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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
SRC 06 130 50850

Office: TEXAS SERVICE CENTER Date:

MAY 18 2004

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.

Maura Deadrick
for Robert P. Wiemann, Chief
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 Christian church of the Assemblies of God 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 radio broadcaster. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a radio broadcaster immediately preceding the filing date of the petition.

On appeal, counsel asserts that the director relied on an impermissibly narrow definition of “experience.”

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 20, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a radio broadcaster throughout the two years immediately prior to that date.

In a letter accompanying the petitioner's initial submission, [REDACTED] Senior Pastor of the petitioning church, stated: "During the past two years, [the beneficiary] has helped our radio ministry as a volunteer. . . . We now employ him as a radio broadcaster in R-1 nonimmigrant status." [REDACTED] the petitioner's Executive Pastor and Senior Associate, states that the beneficiary's "involvement in our activities evolved into a vital staff position as a full time engineer. As of Oct. 2005 [the beneficiary] has been a valued employee of our church."

[REDACTED] did not specify when in October 2005 the petitioner began to pay the beneficiary. The beneficiary's name does not appear in payroll records dated October 19, 2005.

The record shows that, before the beneficiary's nonimmigrant status changed to that of an R-1 religious worker on September 23, 2005, he was an F-1 nonimmigrant student. Form I-20 A-B, relating to the beneficiary's F-1 status, shows that, as of December 2004 and March 2005, the beneficiary was a graduate student at the University of Louisville (Kentucky), studying electrical, electronics and communications engineering. The university provided all of the funding for this study, including tuition and living expenses, under an "Assistantship."

The beneficiary's own résumé contains the following entries:

EDUCATION

University of Louisville, Louisville, KY, Speed School of Engineering; enrolled in a PhD program, anticipated graduation May 2008.

WORK EXPERIENCE

University of Louisville, Louisville KY
Teaching Assistant, Instructor (2001-2005)

- Taught 5 different 100 and 200 level courses at the Electrical Engineering Department.
- Developed and taught new course called "ECE 211 Logic Design."
- Assisted in several research projects.

[The petitioning church]

Translator, Shortwave Radio Programming Director, TV Graphic Designer (2005-present)

On March 30, 2006, the director issued a request for evidence, instructing the petitioner:

Submit a detailed description of the beneficiary's prior work experience including duties, hours and compensations (*especially compensations*), accompanied by appropriate evidence (such as copies of pay stubs or checks, W-2's or other evidence as appropriate). Submit an IRS certified copy of the income tax returns with all the pertaining W-2s for the two years preceding the filing of this petition.

In response, the petitioner submitted tax return transcripts showing that the beneficiary earned wages and salaries in the amounts of \$15,000 in 2003, \$13,000 in 2004, and \$11,818 in 2005. The petitioner submitted

Form W-2 Wage and Tax Statements for only one year (2005). The Forms W-2 show that the University of Louisville paid the beneficiary \$5,568.18; the petitioner paid the beneficiary \$3,125.00; and [REDACTED] an affiliate of the petitioning church at the same address, also paid the beneficiary \$3,125.00. A May 2006 pay stub shows that the petitioner and Word Management continue to employ the beneficiary jointly, each paying half of his gross salary. The documents do not identify the source of the beneficiary's earnings in 2003 or 2004, but the petitioner has never claimed that those earnings derived from any source other than the University of Louisville, or that the beneficiary engaged in any compensated religious work during those years.

The director denied the petition on June 19, 2006, stating that the petitioner had failed to document two years of continuous experience in a religious occupation. On appeal, counsel states that the regulations merely require experience, not *paid* experience.

Counsel does not explain how volunteer work amounts to an "occupation." We note that, pursuant to 8 C.F.R. § 204.5(m)(4), a job offer is not qualifying unless the prospective employer shows that the beneficiary will not be solely dependent on outside employment. Here, the record shows that the beneficiary was, in fact, solely dependent on outside employment for most of the March 2004-March 2006 qualifying period. The petitioner's sole source of income in 2004 and most of 2005 was inherently secular work for the University of Louisville. Such an arrangement, continued into the future, would obviously be unacceptable under the regulations, and the petitioner has not demonstrated that this unacceptable arrangement ought to count as qualifying, continuous experience.

Furthermore, aside from the issue of compensation, there is no evidence that the beneficiary worked full-time for the petitioner prior to the autumn of 2005. Because the beneficiary is known to have been both studying for a doctorate and working part-time for the University of Louisville during most of the qualifying period, it is not at all apparent that he would have had sufficient time available to pursue a full-time (and, therefore, continuous) work schedule with the petitioner. The record contains negligible documentation (as opposed to after-the-fact claims) to establish the nature or extent of what the beneficiary was actually doing for the petitioner before his change of status allowed him to engage in compensated employment. Thus, the record does not show continuous performance of work in a religious occupation.

Therefore, we concur with the director's decision that the petitioner has not shown that the beneficiary continuously worked in a religious occupation throughout the two years immediately prior to the filing of the petition. We note that this finding is without prejudice toward a future petition, filed after the beneficiary has accumulated two years of paid, full-time experience with the petitioner or another religious organization.

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.