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U.S. Citizenship
and Immigration
Services

CI

FILE:

[REDACTED]
WAC [REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: JUN 22 2005

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:

[REDACTED]

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 initially approved the special immigrant religious worker petition. On further review of the record, the director determined that the self-petitioner (petitioner)¹ was not eligible for the benefit sought. Accordingly, the director properly issued a notice of intent to revoke the approval of the immigrant visa petition, and the reasons therefore, and exercised his discretion to revoke the approval of the petition on December 31, 2003. The petitioner filed an appeal to this decision, and the petitioner's timely appeal is now before the Administrative Appeals Office (AAO) for review. The AAO will dismiss the appeal.

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Esteime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Esteime*, 19 I&N 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Id.* at 582. The approval of a visa petition vests no rights in the [petitioner], as approval of a visa petition is but a preliminary step in the visa application process. The [petitioner] is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 582.

The petitioner seeks classification 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 teacher of religion. In revoking the petition, the director determined that the petitioner did not have the requisite experience during the two-year period prior to the filing of the petition.

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;

¹ Despite the fact that "Word for the World" is listed in "Part 1" of the Form I-360 as the organization filing the petition, the petition is signed by [redacted] not by any authorized representative of Word for the World. Accordingly, [redacted] is considered to be a self-petitioner.

(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.”

The petition was filed on April 12, 2001. Therefore, the petitioner must establish that she was continuously working in essentially the same position as being offered by the church for the two years immediately prior to that date, the period covering April 12, 1999 to April 12, 2001. The record reflects that the petitioner entered the United States on March 16, 1999 as a B-2 nonimmigrant with permission to remain until September 1999. There is no evidence that the petitioner received an extension of her B-2 nonimmigrant status to extend her stay beyond this period. The record does, however, contain a Form I-797, Approval Notice, granting the petitioner permission to remain in the United States as an R-1 nonimmigrant from December 6, 2000 to June 14, 2004. Accordingly, as it appears that for much of the qualifying period, the petitioner was not in a status authorized to work.²

In support of the initial filing, [REDACTED] pastor of the church for which the petitioner seeks employment, describes the petitioner's past duties and the job offered. Pastor [REDACTED] states:

When [the petitioner] arrived in the United States to visit she attended WWCF [Word for the World Christian Fellowship] in Los Angeles, of which I am pastor . . . [The

² The petitioner was in B-2 status from March 16, 1999 to September 15, 1999. She did not obtain R-1 status until December 2000.

petitioner] initially volunteered her time and expertise throughout our children's ministry and is now employed full-time as a religious worker by this church pursuant to her R-1 nonimmigrant visa status. She teaches in our church in Los Angeles every Sunday morning and in our Arleta congregation frequently.

* * *

[The petitioner] will serve our church as a Religion Teacher and Youth and Children Worker, as she so successfully served in the Philippines and Singapore.

* * *

[The petitioner] who is now ordained, will continue to be employed as a Religion Teacher/Youth and Children worker with a salary of \$800 per month for her services. She may also receive assistance in kind from time to time in addition to her salary. This remuneration is more than sufficient to ensure that she has no need to seek employment outside our ministry.

The petitioner provided no specific details or evidence regarding the number of hours worked during the requisite period. 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)). Further, although the petitioner submitted copies of checks issued to her from the church, the checks cover the period from January 2001 to March 2001. As such, they are insufficient to show her full-time, continuous work during the entire requisite period.

The director approved the petition on February 27, 2002. Subsequently, on May 29, 2002, the petitioner filed a Form I-485 Application to Adjust Status. As part of the adjustment application, the petitioner submitted Form G-325A, Biographic Information. The instructions on that form require the applicant to list her employment over the past five years (2002-1997). As it relates to the two-year period preceding the filing of the Form I-360, the petitioner listed her employment as "religion teacher" for Word for the World from December 2000 to the present and "children's ministry" for Jesus My Lord Fellowship in the Philippines from October 1990 until June 2000. It is unclear how the petitioner claims employment in the Philippines until June 2000 when the information in the record reflects that she entered the United States in March 1999. 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).

We further note that the petitioner claims no employment with Word for the World until December 2000 when she received approval as an R-1 nonimmigrant. Although the petitioner submitted copies of her 2001 tax return and Form 1099-MISC indicating a salary of \$9,600 from Word for the World, as well as copies of checks from Word for the World for the period covering April 2001 through April 2002, no evidence has been submitted to establish the petitioner's remuneration prior to 2001 or to establish that the petitioner actually worked on a full-time basis. The lack of documentation prior to January 2001 casts doubt on the

petitioner's claim that she began her employment with Word for the World, on a full-time basis, in June 2000. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

On October 29, 2003, the director issued a notice of intent to revoke noting that the petitioner was a volunteer during the requisite period, that her salary of \$800 per month was not indicative of full-time employment and that she failed to provide documentary evidence that her duties for Word for the World required a full-time employee.

In response to the notice of intent to revoke, to substantiate the petitioner's claim of full-time work, counsel for the petitioner provided a summary of the petitioner's weekly schedule, copies of the church's newsletter and calendar of church activities for November 2003.

The director revoked the approval of the petition on December 31, 2003, on the ground that the beneficiary did not have the necessary qualifying experience.

On appeal, counsel indicates that she is sending a brief and/or evidence to the AAO within 30 days. To date, more than 17 months after the filing of the appeal, the record contains no further submission. We, therefore, consider the record to be complete as it now stands.

On the Form I-290B, counsel argues that "the petition is for a bona fide ordained Minister of Religion" and that she "may not . . . be demoted to a mere part-time Sunday School teacher by the gender prejudice of the examiner, as has apparently occurred here."

Counsel's accusation of "gender prejudice" is both inflammatory and spurious and her argument that the director "demoted" the petitioner to a mere "teacher" rather than an "ordained minister" is without merit. We refer to the numerous references by Pastor [REDACTED] at the position being offered to the petitioner is that of a "Religion Teacher," and a "Youth and Children Worker." We do not and have not disputed the fact that the petitioner is an ordained minister. However, the position for which the petitioner seeks employment, as described in the evidence provided by the petitioner herself, is that of a teacher of religion, not a minister.

Counsel then states that the petitioner has been "employed continuously, exclusively and full-time" for Word for the World from December 6, 2000 to June 14, 2003, and argues that the director's attempt to amend the Act to require "civil service-type employment as experience is both over-broad and over-narrow in that it includes persons Congress did not mean to benefit from the statute and excludes persons Congress means to benefit from the statute." Counsel further argues that the director's finding regarding continuous employment is "a radical revision and change in the meaning" of the Act.

We do not agree. First, 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 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. 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.

Second, counsel’s assertion that the petitioner “has been employed continuously, exclusively and full time . . . from [December 6, 2000 to June 14, 2000]” does not cover the entire requisite period. Counsel does not make any assertion and provides no further evidence on appeal that the petitioner’s work before December 6, 2000 was also performed “continuously, exclusively and full time.”

Accordingly, we cannot conclude that the petitioner, throughout the two-year qualifying period, had been working full-time and continuously. We, therefore, uphold the director’s finding that the petitioner has not satisfied the two-year experience requirement.

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 met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.