

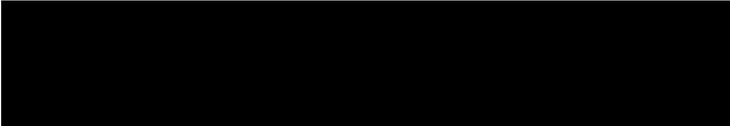


U.S. Citizenship
and Immigration
Services

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

CI



FILE: [REDACTED]
SRC 02 112 53416

Office: TEXAS SERVICE CENTER Date: JUN 29 2005

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas 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 minister. 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, that the position qualified as that of a religious worker, that the beneficiary was qualified for the position within the organization, or that the petitioner had the ability to pay the beneficiary the proffered wage.

On appeal, the petitioner 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 first 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 February 19, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister throughout the two-year period immediately preceding that date.

In its letter accompanying the petition, the petitioner stated that the beneficiary “has been a member of the Christian and Missionary Alliance since 1987, and has been working as an Interim Pastor since 1989. On March 7, 1998 [he] was ordained as a reverend pastor at the Christian and Missionary Alliance Church in Libreville, Gabon.” The petitioner did not indicate when the beneficiary became associated with the petitioning organization, and did not submit any evidence of work performed by the beneficiary during the qualifying two-year period.

In a request for evidence (RFE) dated March 26, 2003, the director instructed the petitioner to:

Submit a detailed description of the beneficiary’s prior work experience including duties, hours and compensations, . . . accompanied by appropriate evidence (such as copy of pay stubs or checks, W-2’s or other evidence as appropriate . . . All this information requested must include the two years preceding the filing of this petition. Provide English translation with all documentation.

In response, the petitioner submitted an unsigned letter dated June 19, 2003. The writer stated, “Since his arrival to the Church in 2000, [the beneficiary] has been a great help. He has been serving as a volunteer pastor in the church.” The petitioner submitted a copy of a “certificate of recognition” dated June 13, 2003, which states that the beneficiary “has this day been recognized as an Elder in the Church of God” who is authorized to “administer the sacraments and ordinances and to feed the flock of God.”

The petitioner also submitted copies of the beneficiary’s Forms 1040, U.S. Individual Income Tax Returns, for the years 2001 and 2002. The beneficiary indicated on the returns that he is a “pastor volunteer worker” and that his wife is a “house wife.” The returns reported income of \$13,500 in 2001 and \$17,588 in 2002. Both returns are dated in June 2003, and the record does not reflect that the returns were ever filed with the Internal Revenue Service. Further, as the petitioner and the beneficiary both indicate that he worked in a volunteer capacity with the church, the record is unclear as to the source of the beneficiary’s stated income in 2001 and 2002. The petitioner submitted no other evidence of the beneficiary’s work during the two years immediately preceding the filing of the visa petition. 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)).

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.

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 "personal statement" from the beneficiary in which he states that he served as pastor of the Sotega, Avea and PK8 Churches in Libreville, Gabon after his ordination as a minister with the [REDACTED] in 1998. The beneficiary states that his "role at each church was to manage, minister and grow these local churches" and that he took "an official leave of absence from these churches in 2002." The beneficiary states that he was paid the equivalent of \$750 U.S. per month. The record contains a letter from the [REDACTED] Church President, which reflects that the beneficiary was paid a monthly salary of \$750. However, the letter does not indicate the termination date of the beneficiary's employment. We note that the record reflects that the beneficiary arrived in the United States in August 2000. The

record contains no information as to his continued relationship with the [REDACTED] following his arrival in the United States. The petitioner submitted no documentary evidence of any work performed by the beneficiary for the petitioning organization during the qualifying period. *Matter of Soffici*, 22 I&N Dec. at 165.

The evidence does not establish that the beneficiary was continuously employed as a minister for two full years prior to the filing of the visa petition.

The second issue on appeal is whether the petitioner established that the position qualifies as that of a religious worker.

The petitioner submitted evidence that the beneficiary was ordained in 1998 by the [REDACTED] in Gabon. The petitioner identifies its denomination as the [REDACTED]. The director determined that, as the petitioner had not established a religious affiliation between the [REDACTED] it had not established that the work done by the beneficiary qualifies as that of a religious worker.

Whether or not the beneficiary qualifies for the position within the petitioning organization does not determine whether or not the position qualifies as that of a religious worker within the meaning of the statute and regulation. We withdraw this determination by the director.

The petitioner stated that, in the position, the beneficiary would be responsible for “preaching the word of God, administering, evangelizing, wedding celebration[s], baptisms, baby christenings and hospital/home visitation.” The petitioner also submitted a copy of an excerpt from what it identifies as the *Manual of the Church of the Nazarene*, which lists the duties of the pastor within the denomination.

The evidence sufficiently establishes that the position is that of a religious worker within the meaning of the statute and regulation.

The third issue is whether the petitioner established that the beneficiary was qualified for the position within the organization.

The petitioner submitted a copy of a letter from [REDACTED] president of the [REDACTED] who stated that the beneficiary has a theological diploma and was ordained as a minister on March 7, 1998. The petitioner submitted a copy of the beneficiary’s certificate of ordination; however, the translation accompanying the certificate does not comply with the provisions of 8 C.F.R. § 103.2(b)(3) in that the translator is not identified, did not certify that the translation was complete and accurate, and did not certify that he or she is competent to translate from the French into English. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The petitioner also submitted a copy of a June 2003 “certificate of graduation” issued to the beneficiary by the [REDACTED] indicating that he had completed the course of study as an “elder.” A June 2003 “certificate of recognition” issued by the [REDACTED] authorizes the beneficiary to “administer the sacraments and ordinances and to feed the flock of God.” A June 24, 2003 letter from the [REDACTED] stated that the beneficiary had “pastored” in Gabon from 1989 to 1999, and that his job description as a pastor with the [REDACTED] would be the same as the duties he performed in Africa.

Nonetheless, the petitioner submitted no evidence that the beneficiary was qualified to perform as a minister with the petitioning organization prior to June 2003. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971); 8 C.F.R. § 103.2(b)(12). Therefore, the evidence does not establish that the beneficiary was qualified for the position within the petitioning organization at the time the petition was filed in 2002.

The fourth issue to be discussed is whether the petitioner 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.

The petitioner stated that it would pay the beneficiary \$15,000 per year plus room and board. As evidence of its ability to pay this salary, the petitioner submitted copies of what appears to be its financial statements for the years 1999, 2000 and 2001. However, the documents are not accompanied by a full English translation as required by the regulation. *See* 8 C.F.R. § 103.2(b)(3). The petitioner also submitted a statement from its bank, verifying that the petitioner had an established checking account with the bank. In response to the director's RFE, the petitioner submitted copies of its financial statements for May 1, 2002 through March 31, 2003, and copies of its monthly checking account statements for the period January 2003 through April 8, 2003.

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 primary evidence.

Accordingly, the evidence does not establish that the beneficiary had the continuing ability to pay the proffered wage as of the date the petition was filed.

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.