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JUN 21 2007

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:  
WAC 06 059 53119

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:

[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*  
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 Presbyterian 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 an assistant pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as an assistant pastor in the petitioner's religious denomination immediately preceding the filing date of the petition.

On appeal, the petitioner submits witness letters and a brief from counsel.

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," on behalf of the same religious denomination in which a given alien seeks employment. 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 membership in the denomination and experience in the religious vocation, professional religious work, or other religious work. The petition was filed on December 15, 2005. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an assistant pastor within the petitioner's denomination throughout the two years immediately prior to that date.

The record establishes that the beneficiary was ordained as a minister in 1996. At issue is whether or not the beneficiary continuously carried on the vocation of a minister in the petitioner's denomination throughout the two-year period immediately prior to the filing of the petition. In the initial filing, counsel provided the following chronology of the beneficiary's activities during the qualifying period:

- **Jan 2000 – Jan 2004** – In furtherance of his vocation, [the beneficiary] was enrolled at Biola University Talbot School of Theology under F-1 status. He eventually earned a Master of Arts degree.
- **Feb 2004 – April 2004** – At this time, [the beneficiary] obtained his Employment Authorization Card and worked as a Pastor for the [petitioning] Church.
- **April 2004 – Sept 2005** – In furtherance of his vocation, [the beneficiary] was enrolled at Fuller Theological Seminary under F-1 status. He was admitted to the Doctor of Ministry program.
- **Sept 2005** – At this time, [the beneficiary] changed his status to R-1 and began work as a Pastor for the Petitioner's Church.
- **Dec 2005** – The instant petition is filed.

As indicated, [the beneficiary] consistently carried on his Pastoral vocation for 2 years immediately preceding the date of this petition via a combination of pursuing a religious course of study under F-1 status and pastoral work under R-1 status.

(Evidentiary citations omitted.) The petitioner submitted copies of canceled checks, showing that the petitioner paid the beneficiary from February through May 2004, and documentation of the beneficiary's R-1 nonimmigrant religious worker status effective September 2005.

The beneficiary's résumé, submitted with the initial petition, indicated that the beneficiary had been an assistant pastor at the petitioning church since January 2003. The résumé also indicated that the beneficiary was a "Current" student at Fuller Theological Seminary. The document, which is undated, thus indicated that the beneficiary worked as an assistant pastor during his studies. This sheds light on the nature of the beneficiary's claims, but the beneficiary's résumé is not documentary evidence that the beneficiary was, at the time, actively carrying on the vocation of an assistant pastor.

In a request for evidence, dated May 2, 2006, the director instructed the petitioner to submit "evidence that the petitioner . . . , Biola University Talbot School of Theology, and Fuller Theological are the same **denomination**" (director's emphasis). In response, counsel states that the law does not "even remotely suggest that the school of attendance must belong to the petitioner's denomination." While we agree with this assertion, we do not share counsel's corollary assessment that such a requirement "would mean that every student who attended interdenominational schools" would experience an interruption in their religious vocation. This is simply not true. A previously ordained minister who continued to work full-time as a minister, while *also* engaging in studies at an interdenominational school, would experience no disqualifying interruption in the continuity of his or her vocation.

Counsel asserted that “studying in the United States under F-1 [status] is considered carrying on the vocation if it can be demonstrated that such study is **consistent with the ministerial vocation**” (counsel’s emphasis).

Senior Pastor of the petitioning church, stated that the beneficiary’s “studies . . . are wholly consistent with the ministerial vocation of our church and denomination” because the denomination’s ministers “must . . . pursue a degree in Theology and Master of Divinity.” therefore, indicates that the beneficiary’s studies are “consistent” with his vocation in the sense that he is studying for a required degree. By the same logic, first-year law studies are “consistent” with the practice of law, and first-year undergraduate studies are “consistent” with the practice of medicine. This does not mean, however, that a first-year law student is a practicing attorney during those studies, or that a college freshman is a practicing physician during that first year of postsecondary education. Counsel revisits this argument on appeal, and we shall discuss it further in that context.

The director denied the petition, stating that, given the beneficiary’s studies, “the beneficiary could not possibly have the required two years continuous full-time experience in the religious vocation of assistant pastor, immediately preceding the filing of the petition.” The director further made the related, but separate, determination that the petitioner failed “to establish that the petitioner . . . , Biola University Talbot School of Theology and Fuller Theological [belong to] the same denomination.”

On appeal, counsel repeats the assertion that the seminaries where the beneficiary studied need not share the petitioner’s denominational affiliation. Letters from officials of both named seminaries confirm this fact. As stated previously, we agree with counsel on this matter; the issue of denominational affiliation would generally be of greater concern with respect to seminary faculty than to students. Nevertheless, the petitioner must still demonstrate that the beneficiary carried on the vocation of a minister within the petitioner’s denomination throughout the two years immediately preceding the filing of the petition. It is not sufficient for the petitioner simply to demonstrate that more than two years have elapsed following the beneficiary’s ordination. The requirement is not a passive one, relating to the passage of time regardless of the beneficiary’s activities. Rather, there is an active requirement that the beneficiary must have been “carrying on” the vocation of a minister.

On appeal, counsel states:

For purposes of the two-years requirement, studying in the United States under F-1 status is clearly considered carrying on the ministerial vocation of the RESPONDENT’S vocation if it can be demonstrated that such study is **consistent** with the ministerial vocation of the RESPONDENT’S denomination and provided that the BENEFICIARY continues to perform the duties of a minister (*see* Letter, , Acting Ass. Comm. Adjudications CO 2[0]4.26-C (May 8, 1992).

(Counsel’s emphasis.) Counsel cites’s letter as though it supports counsel’s arguments on appeal, but in fact it undermines them. The letter does not state that seminary study is equivalent to carrying on the vocation of a minister, or that such studies are always presumed to be consistent with carrying on that vocation. Rather, the letter indicates that such study *may* be “consistent with the ministerial vocation” *under certain conditions*. One of those conditions, as counsel openly acknowledges, is that the alien “continues to

perform the duties of a minister” during his or her studies. This caveat would be redundant or meaningless if seminary study itself were considered to be among “the duties of a minister.” Therefore, we cannot and do not assume that “the duties of a minister” encompass any and every remotely religious activity undertaken by a person following his or her ordination. Instead, we construe “the duties of a minister” to comprise the typical functions of clergy within a given denomination.

Following the above reasoning, if the phrase “study consistent with the vocation” is to have any meaning or relevance for our purposes, such study must be both in furtherance of, and concurrent with, the alien’s continuing practice of the vocation. Seminary study does not invariably require absolute cessation of all ministerial duties during the period between enrollment and graduation; one can work as a minister during part of the day or week, and pursue studies during other parts of the day or week. Such study is consistent with the vocation of a minister, because it relates to the minister’s work, and it does not interrupt the alien’s ongoing performance of ministerial functions. In some instances, a seminarian may perform the duties of clergy for course credit, thus performing those duties and fulfilling academic requirements at the same time.

Here, the petitioner has not shown that the beneficiary continued to perform the duties of a minister while studying at either seminary. Rather, the evidence of record indicates that the beneficiary *alternated* between periods of study and periods of employment as a minister. If the beneficiary stopped working as a minister in order to resume his studies, then it is clear that his studies were not consistent with his ministerial vocation in the sense contemplated in [REDACTED]’s letter. Here, counsel does not claim that the beneficiary worked and studied at the same time. Counsel, instead, stipulates the opposite, stating the “BENEFICIARY was *either* employed by the RESPONDENT *or* studying under F-1 status during the relevant two-year period” (counsel’s capitalization; italics added). The beneficiary’s study and work were consecutive rather than concurrent.

While we have discussed [REDACTED]’s letter, we note that letters written by the Office of Adjudications do not constitute official Citizenship and Immigration Services (CIS) policy and will not be considered as such in the adjudication of petitions or applications. Although the letter may be useful as an aid in interpreting the law, such letters are not binding on any CIS officer as they merely indicate the writer’s analysis of an issue. See Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, *Significance of Letters Drafted by the Office of Adjudications* (December 7, 2000). In rendering this decision, we agree with the reasoning in [REDACTED]’s letter, but we regard it as a defensible statement of CIS’ position rather than as binding precedent.

The record does not indicate that the beneficiary changed religious denominations, or worked on behalf of a different denomination, during the two-year qualifying period ending December 15, 2005. Nevertheless, we concur with the director insofar as the petitioner has not shown that the beneficiary continuously carried on the vocation of a minister throughout that two-year period.

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.