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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

*CI*

[REDACTED]

FILE: [REDACTED]  
EAC 01 177 50134

Office: VERMONT SERVICE CENTER

Date: **MAR 11 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.

*Mari Johnson*

*S* Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center denied the employment-based immigrant visa petition. The matter 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 the requisite two years of continuous work experience as a pastor immediately preceding the filing date 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;

(ii) seeks to enter the United States--

\* \* \*

(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 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 28, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a pastor throughout the two years immediately prior to that date, the period from April 28, 1999 through April 28, 2001. Part-time work, or work interrupted by secular employment, is not continuous. See *Matter of B*, 3 I&N Dec. 162 (CO 1948), and *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

The Form I-94, Arrival and Departure Record, indicates that the beneficiary initially entered the United States on July 31, 1992 as a B-2 nonimmigrant with authorization to remain in the United States until January 30, 1993. It is noted that the record contains no evidence that the beneficiary received authorization to remain in the United States beyond January 30, 1993. As such, any work performed by the beneficiary in the United States during the qualifying period was performed without authorization.

In a letter submitted with the initial filing of the petition, Rev. [REDACTED] Administrative Bishop of the petitioning church, states that the beneficiary "was called and commissioned by the [C]hurch of God as a Minister of the Gospel of Jesus Christ on December 8, 1983, and has been functioning as a faithful member of

the ministerial fraternity of the Church of God ever since,” but does not elaborate on the nature or details of this work.

The petitioner also submitted two letters which reference the beneficiary’s employment in the United States. The first letter, written by [REDACTED] of the United Deliverance Church of God, Inc., in Brooklyn, New York states that the beneficiary “came to work for the United Deliverance Church of God from 1994 until 1998 as an Assistant Pastor.” The second letter, dated April 28, 1998, written by [REDACTED] State Overseer for the Church of God New York State Office, indicates that the beneficiary “serves as Pastor at one our local churches, Sterling Place Mission Church of God.” As both references to the beneficiary’s employment refer to dates prior to the requisite two-year period, the letters are not considered evidence of the beneficiary’s qualifying employment.

The petitioner also submitted copies of five paychecks covering the period February 2001 through April 2001 from the Upper Room Church of God. However, as the checks cover only a four-month period during the two-year qualifying period, they also do not establish the beneficiary’s continuous employment throughout the two-year period.

On January 15, 2002, the director requested further evidence of the beneficiary’s work during the qualifying period. Specifically, the director requested evidence of how the beneficiary has been supporting himself in the United States and “historical documentation such as time sheets, work logs, pay receipts, etc.” verifying the beneficiary’s two years of continuous work experience at the time of filing.

In response, Bishop Spivey indicates that the church is “not able to supply information prior to the time the beneficiary began working with us [on] April 27, 2001.” Bishop Spivey further states that “as far as the two qualifying years are concerned, the beneficiary has demonstrated that he has met the requirement, this is supported by reference letters from Bishop Sylvester Rumble dated March 26, 2001 and [REDACTED] dated April 28, 1998.” As noted previously, however, and contrary to Bishop Spivey’s statement, the beneficiary’s “reference letters” do not establish the beneficiary’s employment during the qualifying period.

The director denied the petition on August 6, 2002, noting the beneficiary’s employment was “unclear.” The director further stated that “[w]hile it is apparent that the beneficiary has been employed by your church, you have not submitted evidence that persuasively demonstrates he has been employed full-time” for the entire qualifying period.

On appeal, the petitioner submits additional documentation, such as death certificates and memorial notices for family members, none of which relates to the beneficiary’s employment during the qualifying two-year period.

In a letter submitted by Sister [REDACTED] Ms. [REDACTED] states that the Upper Room Church of God was founded by the beneficiary and that the beneficiary is presently the senior pastor. Ms. [REDACTED] further states:

[The beneficiary] has been a member of the church of God for [o]ver 34 [years] and has been a pastor with that same church for over 23 [years]. He served as Sunday school teacher, president of the youth department, board chairman, assistance pastor, played in the music department, evangelist, and worked in many other position[s] essential to the development of the church.

Although Ms. [REDACTED] states that the beneficiary has “been a pastor . . . for over 23 [years],” she does not indicate where he served as pastor or the dates spent in different churches within the Church of God.

The record remains absent evidence to establish that the beneficiary had the requisite two-years experience at the time of filing. For this reason, the petition may not be approved.

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.