



U.S. Citizenship
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Services

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[Redacted]

FILE: [Redacted]
WAC 06 120 50580

Office: CALIFORNIA SERVICE CENTER

Date: JUL 11 2007

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]

PHOTIC COPY

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.

Maura Deadrick
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 a church belonging to the Presbyterian Church (U.S.A.) Protestant 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 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.

On appeal, the petitioner submits a brief from counsel and an affidavit from the beneficiary.

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 March 7, 2006. 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.

In a letter accompanying the initial submission, [REDACTED], President of the petitioning church, stated:

Our church has approximately seventy primarily Korean speaking members and [is] growing quickly. [The beneficiary] has served for the [past] 2 1/2 years as the associate pastor for the church and receives an annual salary of \$24,000 plus a car allowance. However, since our pastor [REDACTED] passed away recently, [the beneficiary] has taken over all church related operations

Tax documents show that the church paid the beneficiary \$22,800 in 2004.

On May 31, 2006, the director issued a request for evidence, instructing the petitioner to provide additional details and evidence regarding the beneficiary's work during the two-year qualifying period. In response, the petitioner submitted an "Activity Report" showing a week-by-week breakdown of the hours the beneficiary worked. The number of hours worked varied from week to week, but the document shows the beneficiary worked 15 hours during most weeks in 2004 and early 2005, increasing to 25 hours later that year. The schedule rarely shows more than 30 hours worked in a given week. In a jointly signed cover letter accompanying this report, two church officials stated: "many of the private visits requested by members of our church with [the beneficiary] were not added to the following report, due to privacy of our members as well as inaccuracy of date and time of the visits." Other than this omission of "many of the private visits," the officials "acknowledge the . . . Activity Report on [the beneficiary] to be accurate and precise for the period of March, 2004 thru March 2006."

The director denied the petition on September 1, 2006, stating that the petitioner's documentation shows that the beneficiary worked "an average of 25 hours per week." The director asserted that "part-time employment does not constitute qualifying work experience."

On appeal, counsel does not contest the director's logic in requiring full-time experience. Instead, counsel argues that the beneficiary did, in fact, work full-time during the qualifying period. Counsel states that the previously submitted "Activity Report" "shows an average of 25 hours conducting services, but does not list the additional services . . . which take place at his home, parishioner's homes, funeral parlors, hospitals and elsewhere." The beneficiary, in an affidavit, asserts that he had "created a spreadsheet" which listed the hours he had worked "on site." The beneficiary states: "in addition to the time I spend at the physical premises of the church, I spend vast amounts of time each week doing other tasks that are associated with my being the Pastor that do not take place on site," such as weddings, funerals, visits and counseling. The beneficiary states that, taking these activities into account, "I would estimate that I spend a minimum of 60 hours per week performing these duties." The beneficiary asserts that, since beginning his work at the petitioning church, has never worked elsewhere and "never had a day off."

The petitioner, on appeal, submits no evidence to support the beneficiary's claims. Therefore, we must determine whether the evidence submitted previously is consistent with those claims. Almost every activity listed in the "Activity Report" is either "Sunday night service" or "weekly bible study," with monthly "deacon's meeting[s]" and the occasional church picnic. Clearly this is not a comprehensive accounting of every function the beneficiary performed on behalf of the church. Also, the letter submitted with that document indicated that visitations were not included, in part because they are more difficult to document

with precision. Thus, the record supports the claim that not everything the beneficiary did as a pastor is reflected on the "Activity Report."

At the same time, the above finding does not compel the conclusion that the beneficiary's work is and has been consistently full-time. While the list of duties is not complete, the "Total Hours" spent each week does not correspond strictly to the listed duties. For instance, in the last week of May 2004, only one item is listed: "5/30-performed Sunday night service." The document states that the beneficiary worked 10 hours that week. It seems unlikely that a single Sunday night church service was ten hours long. Similarly, the second week of March 2004 showed three activities: "Sunday night service" on March 7; "lead deacon's meeting" the same day; and "lead bible study" on March 10. The figure provided for the week's "Total Hours" is 25, although it is highly unlikely that those three activities, combined, occupied 25 hours of the beneficiary's time. It appears, therefore, that the "Total Hours" shown in the "Activity Report" already account for activities beyond the specific functions listed.

Furthermore, in a church with only 70 parishioners, it appears unlikely for the beneficiary to have spent a significant amount of time, week in and week out, on one-time events such as "weddings and funerals." Visits and counseling could take place on a more routine basis than weddings and funerals, but the beneficiary would have had to have provided half an hour of counseling every week to every member of the congregation in order to push his work week up from 25 hours to 60 hours.

As we have already noted, two church officials attested that the report was "accurate and precise," and they did not identify any missing activities except "private visits." It strains credulity to assert that these officials actually meant that the report was "accurate and precise" except for the omission of most of his working time, and we will not construe the phrase "many of the private visits" to mean that such visits took up the bulk of the beneficiary's duties.

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. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988). 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. *Id.* at 582, 592.

Here, the petitioner has not submitted independent objective evidence to resolve the discrepancies between the "Activity Report" and the beneficiary's subsequent claim to work 60, rather than 25 hours, at most, per week. The record is devoid of evidence to substantiate the beneficiary's assertions on appeal. 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). We affirm the director's decision.

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.