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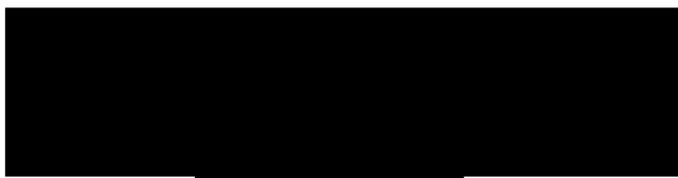
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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Services

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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: JUN 07 2007
WAC 06 008 50249

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:

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.

Laura Deodine
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 member church of the Christian Church Disciples of Christ. 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 religious program director-youth ministry. The director determined that the beneficiary had worked part-time for the petitioner, and therefore lacked the requisite two years of continuous work experience immediately preceding the filing date of the petition.

On appeal, the petitioner asserts that a “typographical error” on previous correspondence led to the denial.

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 February 6, 2006. 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. Part-time experience is not continuous for immigration purposes. *See Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In a letter submitted with the initial filing of the petition, [REDACTED], Trustee of the petitioning church, stated that the beneficiary "has been an active member of the [petitioning] Church . . . since January of 2002, where he has demonstrated his strong dedication to the Christian faith." [REDACTED] did not, in this first letter, discuss the beneficiary's work experience during the 2004-2006 qualifying period. He did, however, observe that the beneficiary was already in the United States as an R-1 nonimmigrant religious worker, having held such status since March 2004.

On April 28, 2006, the director issued a request for evidence, instructing the petitioner to provide details about the beneficiary's work history during the 2004-2006 qualifying period, including "the number of hours worked." In response, the petitioner submitted a listing of the beneficiary's duties, organized by days of the week. The petitioner indicated that, on Fridays, the beneficiary spent "3 hours" on "Printing of Church Bulletin" and "Planning, implementing, and organizing programs and activities for children and youth through 12th grade." The petitioner did not keep a running total of the hours worked each day, but the figures provided in the letter add up to between 30 and 32 hours per week (the variation arising from fluctuations in the beneficiary's Sunday schedule).

The director denied the petition on July 24, 2006, stating that 30 to 32 hours per week is not full-time, and therefore "the evidence is insufficient to establish that the beneficiary has been performing full-time work in the same capacity as the proffered position for the two-year [period] immediately preceding the [filing date of the] petition. The director also cited *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988), in which the Board of Immigration Appeals stated that 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.

On appeal, [REDACTED] Senior Pastor of the petitioning church, states: "we made one typographical error in a letter. We mistakenly stated that [the beneficiary] works 3 hours on Fridays instead of 8 hours. This error reduced [the beneficiary's] weekly work hours from 37 hrs. per week to 32 hours per week." [REDACTED] adds that the beneficiary "also engages in several after hour activities for our church," with the result that his "typical work week usually exceeds 37 hours." [REDACTED] asserts that the beneficiary "has been a valued full-time employee" since February 2004.

The director had already advised the petitioner that, pursuant to *Matter of Ho*, an unsubstantiated claim is not sufficient to reconcile discrepancies (such as the conflicting assertions regarding the beneficiary's Friday work schedule). The petitioner submits no new evidence to show that the new claim of an eight-hour Friday work day is more credible than the earlier claim of a three-hour Friday work day.

We note that the petitioner states that the beneficiary will receive \$2,500 per month plus a \$985 monthly housing allowance and \$100 in monthly medical insurance, but Internal Revenue Service Forms 1099-MISC show that the petitioner has, so far, paid the beneficiary less than half that amount. The forms show that the petitioner paid the beneficiary \$14,918.40 in 2004, and the same amount in 2005. Bank statements submitted by the petitioner do not show payments of \$2,500 or \$985. They do, however, show monthly payments of \$1243.20, consistent with the \$14,918.40 per year shown on the Forms 1099-MISC. The demonstrable fact

that the petitioner has been compensating the beneficiary at less than half the proffered rate is consistent with reduced hours. It certainly is not strong evidence that the beneficiary had been working for the petitioner on a full-time basis during the qualifying period or that the petitioner is, or has been, able to pay the beneficiary's full proffered rate of pay as required by 8 C.F.R. § 204.5(g)(2).

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.