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U.S. Citizenship  
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **AUG 15 2008**  
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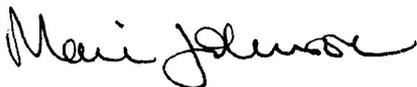
IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: 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, Chief  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The alien beneficiary seeks classification 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 director of youth ministry of Redemption Christian Fellowship.

The director determined that the petitioner had not established that the proffered position qualified as a religious vocation or occupation and that the beneficiary has been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

On appeal, counsel asserts that the petitioning organization has submitted sufficient evidence of the beneficiary's work duties during the two years. Counsel asserts that the beneficiary's duties clearly relate to a traditional religious function.

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 first issue is whether the petitioner established that the beneficiary had been continuously employed in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the

petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States.” The regulation 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.”

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on December 11, 2006. Therefore, the petitioner must establish that the beneficiary was continuously working as a youth pastor throughout the two-year period immediately preceding that date.

Along with the Form I-360, the petitioner submitted a letter from [REDACTED] indicating that the beneficiary serves as a youth pastor, senior office administrator, international coordinator and director of video and television productions. The petitioner asserts that the beneficiary functions in all ministerial duties at its church and describes the beneficiary’s duties as follows:

- Oversees the entire youth ministry department and is in charge of the staff that works with him.
- Administrative head of the video and television ministry, which develops and distributes, locally and internationally, ministry materials that are used for the building and strengthening of our pastors, leaders and churches worldwide.
- Administrates and coordinates our worldwide international nationwide crusades, pastor conferences and training seminars.
- Deals directly with the many pastors of the petitioning organization churches in Nigeria, Cote D’Ivoire, Pakistan, Grenada, St. Vincent, Guyana, Antigua, Kenya, Venezuela and others including the United States. Travels with and on behalf of the local ministry regularly conducting the business of the churches.

On April 3, 2007, the director issued a Request for Evidence (RFE), and instructed the petitioner to submit copies of the beneficiary’s wage and tax statements for 2004 through and 2006, evidence that the beneficiary had been ordained and:

Provide evidence of the beneficiary’s work history from December 11, 2004 and ending December 11, 2006 only. Provide experience letters written by the previous and current employers that include a breakdown of duties performed in the religious occupation for an average week. Include the employer’s name, specific dates of employment, specific job duties, number of hours worked per week, form and amount of compensation and level of responsibility/supervision. In addition, submit evidence that shows monetary payment, such as pay stubs, or other items showing the beneficiary received payment. If any work was on a

volunteer basis, provide evidence to show how the beneficiary supported himself during the two-year period or what other activity the beneficiary was involved in that would show support.

In response, counsel for the petitioning organization submitted a letter from \_\_\_\_\_ who asserted that the beneficiary serves as an assistant pastor and described the duties as follows:

In addition to conducting services particularly in the absence of the senior pastor, he is responsible for producing religious materials for radio and television, and he organizes weekly Thursday night youth meetings for the youth of Redemption Christian Fellowship which consist of prayer and bible study, group discussions on messages heard during the weekly services. He also assists in the weekly Tuesday, Friday and Sunday services at Redemption Christian Fellowship. These responsibilities include conducting the youth choir, ministering to the congregation the word of God, assisting in Holy Communion and preparing the youth to minister to the congregation on Friday nights, which is Youth night. Aside from that, he records and edits four weekly services held at Redemption Christian Fellowship for sale to members of Redemption Christian Fellowship and international partners and for archiving purposes. Also from these weekly services, he prepares one hour programs for television broadcast to the Caribbean and Pakistan.

Periodically, [the beneficiary] also plans and coordinates social events such as fundraisers.... Further, he is responsible for hosting the annual Youth Summit at Redemption Christian Fellowship, which brings together the local youth groups for two days of learning, worship and fun, and for organizing International Youth Summits in Venezuela, St. Vincent, Trinidad and Tobago, and Grenada. This is part of the international partners' ministry, of which [the beneficiary] is the crusade director.

\_\_\_\_\_ asserted that the beneficiary has been employed by the church since March 2002, works at least eight hours a day, forty hours a week and is paid a salary of \$2,000.00 per month

Counsel submitted:

- A Certificate of Ordination issued on August 22, 2004.
- Internal Revenue Service (IRS) Forms W-2, Wage and tax statements for 2004 through 2006.
- Canceled checks covering the periods January 2005 through July 2005, December 2005, January 2006, February 2006 and June 2006.
- Several pay stubs covering the periods July 2006 through December 2006.

Counsel also submitted an updated résumé of the beneficiary, who describes his duties as a youth pastor and video editor at the church as follows:

- Work with the youth of the ministry to promote Christian values through regular youth meetings, and summer youth programs. Weekly youth activities include bible study, prayer and discussion. Activities also include organizing summer field trips and sharing videos that promote confidence in the youth.

- Coordinate and organize an annual youth summit during the summer for two days of spiritual development.  
Video taping and editing of all conferences, international crusades and weekly services.  
Plan and implement approved proposal for site selection and layout designs for all international crusades and conferences.
- Responsible for contacting of vendors to supply all necessary equipment such as staging, lighting, tents, chairs, sound systems for all conferences and crusades that the church will facilitate.  
Coordinate all travel plans that include flight, hotel arrangements, transportation and preaching schedules for all conferences and events the organization will hold internationally and within the United States. Also ensure that all required paperwork, of each traveler, is prepared properly for each country. Responsible for contacting local vendors to supply staging, lighting, tents, chairs, and sound systems. Arrange official visits to government officials which includes Presidents and Prime Ministers of the countries visited.

The director, in denying the petition, noted that the petitioner failed to submit the requested daily and weekly schedule of the beneficiary.

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 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged “principally” in such duties. “Principally” was defined as more than 50 percent of the person’s working time. Under prior law a minister of religion was required to demonstrate that he/she had been “continuously” carrying on the vocation of minister for the two years immediately preceding the time of application. The term “continuously” was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

The term “continuously” also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore, that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and generally salaried. To hold otherwise would be contrary to the intent of Congress.

On appeal, counsel submits the beneficiary's work schedule for Mondays through Fridays and questions why a detailed schedule is material.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12).

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence in response to the RFE. On that basis alone, the petition may not be approved. 8 C.F.R. § 103.2(b)(14). The petitioner now submits the requested evidence on appeal. The AAO will not consider this untimely submission for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

indicates that the beneficiary conducts services, and spends a substantial time in performing duties with the youth congregation and in recording and editing the weekly services for the petitioning organization. However, the beneficiary, in his an updated résumé, does not indicate that he performed any of the ministerial duties outlined in the letter from [REDACTED]. The petitioner asserts that the beneficiary's duties consist of at least 40 hours a week, but did not include a schedule of the amount of time spent performing his various duties with the initial filing. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In order to resolve the inconsistencies between statements in the letter from [REDACTED] and the information listed in the beneficiary's résumé and determine whether the beneficiary had engaged in religious work during the qualifying period, the director requested a detailed schedule of the beneficiary's duties. As the petitioner failed to provide requested evidence to resolve these inconsistencies, the record of proceeding before the director at the time of her decision does not establish that the beneficiary was continuously employed as a full-time youth pastor for two full years preceding the filing of the visa petition.

The second issue is whether the petitioner has established that the specific position that it is offering qualifies as a religious occupation as defined in the regulations.

The regulation at 8 C.F.R. § 204.5(m)(2) states, in pertinent part, that:

*Religious occupation* means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The statute is silent as to what constitutes a "religious occupation," and the regulation states only that it is an activity relating to a traditional religious function. Citizenship and Immigration Services (CIS) interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed or beliefs of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination or the petitioning religious organization.

In the RFE, the director instructed the petitioner to provide a detailed description of the work to be done, including specific job duties, level or responsibility/supervision, number of hours worked per week for each duty and a daily and weekly schedule for the proffered position. The petitioner was also instructed to explain how the duties of the proffered position relate to a traditional religious function.

In response, counsel submitted documentation from [REDACTED] and a résumé from the beneficiary which has been summarized above.

The director, in denying the petition, determined that the petitioner has not sufficiently established that the beneficiary's duties "are those of a youth pastor, having religious significance and embody[ing] the tenets of the petitioner's particular religious denomination." The director also noted that the petitioner failed to submit a "breakdown of duties, work schedule of an average work week and a number of hours per week to be spent performing each duty" for the beneficiary.

On appeal, counsel argues that director's conclusion that the beneficiary is not a religious worker simply because "he performs both religious and purportedly secular duties for the church" is contrary to the law and *Camphill Soltane v. U.S. Dept. of Justice*, 381 F.3d 143, 150 (3d Cir. 2004). Counsel asserts that the duties of the beneficiary "relate to traditional religious function more than the houseparent duties found sufficient in *Camphill Soltane*." First, it must be noted that the beneficiary's intended place of work is in San Diego, California, which is not under the jurisdiction of the Third Circuit. Accordingly, *Camphill Soltane* was never a binding precedent for this proceeding. In addition, because the petitioner failed to provide requested evidence in response to the director's RFE, the record before the director did not contain enough information for the director to determine exactly what the beneficiary's duties are. As discussed, [REDACTED] indicated that the beneficiary's duties were ministerial; however, the beneficiary's résumé does not suggest that he performed the ministerial duties outlined by [REDACTED].

While, the beneficiary's work duties may involve some measure of religious work, based on the conflicting information contained within [REDACTED] statements and the beneficiary's own résumé, it is not clear exactly what the beneficiary's duties have been. Accordingly, based on the record before the director, the evidence does not establish that the position is a religious occupation within the meaning of the statute and regulation. Therefore, the petition must also be denied for this reason.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for revocation. 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 met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.