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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: JUL 22 2005
WAC 03 137 53555

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, 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 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.

On appeal, petitioner submits a brief and 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 sole 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 March 27, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a pastor throughout the two-year period immediately preceding that date.

In its March 3, 2003 letter accompanying the petition, the petitioner's pastor, Reverend [REDACTED] stated that the beneficiary began working with the petitioning organization in 1997 as its full-time education pastor, whose duties included Sunday school education, youth group activities, visitation, counseling and preaching. Reverend [REDACTED] stated that, since January 1, 2003, the beneficiary has served as full-time pastor with the petitioner's branch church in Antioch, California, and that his duties there included performing baptisms, preaching, counseling, giving benedictions, performing marriage and funeral services, and "other related duties." Reverend [REDACTED] further stated that the beneficiary receives \$1,600 per month for his services. The petitioner submitted no documentary evidence with the petition to corroborate the beneficiary's employment with 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 Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In a request for evidence (RFE) dated March 29, 2004, the director instructed the petitioner to:

Provide evidence of the beneficiary's work history beginning from at least March 27, 2001, and ending March 27, 2003. Provide a breakdown of duties performed in the religious occupation for an average week . . . 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 (an 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 resubmitted its March 3, 2003 letter, and submitted copies of Forms 1099-MISC, Miscellaneous Income, issued to the beneficiary in 2002 and 2003, and reflecting "other income" of \$12,000 and \$20,470, respectively. The petitioner also submitted a copy of a year 2002 W-2, Wage and Tax Statement, issued to the beneficiary by [REDACTED] Et Al PTR Copyman reflecting wages of approximately \$9,587. The beneficiary's unsigned and undated Forms 1040, U.S. Individual Income Tax Returns, for the years 2002 and 2003, which he filed jointly with his wife, reflected wages of \$28,976 and \$20,377, and business income of \$6,525 and \$15,477. The beneficiary's spouse listed her occupation simply as "employee."

The petitioner submitted no other details of the beneficiary's work with the petitioning organization and provided no corroborative evidence of the beneficiary's employment during 2001.

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 director questioned the difference in wages reported by the beneficiary on his Form 1040 and that reflected on the Forms W-2s, noting that the beneficiary reported more wages than were reported by his employer and noting that the petitioner did not explain the beneficiary's self-employment income.

Counsel asserts on appeal that the director failed to notify the petitioner of the deficiencies in its submissions and failed to give the petitioner an opportunity to remedy those deficiencies. Counsel's assertion is clearly without merit, as the director, in his RFE, set out in specific details the evidence that the petitioner should submit in support of the petition.

On appeal, the petitioner stated that the wages reported on the beneficiary's Forms 1040 included the wages earned by his wife. Although omitting additional documentation for 2002 and 2003, the petitioner submitted copies of the beneficiary's tax returns for the years 1999, 2000 and 2001, including copies of Forms W-2 issued to the beneficiary's wife by Wells Fargo & Company. These returns substantiate the petitioner's

statement that the reported wages included the wages paid to the beneficiary's spouse and those paid to the beneficiary by [REDACTED] Et Al PTR Copyman. The petitioner did not submit complete copies of the beneficiary's tax returns and therefore the record does not include copies of the Schedules SE reporting the beneficiary's self-employment income. However, the documentation suggests that the beneficiary reported his income from the petitioner as self-employment.

In a letter submitted with the appeal, Reverend [REDACTED] stated that the beneficiary worked for his friend, Mr. [REDACTED] on a part time basis and "was given some compensation" for his services. The petitioner, however, failed to submit the details of the beneficiary's work with the church as requested by the director in his RFE. The record does not reflect the hours that the beneficiary devoted to his work with the petitioner and those in which he was engaged in his secular employment. Although the beneficiary's compensation from the petitioner clearly exceeds that paid by [REDACTED] Al PTR Copyman, it does not, without more, establish that the beneficiary was primarily engaged in a religious occupation throughout the qualifying two-year period.

Counsel asserts on appeal that the director erred in determining that, as the beneficiary was partly dependent upon supplemental income for his support, the petitioner failed to establish that the beneficiary was continuously employed in a religious occupation. Counsel correctly noted that the provisions of 8 C.F.R. § 204.5(m)(4), which state that the petitioner must submit documentation that clearly indicates that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support, is applicable only to the proffered job. The petitioner must establish, however, 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. See *Matter of B*, 3 I&N Dec. 162; *Matter of Bisulca*, 10 I&N Dec. 712; *Matter of Sinha*, 10 I&N Dec. 758; *Matter of Varughese*, 17 I&N Dec. 399.

Counsel incorrectly concludes that the regulation would always permit supplemental employment as long as the alien is not "solely" dependent upon it for his financial support. The statute and regulation clearly do not extend to ministers. Section 101(a)(27)(C) of the Act requires those seeking entry into the United States as ministers to do so "solely for the purpose of carrying on the vocation of a minister of that religious denomination." The regulation at 8 C.F.R. § 204.5(m)(4) states that "[t]he 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."

The record is unclear as to the time the beneficiary devoted to his secular employment and to his religious occupation. The evidence submitted is insufficient to establish that the beneficiary was continuously engaged as a pastor with the petitioner for two full years preceding the filing of the visa petition.

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.