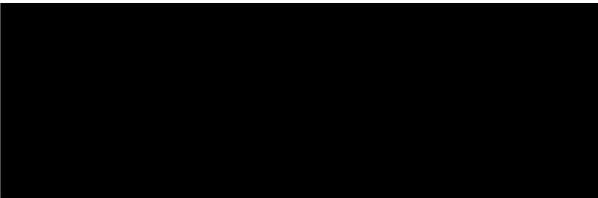
FEB 15 2005

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date:
EAC 02 188 51251

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:



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.

Robert P. Wiemann

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 monk priest. 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.

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 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 May 10, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as a monk priest throughout the two-year period immediately preceding that date.

In its letter accompanying the petition, the petitioner stated that the beneficiary "spent over four years and nine months serving and painting monumental religious works of art in Barbados and Bermuda churches, here now organizing our church and serving the young congregation providing voluntary religious services, Sunday Liturgy, Bible studies and Gospel preaching in the primary languages of the parishioners." The petitioner did not state when the beneficiary began working with the petitioning organization or the time he devoted to such work.

In a letter dated December 29, 2001, the Archbishop of the [redacted] in the Western Hemisphere, stated that the beneficiary had served as a priest in Ethiopia for over 15 years, had served in Barbados for two years and nine months, and in Bermuda for two years. An August 24, 2001 letter from Archbishop [redacted] of the [redacted] Church in the Caribbean and Latin America, stated that the beneficiary has been a monk in the [redacted] Church for over 12 years, and with the archdiocese for four years, spending two years and ten months in Barbados and the remaining one year and 11 months in Bermuda. The petitioner submitted no corroborative evidence of the beneficiary's employment with either archdiocese.

The petitioner submitted a May 6, 2001 letter from the [redacted] in Bermuda, which stated that the beneficiary had "been working in Bermuda from June 26, 1999 to the present date." The church administrator, The Very Reverend [redacted] stated, "During the past year that he has been with us he has taken a very plain Chapel and transformed it into a most beautiful Ethiopian Orthodox Church. He has covered its internal walls with some fifty painted panels." Reverend [redacted] did not indicate that the beneficiary had performed any other work for the church during that time frame.

The petitioner also submitted a copy of a work permit for the beneficiary from the government of Bermuda authorizing the beneficiary, as a priest, to paint church icons at the [redacted] beginning on May 1, 2001 to August 31, 2002. The permit further states, that subject to criminal sanctions, "This permit is subject to the holder not engaging in any gainful occupation other than that specified herein."

According to [redacted] the beneficiary's duties as an Ethiopian Orthodox priest, included leading and conducting religious worship service, administering the Church sacraments, preaching, teaching and painting religious icons. In his letter of February 3, 2003, responding to the director's request for evidence (RFE) dated November 20, 2002, counsel stated that the beneficiary "has continuously performed the duties of a priest on behalf of the Church without compensation but has been provided room and board." Counsel

submitted no documentary evidence to substantiate his statements. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The 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).

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.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

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 submitted a July 23, 2003 letter from the Archdiocese of the [REDACTED] in the U.S.A., which states that the beneficiary served "as a Missionary Priest in Barbados . . . and . . . Bermuda. Since he entered the United States on May 19, 2001 to present he is working at" the petitioning organization. The petitioner also provides a weekly schedule for the beneficiary, indicating that his duties include conducting divine liturgical services, administering the sacraments, providing basic pastoral care, instructing deacons in church dogma and traditional clergy Geez and Amharic chants and teaching Amharic language. The petitioner submitted no evidence, such as pay vouchers, canceled checks, or other documentary evidence to corroborate the beneficiary's employment. Counsel states on appeal that the beneficiary was provided room and board as he felt he could not receive a salary before this petition was approved. However, no evidence of any financial support for the beneficiary was provided. 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 submitted no corroborative evidence of the beneficiary's prior employment; however, the evidence reflects that the beneficiary worked primarily as a muralist during the first year of the qualifying two-year period.

The evidence is insufficient to establish that the beneficiary was continuously employed in the position of monk priest for two full years preceding the filing of the visa petition.

Beyond the decision of the director, the petitioner has not 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.

In its letter accompanying the petition, the petitioner indicates that it will pay the beneficiary a "minimum housing utility allowance of \$800.00 and personal expense allowance of \$400.00 per month." On appeal, the petitioner indicates that it will be "fully responsible for [the beneficiary's] sustenance of \$300.00 weekly, also with the necessary accommodation [sic] and other expenses." As evidence of its ability meet this regulatory requirement, the petitioner submitted a copy of its financial statements for the period ending December 31, 2002 and an unaudited accountant's compilation report.

As the compilation report is based primarily on representations of management, the accountant expressed no opinion as to whether they present fairly the financial position of the petitioning organization. In light of this, limited reliance can be placed on the validity of the facts presented in the financial statements that have been

submitted. No further supporting documentation is included in the record to reflect the assertions made by the accountant in the financial documentation, or contained within the unaudited financial statements.

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 evidence. This deficiency constitutes an additional ground for dismissal of the appeal.

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.