

Identifying data needed to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[REDACTED]

CI

FILE: SRC 03 120 53277 Office: TEXAS SERVICE CENTER Date: **MAY 17 2005**

IN RE: Petitioner:
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, Texas 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). The petitioner has initially described the beneficiary's position as that of a teacher, musician, and vice president of the petitioner's board of directors. 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. In addition, the director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary, or that the position offered qualifies as a religious occupation.

On appeal, the petitioner submits arguments from counsel, witness letters, and copies of various documents.

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).

We note that, on the Form I-360, the petitioner indicates that the beneficiary has never worked in the United States without permission. Information in the beneficiary's alien file indicates that this is not the case. The beneficiary had previously entered the United States on May 7, 1996 as an R-1 nonimmigrant religious worker. The beneficiary was subsequently discovered performing secular construction work for [REDACTED] which was not permitted under the terms of his R-1 visa. On December 19, 1996, an immigration judge granted the beneficiary voluntary departure in lieu of deportation for having engaged in this unauthorized secular employment.

The fact that the beneficiary has previously engaged in unauthorized secular employment while in the United States under the pretext of being an R-1 religious worker is relevant to all of the issues raised in the director's decision. The petitioner's false assertion that the beneficiary has not engaged in such employment raises questions of credibility. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the

reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988).

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 March 24, 2003. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of the proffered position throughout the two years immediately prior to that date.

The regulation at 8 C.F.R. § 204.5(m)(2) defines “religious occupation” as an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Citizenship and Immigration Services therefore interprets the term “traditional religious function” to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

8 C.F.R. § 204.5(m)(4) requires the prospective employer to specify the terms of its job offer to the beneficiary. 8 C.F.R. § 204.5(m)(1) indicates that the beneficiary must seek to enter the United States to perform qualifying religious work.

In a letter dated February 29, 2000, Douglas E. Fulenwider, superintendent of the Louisiana District Assemblies of God, indicates that the beneficiary earns \$900 per month as a teacher, vice president of the petitioner’s board of directors, and a musician. The petitioner submits copies of bank statements, including canceled checks, showing that the petitioner issued checks to the beneficiary in June and July of 2000. All of this evidence falls outside of the March 2001-March 2003 qualifying period.

The director instructed the petitioner to “[s]ubmit a detailed description of the beneficiary’s prior work experience,” as well as Form W-2 Wage and Tax Statements or other evidence of compensation. The director specified that this evidence “must include the two years preceding the filing of this petition.” In response, the petitioner has submitted a letter from [REDACTED], pastor of the petitioning church. The letter appears to have been translated from Spanish to English by a computer program. [REDACTED] states that the beneficiary “start working in 1990 in my ministry from Panama City and actually in United States of America” (sic) [REDACTED] offers no other details regarding the beneficiary’s dates of service.

The petitioner submits a copy of an approval notice for an R-1 nonimmigrant religious worker visa issued to the beneficiary in 2000. This document, by itself, does not prove that the beneficiary went on to work for any

religious organization in 2001-2003, a point which is only emphasized by the beneficiary's past history of performing secular work while in the United States with an R-1 visa.

██████████ board secretary of the petitioning church, states that the beneficiary and his spouse "have donated to the church the amount of \$7,378.00 in the year of 2002." ██████████ in this letter, does not identify the beneficiary as a church employee or an official in its board.

The record contains a copy of the petitioner's "Application for Recognition as a General Council Affiliated Church with the General Council of the Assemblies of God," dated June 5, 2000. The document identifies the beneficiary as one of three deacons, and as one of three trustees. Under "Number of Members," the petitioner indicated "37." Under "Attendance Sunday Morning Service," the petitioner indicated "45." The petitioner also indicated that the church did not hold Sunday night services. A more recent list of church members shows 127 names. The record shows that the beneficiary has been in some way involved with the petitioning church since before the qualifying period. The matter at issue is whether this involvement has included qualifying employment experience.

Copies of the beneficiary's 2001 and 2002 income tax returns identify his occupation as "Labor," and that of his spouse as "Housewife." Forms W-2 show that Specialty Application Services, Inc., paid the beneficiary \$34,952.31 in 2001 and \$27,512.64 in 2002. Form 1099-MISC Miscellaneous Income statements indicate that the petitioning church paid the beneficiary \$13,000.00 in "nonemployee compensation" in each of those two years. The beneficiary's spouse received \$12,000.00 in "nonemployee compensation" in 2001, and \$13,000.00 in 2002. Thus, the tax returns reflect some degree of compensation from the petitioning church, but they also show that the beneficiary did not consider church work to be his occupation in 2001 or 2002.

When considering the beneficiary's intentions and his view of his actual occupation, we need not ignore that, while the beneficiary and his spouse received \$26,000 from the church in 2002, they returned much of that amount shortly afterward, the money effectively being in their possession only long enough to appear on a Form 1099-MISC. We note, also, that the filing fee for this petition was paid out of the beneficiary's personal checking account (the record contains a photocopy of the check).

As noted above, the petitioner initially described the beneficiary as a teacher, vice president of the petitioner's board of directors, and a musician. The director requested "a detailed description of the current proffered position." In response, ██████████ states that the beneficiary "has been ministry like Director of Music, Lider (Pastor) of Family Groups, Teacher of instruments in order to interpret Christian music and Vice-President of the Board of the Church" (sic). A transcript from ██████████ of the Bible indicates that the beneficiary studied for a "Spanish Ministerial Credential" from December 30, 1998 to March 30, 2001. There is no indication that the beneficiary completed the program; the lines marked "Date Issued" and "Awarded" have been left blank.

A roster of church workers identifies the beneficiary as "Vice-President ██████████" ██████████ The roster does not mention that the beneficiary has any teaching duties. Other cell group leaders and board members are listed as unsalaried volunteers, as is the director of the petitioner's Sunday school. The only paid workers are the beneficiary, his spouse, and ██████████ Given that most cell group leaders are unpaid volunteers, it is obvious that leading a cell group is not typically a paid occupation at the petitioning church. Similarly, a place on the board of directors is not indicative of a paid position, as the secretary and treasurer are unpaid volunteers as well. According to the roster, the only remaining function performed by the beneficiary, that is not also performed by a number of unpaid volunteers, is that of "Praise & Worship Leader," a position not listed in the petitioner's earlier submission. The petitioner offered no

description of the duties or work hours of the "Praise & Worship Leader," although we note that the petitioner's June 2000 application for recognition does not indicate that the petitioner holds more than one worship service per week.

The director denied the petition, observing that the beneficiary's Forms W-2 were from a secular employer, and that the beneficiary's payments from the petitioning church were "nonemployee compensation." The director determined that the petitioner has not shown that the beneficiary continuously worked for the petitioner, or that the petitioner has extended a *bona fide* offer of full-time employment in a qualifying religious occupation.

On appeal, counsel states that the beneficiary "was given a 1099 [rather than a Form W-2] upon advice of the church bookkeeper, since [the beneficiary] was on an 'R' visa, and not a permanent resident." The record contains nothing from the church bookkeeper to corroborate this claim, nor any explanation as to why that individual incorrectly believed that only permanent residents and citizens can receive Forms W-2. Another employer was, obviously, able to issue Forms W-2 to the beneficiary in 2001 and 2002.

Counsel continues: "No where [sic] on the 1099 does it say non-employee compensation." This assertion is easily and definitively proven false by examination of the Form 1099-MISC itself (a copy of which the petitioner submits on appeal). Block 7 of the form plainly reads "Nonemployee compensation." The beneficiary's compensation is shown in block 7.

Counsel states the beneficiary's "position is a traditional religious function. He directs the musical liturgy . . . , pastors family groups, counseling the members on society problems, marital problems, drinking problems, etc.; and serves [on] the board. All of these functions are [those] of a religious occupation." In a new letter, [REDACTED] refers to the beneficiary as a "minister" and states that the beneficiary works 38 hours per week, performing such functions as "Teachings of biblical studies," "Training teachers in the bible school" and "spiritual Council Hours." The beneficiary's job description continues to evolve. The previously-submitted employee roster listed "Praise & Worship Leader" as the beneficiary's only non-volunteer function. [REDACTED] new letter indicates that the beneficiary devotes only three hours a week (all on Mondays) to "Leadership of her practices of the [REDACTED] (sic). When considering whether the petitioner has extended a *bona fide* job offer to the beneficiary, we cannot ignore the inconsistencies in the various accounts of the beneficiary's duties. This same absence of a consistent description of the beneficiary's work prevents a finding that the petitioner has persuasively shown that the beneficiary's position constitutes a qualifying religious occupation.

Officials of other area churches assert that the beneficiary has occasionally performed activities at their churches. It is clear that the beneficiary has been active in some way in the local church community. At issue is the extent and nature of this work, not whether it happened at all.

The beneficiary's primary source of income since entering the United States has been as "labor" for Specialty Application Services, Inc. When determining whether an alien's religious work has been "continuous," one factor to consider is whether the alien has undertaken another occupation. *Matter of B*, 3 I&N Dec. 162 (CO 1948). It is undisputed that this beneficiary has undertaken another occupation. The available evidence shows that the beneficiary entered the United States under an R-1 visa; lost that visa due to performing secular work; re-entered under another R-1 visa; and once again engaged in secular work. He received money from the petitioning church, paying back much of it shortly afterward, and the petitioner has been unable to provide a *consistent* account of what, exactly, the beneficiary has done while working for the church. We cannot conclude that the beneficiary has continuously engaged in qualifying work for the petitioner; that the

petitioning church has extended a *bona fide* job offer; or that the beneficiary has demonstrated a genuine intention of working for the petitioning church. Rather, the available evidence points instead to the conclusion that the beneficiary's church work has been undertaken for the purpose of obtaining immigration benefits, while the beneficiary has repeatedly engaged in more lucrative secular work.

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.