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FILE: LIN 03 201 50006 Office: NEBRASKA SERVICE CENTER Date: MAY 02 2005

IN RE: Petitioner:
Beneficiary:



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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office 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 responsible for curriculum development and teacher training. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience in the position sought 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--

(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) 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 experience in the religious vocation, professional religious work, or other religious work. The petition was filed on June 13, 2003. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of her intended position throughout the two years immediately prior to that date, the period covering June 13, 2001 through June 13, 2003.

In a letter accompanying the initial filing, Rev. [REDACTED] president of the petitioning church, states:

Two years ago [the beneficiary] became interested in ministering to young adults and with the help of her advisors chose to complete her Christian Outreach Program and Master's Independent Studies by assisting in the development of the curriculum for a new outreach program, the youth ministry You are the One (YATO).

During her graduate studies, [the beneficiary] continued to fulfill her duties as a minister. She conducted worship services and performed the Holy Sacraments at the [New Christian Church of Full Endeavor] NCCFE in Wisconsin and also traveled to several cities in the U.S. . . . to fulfill her ministerial duties in outreach programs and for YATO. In 2002 [the beneficiary] conducted worship services and performed other ministerial duties while in Australia. As a part of the NCCFE's volunteer ministry [the beneficiary] has continuously carried out the duties of an ordained minister for the past three years while finishing her studies at Endeavor Academy.

The petitioner does not indicate that the beneficiary received any remuneration for her services during the two-year period preceding the filing of the petition. Instead, Rev. [REDACTED] uses terms that imply future employment, rather than terms already in effect. He states:

The Board has approved [the beneficiary's] position and *will provide* the funding necessary to meet all of [the beneficiary's] needs. The NCCFE *will provide* [the beneficiary] with room and board and a \$300 per month stipend for her personal needs... [the beneficiary] has been practicing a simple monastic lifestyle for the eight years she has been a member of our order and seems very suited to it.

[Emphasis added.]

On October 27, 2003, the director instructed the petitioner to submit additional documentary evidence to establish the nature and extent of the beneficiary's religious work during the two-year qualifying period. In response, Rev. [REDACTED] submits a second letter, which states:

Over the past two years, [the beneficiary's] time has been divided between her full time graduate studies at NCCFE's ministerial school, Endeavor Academy, facilitating Advents of Awakening to the Light Within spiritual retreats and youth ministry workshops and serving as a voluntary minister of NCCFE.

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[The beneficiary's] course work for her graduate studies over the past two years included a morning class five days a week (80 hours per month) at Endeavor Academy, leading an afternoon workshop once a week to train other how to present the YATO ministry . . . and meeting three afternoons a week with the YATO team . . . Over the past two years, [the beneficiary] has spend an average of approximately 65 hours per month with the development of our youth ministry.

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[The beneficiary] has been in continuous service as a [m]inister for NCCFE since her ordination in July 2000. She has volunteered her services as a minister at our mother church in Wisconsin and performed ministerial outreach throughout the United States and in her home country of Australia. [The beneficiary] spends approximately 15 hours a month conducting worship services, prayer meetings, vespers and performing other

ministerial duties. In addition, [the beneficiary] chairs a Twelve Step and *A Course in Miracles* meeting called A Way Out once a week and is available to those who request her help with spiritual counseling and mentoring.

The director denied the petition based on a determination that the beneficiary had not satisfied the two-year continuous experience requirement. Specifically, the director noted that the beneficiary was a student for much of the qualifying period, as well as an unpaid, part-time volunteer.

On appeal, Rev. [REDACTED] submits a third letter and copies of documents previously submitted. In the letter submitted on appeal, Rev. Howard first addresses the director's finding regarding the beneficiary's 15 hours per month of volunteer work. Rev. [REDACTED] states:

[T]his ministerial service represents just a portion of [the beneficiary's] activity for the Church and is not directly relevant to this application. It was enclosed only as evidence of her dedication and commitment to her calling. It does not represent the work for which we wish to employ her.

[The beneficiary's] relevant experience relates to the two years prior to our petition when she spent approximately 65 hours per month doing work precisely the equivalent of the position for [which] we wish to employ her

As part of their studies a number of our graduate students undertake the development of a project in an area to which they are divinely guided. [The beneficiary] was instrumental in the development and implementation of a youth ministry project . . . She developed this ministry at our seminary based on a called to minister to youth. Under supervision she learned how to develop and put into action a ministry. The success of her project prompted our decision to employ her to continue with the outreach and implementation of the [y]outh [m]inistry.

We are not persuaded by Rev. [REDACTED] attempt to counter the director's findings. First, Rev. [REDACTED] assertion that the beneficiary "spent 65 hours *per month*" [emphasis added] performing the same duties as the proffered position, does not establish that the beneficiary's duties during the requisite period equated to full-time work. Rev. [REDACTED] further fails to address the issue of the beneficiary's voluntary employment.

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 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).

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.

In this instance, although Rev. Howard refers to the beneficiary's "monastic lifestyle," the beneficiary is not a nun. Further, despite the petitioner's intent to provide the beneficiary with a stipend, as well as room and board in the future, the record contains no evidence that the petitioner provided for the beneficiary in any way during the requisite period. Although there may be other limited circumstances in which unpaid volunteer work may constitute qualifying experience, the burden of proof remains on the petitioner to establish that the claimed work took place continuously. Such continuous work has not been shown here.

Even more detrimental to the petitioner's claim of the beneficiary's continuous employment is the fact that the beneficiary was a student during much of the requisite period. Although we find the record amply reflects that the beneficiary seeks to enter the United States in order to carry on the vocation of a minister, section 101(a)(27)(C)(iii) of the Act requires that the beneficiary "has been carrying on such vocation" throughout the two-year qualifying period. Here, the beneficiary has not been carrying on "such vocation." Rather, she has been undergoing training and continuing her studies. Part-time ministerial work by a student is not continuous experience as a minister. See *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

The underlying statute, at section 101(a)(27)(C)(iii), as well as the regulations at 8 C.F.R. § 204.5(m)(1) and (3)(ii)(A) require that the beneficiary must have carried on *the* vocation or occupation, rather than *a* vocation or occupation, indicating that the work performed during the qualifying period should be substantially similar to the intended future religious work. An alien who seeks to work as a minister has not been carrying on "such work" if the alien has been a student and not carrying on the duties of a pastor for much of the preceding two years.

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.