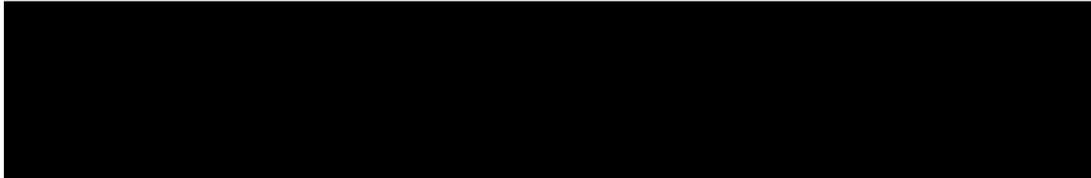




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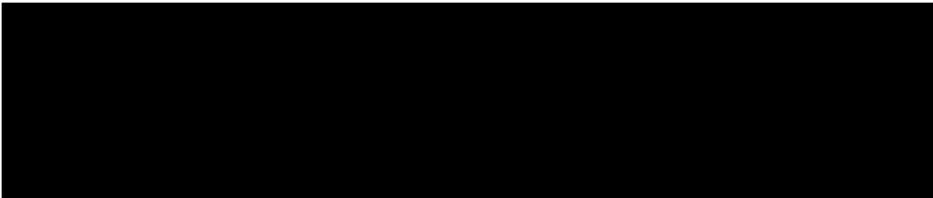
**AUG 28 2007**

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:



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.

  
for Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, California 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 mother church of a Christian denomination. 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 priest. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a priest immediately preceding the filing date of the petition.

On appeal, counsel argues that the director relied on requirements beyond the law.

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 9, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a priest throughout the two years immediately prior to that date.

The Most [REDACTED] General Secretary of the petitioning entity and Auxiliary Bishop of the Diocese of San Clemente, California, described the beneficiary's past experience:

[The beneficiary] has served as a pastoral volunteer providing pastoral care to Filipinos and Filipino-American members of the Diocese and assisted in the facilitation of home fellowship groups from January 2003 to August 2005. On August 21, 2005, he was ordained and was received into Priesthood. . . .

[The beneficiary] currently holds a valid H-1B working visa from Pro Staffing Services of America where he works as an Accountant.

Documentation submitted with the petition confirms the beneficiary's H-1B status as an employee of Pro Staffing Services of America.

On December 20, 2006, the director requested "evidence of the beneficiary's work history beginning June 9, 2004 and ending June 9, 2006." In response, [REDACTED] confirmed his earlier assertions, stating that the beneficiary "worked as pastoral volunteer of the Petitioner church from January 2003 to August 2005 and was subsequently appointed as Priest. . . . Currently, [the beneficiary] also works as a Market Research Analyst for Pro Staffing Services of America where he currently holds an H-1B working visa. He was assigned to market and promote client companies such as J M J Enterprises Inc. and Riviera Healthcare Center." [REDACTED] listed the beneficiary's priestly duties, which add up to 15-20 hours per week, and stated that, "upon approval of this petition," the beneficiary's duties will be "full time."

While [REDACTED] identified J M J Enterprises Inc. as one of Pro Staffing Services of America's "client companies," the two companies appear to be one and the same. A 2004 Form W-2 Wage and Tax Statement identifies the beneficiary's employer as "J M J Enterprises Inc dba PSSA," at the same address as Pro Staffing Services of America. Other Forms W-2 for 2004 show that the beneficiary worked for Medcrest of California Inc., GCC of San Bernardino, LLC, and Riviera Convalescent Center. On his 2004 income tax return, the beneficiary's occupation is listed as "Admin. Asst." The record does not reveal the source of the income that the beneficiary reported on his 2005 income tax return, but on that return the beneficiary's occupation is listed as "B. Assistant."

The director denied the petition on April 17, 2007, because the beneficiary was not solely engaged as a minister throughout the two-year qualifying period. On appeal, counsel asserts that, by law, the beneficiary's past experience need only have been continuous, not necessarily paid or full-time. Counsel asserts that the director impermissibly added requirements for compensation and full-time employment not found in the statute or regulations in effect at the time of filing.

By focusing exclusively on statutory and regulatory language, counsel ignores equally binding case law. 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 (Sept. 19, 1990).

One such binding precedent decision is *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980), in which the Board of Immigration Appeals found that an alien who worked part-time for the church with no compensation did not accumulate continuous experience in the vocation of a minister. *Id.* at 399, 402.

Furthermore, one need look no further than the statute itself (quoted elsewhere in this decision) for the provision that the beneficiary must be *solely* engaged in the vocation of a minister. The available evidence makes it clear that the beneficiary was not solely engaged in the vocation of a minister throughout the two-year qualifying period. The record amply demonstrates that, for much if not all of the qualifying period, the beneficiary worked for various secular employers.

Furthermore, during this same period of secular employment, the beneficiary was a part-time uncompensated volunteer, and per cited case law, such experience does not constitute continuous engagement in the vocation of a minister. Finally, the record shows that, for more than half of the two-year period, the beneficiary was not recognized as a priest in the petitioning denomination. [REDACTED] has repeatedly stated that the beneficiary earned that title in August 2005. Thus, it is immediately clear that the beneficiary was not a priest throughout the two-year qualifying period, solely, continuously or otherwise. The beneficiary was a priest for less than ten months of that period.

For the above reasons, we affirm the director’s finding that the beneficiary was not continuously engaged in the vocation of a minister throughout the two years immediately preceding the filing of the petition.

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.