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U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

JAN 31 2005

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:  
WAC 03154 54174

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:

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.

*Mai Johnson*

*R* 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 an Associate Pastor. The director denied the petition on January 16, 2004 based on a determination that the petitioner failed to establish that the beneficiary had been continuously performing full-time work as an Associate Pastor for the two-year period immediately preceding the filing of the petition and that the beneficiary's duties relate to a traditional religious function in the petitioner's church.

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 an 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-year period 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."

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 April 22, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as an Associate Pastor for two years immediately prior to that date. The Form I-94, Arrival and Departure Record, indicates that the beneficiary initially entered the United States on August 3, 2000 as a B-1 nonimmigrant. The record further reflects that the beneficiary received approval to extend her stay as a B-1 nonimmigrant until May 2, 2001. On March 14, 2003, the beneficiary subsequently received approval to change her nonimmigrant status to that of an H-1B nonimmigrant with authorization to remain in the United States until September 1, 2003. Thus, the beneficiary was in the United States during the entire qualifying period.

the petitioner's Assistant Superintendent, states that it "intends to employ" the beneficiary as an Associate Pastor. In a letter dated December 5, 2002, Mr. Gable states that the beneficiary's duties will "include but are not limited to: establishing a Filipino Outreach Fellowship in the San Fernando Valley; preaching and teaching the Word of God, ministry of visitation, and training Filipino converts."

The director instructed the petitioner to submit detailed information about the beneficiary's claimed work throughout the two years preceding the filing date, as well as "evidence to show how the beneficiary supported [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 to the director's request for evidence, Rev. Senior Pastor of the petitioning church, states:

[The beneficiary] has been a great help to our ministry. Since she became a member to our congregation, she has been involved in the ministry as a volunteer minister . . . [the beneficiary's] needs were provided through love offering from members of the body of Christ and free housing and food from her relatives.

The petitioner also submitted an affidavit from the beneficiary's cousin who stated that the beneficiary "has been staying in [the cousin's] residence since her arrival in California. Housing and food are provided free of charge indefinitely."

We are not persuaded by either of these evidentiary claims. First, the petitioner has submitted no documentation to support his assertion that the beneficiary's needs were "provided through love offering" from members of the church. 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). Second, the record does not support the beneficiary's cousin's claim that the beneficiary has been staying in the cousin's residence at California from August 26, 2000 to the time of filing as the address listed for the beneficiary on the Form I-360 indicates the beneficiary's address as 8032 Dumbarton Ave., Los Angeles, California. 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).

Additionally, the petitioner submitted a series of documents, collectively labeled as the beneficiary's "Work History" from April 22, 2001 to April 22, 2003. There is no indication of when these individual pages were printed. There is no reason to believe that the "work history" constitutes persuasive, contemporaneous evidence of the beneficiary's work for the petitioner. The petitioner has not submitted any documentation at all from the qualifying period that unambiguously establishes the beneficiary's full-time work as an Associate Pastor. Further, the fact that the beneficiary was residing in the United States in H-1B nonimmigrant status through a claim of employment with Marian College further undermines the petitioner's claim of the beneficiary's full-time employment as an Associate Pastor during the requisite two-year period.

In his denial, the director noted that the beneficiary's position as a "volunteer minister" involves no compensation from the petitioner. As the beneficiary's duties were performed on a volunteer basis, the director concluded that the beneficiary did not have the requisite two-years of continuous experience in the position or that the beneficiary's position is a religious occupation as it is not related to a traditional religious function.

On appeal, the petitioner acknowledges that the beneficiary "is not receiving a salary" because she does not have work permit and claims that the beneficiary's duties can only be performed by a "trained, credentialed 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. Rpt. 101-723, at 75 (Sept. 19, 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 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. Com. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Com 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 salaried. To hold otherwise would be contrary to the intent of Congress.

As the record does not demonstrate the beneficiary received remuneration for his services, the petitioner is unable to show that the beneficiary had the requisite two years experience as an Associate Pastor immediately preceding the filing date of the petition.

The remaining issue is whether the beneficiary's position constitutes a qualifying religious occupation for the purpose of special immigrant classification. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definition:

*Religious occupation* means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fundraisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position it is offering qualifies as a religious occupation as defined in the regulation. 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 reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

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.

In this instance, the petitioner offered nothing to show that the religious denomination considers the beneficiary's duties to be a traditional religious function, routinely assigned to a full-time paid employee, rather than tasks usually delegated to a part-time worker or a volunteer from the congregation. Instead, the record reflects that the beneficiary is an unpaid volunteer. The fact that the petitioner is able to provide services and operate as a church without the beneficiary serving in a full-time, paid capacity, does not support the petitioner's assertion that the beneficiary's position is considered a traditional religious function by the petitioner's denomination.

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.