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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **FEB 24 2005**
WAC 03 173 54187

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant 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, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office 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 an associate pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as an associate pastor immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary, or that it had the ability to pay the beneficiary's salary.

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) 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." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on May 19, 2003. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an associate pastor throughout the two years immediately prior to that date.

The petitioner indicates that the beneficiary has been an ordained minister since 1994, serving as an assistant pastor in his native Philippines before arriving in the United States on June 10, 2001. The petitioner submits a letter from officials of Metropolitan Bible Baptist Church, San Pedro, Philippines. The letter states that the beneficiary "is currently serving the church [on a] full time basis as an Assistant to the Pastor." The letter is undated, and therefore it does not imply that the beneficiary worked continuously in late May and early June

2001, the first few weeks of the qualifying period. Other documents from the church in the Philippines likewise fail to establish when the beneficiary's employment ended there.

A booklet, prepared by the petitioner in recognition of the church's 15th anniversary in May 2003, includes an organizational chart showing several "missions" in the Philippines and the United States, which are subordinate to the "main" church. The head of the main church is Rev. [REDACTED], senior pastor of the petitioning church. The beneficiary is identified as the "preacher" at a mission church in Falls Church, Virginia. The chart also identifies other individuals as "assistant pastors" and "pastoral assistants." The title "associate pastor" does not appear.

The petitioner's initial submission does not offer any indication that the beneficiary has been working continuously for the petitioner since his June 2001 arrival. The only evident reference to the duration of the beneficiary's work for the petitioner appears in the aforementioned anniversary booklet. That booklet includes an introductory message from Rev. [REDACTED] who mentions "the birth of another . . . congregation led by [the beneficiary] two weeks before this anniversary celebration." This reference indicates that the new congregation was formed in late April 2003, assuming the "anniversary celebration" coincided with the actual anniversary on May 4, 2003. There is no indication that the beneficiary worked for the petitioner before the founding of the new congregation.

The director requested detailed information and evidence to establish the beneficiary's activities during the 2001-2003 qualifying period. In response, the petitioner submits documents showing that the beneficiary first traveled to the United States for a "speaking engagement in Capital Baptist Church in Annandale, Virginia." This evidence also shows that the beneficiary was working at Metropolitan Bible Baptist Church in the Philippines as late as May 25, 2001, and that both Metropolitan Bible Baptist Church and Capital Baptist Church initially considered the beneficiary's June 2001 engagement to be a short-term visit.

An undated Capital Baptist Church Sunday School Schedule lists the beneficiary as the teacher of an 11:00 a.m. class for "Married Filipino" parishioners. A weekly attendance record indicates that the beneficiary was a "Maturity Leader," who was present at 43 Sunday School classes between August 2001 and July 2002. This is the only contemporaneous evidence relating to the beneficiary's work for Capital Baptist Church. These documents are not sufficient to demonstrate that the beneficiary worked continuously at Capital Baptist Church from the date of his arrival to the date that he began working for the petitioner; they establish only that he was present on most (but not all) Sunday mornings. The documents do not indicate that the beneficiary held any other position with the church, was considered an employee rather than a volunteer, or worked at any time other than on Sunday mornings. The only other substantive claim advanced regarding the beneficiary's past experience is counsel's assertion that, in the Philippines, the beneficiary "worked an average of 20 hours a week." This is consistent with the petitioner's assertion (discussed elsewhere in this decision) that the beneficiary will work "at least twenty hours a week" in the future, although it conflicts with an earlier letter which referred to the beneficiary's past work as "full time."

The director denied the petition, in part because the record does not establish that the beneficiary worked continuously (i.e., full-time and without interruption) throughout the two-year qualifying period. On appeal, counsel argues that the director erred "in applying the two-year full-time employment requirement in the case at hand because the offered position is not a lay occupation under the meaning of the regulations."

While it is true that the beneficiary seeks employment in the vocation of a minister, rather than in a religious occupation (two distinct categories, as defined at 8 C.F.R. § 204.5(m)(2)), there is case law on point which

indicates that part-time work does not qualify as continuous experience in the vocation of a minister. See *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

Having argued that the beneficiary's experience need not have been full-time, counsel then argues that the director "acted arbitrarily and unreasonably in ruling that beneficiary did not possess the required two years' experience." Counsel asserts that the director's "conclusion was partially based on counsel's statement to the effect that beneficiary 'worked an average of 20 hours per week under the direct supervision of Pastor.' What counsel meant by this was that beneficiary spent an average of 20 hours a week actually performing 'traditional religious functions' under the direct supervision of the Pastor." Counsel contends that the beneficiary worked an unspecified number of additional hours each week performing "corollary pastoral duties."

Leaving aside counsel's use of the term "traditional religious functions," which (in the regulatory sense) applies to religious vocations rather than the vocation of a minister, counsel's assertions do not overcome the director's findings. As noted previously in this decision, the record contains very little evidence to show what the beneficiary was doing during the qualifying period. The minimal contemporaneous evidence shows that the beneficiary was associated with the churches claimed, but the available documentation is not sufficient to show continuous employment. Counsel's assertions carry negligible weight, because the assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). We note counsel's "20 hours" remark only so far as to observe that counsel's attempt to amend that comment strains credulity. The original remark did not, by any reasonable interpretation, imply a much longer work week undertaken without pastoral supervision. Furthermore, as already noted, the record contains other references to a 20-hour work week.

Counsel states that it would be "sheer absurdity" to hold ministers to a 35 to 40 hour work week requirement. To support this assertion, counsel offers two examples: the Pope, "who celebrate[s] mass only during Christmas Day and Easter Sunday)" and "Reverend Jesse Jackson (who spend[s] the most part of his religious duties singing politics." These counter-examples hardly apply to typical ministers. While the Pope may not celebrate mass as frequently as a parish priest, the Pope's duties as head of the Roman Catholic Church and sovereign of the Vatican City go well beyond the typical duties of a priest.

With regard to Rev. Jackson, his political activities are not "religious duties." Rather, Rev. Jackson's public persona is that of a social activist who happens to be an ordained minister. To provide another example, Father Robert Drinan served in the United States House of Representatives not as a priest, who in his official capacity answered to the Pope, but as an elected member of Congress who answered to the people of the Massachusetts district he represented.

Counsel asserts that the issue of the beneficiary's compensation should be immaterial, because "religious occupations generally are entered into on a volunteer basis, with no expectation of monetary benefits." It remains that, by law, the beneficiary must seek to enter the United States *solely* for the purpose of working as a minister. If a religious 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). We see no reason to believe that Congress intended for aliens to be able to obtain permanent immigration benefits simply by pledging to perform volunteer work at their respective houses of worship. The special immigrant religious worker classification is an employment-based, rather than activity-based, classification. Furthermore, the Board of Immigration Appeals, finding against the alien in *Matter of Varughese*, observed that the alien's "work at the church has been of a voluntary nature" and "he [was] not compensated." *Id.* at 399.

Counsel then observes that “beneficiary was still considered a Pastor of his ministry while in the U.S. on a temporary visit as the representative of his church.” The standard, however, is not whether the beneficiary was *nominally* a pastor. He must have been *carrying on* the vocation of a minister continuously throughout the qualifying period. The petitioner must therefore demonstrate not only that the church in the Philippines was under the (apparently false) impression that the beneficiary intended to return, but also that the beneficiary was actually engaged, full-time, in qualifying ministerial work. Otherwise, the two-year requirement becomes meaningless because even a minister on an extended sabbatical, who had performed no religious duties of any kind for two years, could still claim to be a “minister” on the basis of a previous ordination.

Beyond all these arguments, the petitioner has not established that the beneficiary carried on the vocation of a minister at Capital Baptist Church. The few documents from that church identify the beneficiary as one of several Sunday school teachers. The regulations at 8 C.F.R. § 204.5(m)(1) and (3)(ii)(A) require that the beneficiary must have carried on *the* vocation or occupation, rather than *a* vocation or occupation, indicating that the work performed during the qualifying period should be substantially similar to the intended future religious work. The underlying statute, at section 101(a)(27)(C)(iii), requires that the alien “has been carrying on such . . . work” throughout the qualifying period. An alien who seeks to work as a minister has not been carrying on “such work” continuously if he worked for a year or more as a Sunday school teacher during the qualifying period.

Based on the above, we concur with the director’s finding that the petitioner has not satisfactorily established that the beneficiary meets the requirement of two years of continuous experience immediately prior to the filing date.

The remaining two issues are somewhat interconnected. Pursuant to 8 C.F.R. § 204.5(m)(4), the petitioner must state how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration). 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.

Rev. [REDACTED] states that the beneficiary “is expected to spend at least twenty hours a week in the service of our organization. Occasionally, he may be called upon to provide additional hours of pastoral services.” Rev. Abante states that the beneficiary “will be provided a modest monthly allowance/stipend,” but he does not specify the amount of this stipend. The petitioner’s initial submission includes a “Profit and Loss Statement,” showing a net income of \$30,909.45 for calendar year 2002.

The director instructed the petitioner to submit “the terms of payment for services or other remuneration,” and evidence to establish the petitioner’s ability to meet those terms. The petitioner, in response, has submitted copies of five checks, each for \$1,000, issued to the beneficiary between June 22, 2003 and November 2, 2003. The copies appear to be from the petitioner’s own carbonless copies of the checks, rather than the canceled original checks, and therefore there is no indication that these checks were cashed.

The petitioner has also submitted a copy of its quarterly wage report, submitted to the State of California. This document identifies five employees who received wages from the petitioner during the quarter ending September 30, 2003. The beneficiary is not among those named, even though two of the \$1,000 checks are dated during the relevant quarter. Another document lists seven paid employees during the same quarter (the five from the state report, plus two others). Again, the beneficiary's name is not on this document. One could argue that the beneficiary's name does not appear because the beneficiary worked for the petitioner in Virginia, not California. In that case, the quarterly report is simply irrelevant. The petitioner provides no comparable documentation to show wages paid to its workers in Virginia.

The petitioner has submitted a second copy of its 2002 profit and loss statement, with an attestation signed by four officials of the petitioning church to the effect that the statement is accurate. Under "expenses," the statement lists several salaries next to the names of each salaried employee. The beneficiary's name is not shown on this statement.

The director determined that the petitioner had not set forth a qualifying job offer, because "[t]he petitioner has not adequately established that that needs of the petitioning entity will provide permanent, full time religious work for the beneficiary in the future." The petitioner has promised only part-time work for "a modest stipend."

On appeal, counsel maintains that the director "has acted arbitrarily in selecting only such evidence that it deems 'unpersuasive.'" Counsel protests that the director ignored "other corroborating evidence such as petitioner's actual check payments to beneficiary . . . [and the] quarterly state report of other employees' wages." As noted above, there is no evidence that the checks to the beneficiary were ever cashed. The quarterly report and the profit and loss statements both list individual employees by name, and neither document reflects any payments to the beneficiary at all.

The above-cited regulation at 8 C.F.R. § 204.5(g)(2) 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. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). What evidence the petitioner *has* submitted is either inconsistent or irrelevant.

The petitioner still has not established such basic details as the beneficiary's proffered salary. The checks in the initial group submitted each show the same amount, but are irregularly spaced in time. A new group, submitted on appeal, varies in amount from check to check, establishing, at best, that the petitioner pays the beneficiary what it wants to, when it wants to, with no discernible consistency. The assertion that the beneficiary will work "at least twenty hours" a week for a "modest stipend" of variable size is not a qualifying job offer, because it is not sufficient to establish that the beneficiary will work *solely* in the vocation of a minister (without recourse to other employment) as required by law.

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.