

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

C₁

PUBLIC COPY



FILE:



Office: VERMONT SERVICE CENTER

Date: JAN 08 2008

EAC 06 218 50985

IN RE:

Petitioner:



Beneficiary:

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:



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 Director, Vermont 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 Ukrainian Catholic 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 a cantor/choir director. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a cantor/choir director immediately preceding the filing date of the petition.

On appeal, the petitioner submits various documents, some previously submitted, and arguments 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.” 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 July 21, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a cantor/choir director throughout the two years immediately prior to that date. In a 1980 decision, the Board of Immigration Appeals determined that *part-time religious work* is not “continuous” for immigration purposes. *Matter of Varughese*, 17 I&N Dec. 399, 402 (BIA 1980).

An advisory message printed on the Form I-360 petition indicated that failure to “completely fill out this petition” could result in denial of the petition. Nevertheless, the petitioner failed to answer a question in Part 4 of the form, asking whether the beneficiary had worked in the United States without authorization. On Part 3 of the form, under “Current Nonimmigrant Status,” the petitioner indicated that the beneficiary was “out of status.” Materials in the initial submission indicate that the beneficiary held an R-1 nonimmigrant visa allowing her to work at the petitioning church, but only through January 30, 2002, nearly four and a half years before the filing date.

In a June 5, 2006 letter accompanying the initial filing of the petition, [REDACTED] Administrator of the petitioning church, stated that the beneficiary’s “weekly salary will be \$460.00,” but he did not mention any prior work by the beneficiary for the petitioning church. A letter from an unidentified witness attests to the beneficiary’s work at St. Yuri’s Church in Drogobych, Ukraine, from 1991 to 1996, but again that period ended more than two years before the petition’s filing date. The petitioner indicated that the beneficiary has been in the United States since 1997, and therefore none of her employment abroad can constitute qualifying employment.

On December 11, 2006, the director issued a request for evidence (RFE), instructing the petitioner to submit a detailed work history, with evidence of payment, for the beneficiary during the 2004-2006 qualifying period. In response, the petitioner submitted a new letter from [REDACTED] dated February 15, 2007. The letter was computer-printed, with handwritten additions (shown in *italics*). The relevant portion of the letter reads:

Employment Offer Letter & *work history*.

This is to certify that [the beneficiary] is being employed in our Church as a full-time “Cantor/Choir Director” *since 2002*

The original text of the letter made no reference to past employment; only the handwritten additions attested to past work. It is not clear who added the references to past work, or when the additions were made. [REDACTED] signed the letter with a ballpoint pen, whereas the additions are in a visibly thicker line, apparently made with a felt-tip or roller-ball pen. The clearly discernible use of two different pens does not suggest that [REDACTED] made the additions at the same time that he signed the letter. We note that, in a later submission, the petitioner submitted a photocopy of the letter that shows [REDACTED] signature and the church’s raised seal, but not the handwritten additions. This shows that the letter was signed, and the seal applied, before the additions were made.

The petitioner submitted copies of unprocessed salary checks payable to the beneficiary, dated late 2006 and early 2007. The checks are all dated after the petition’s July 21, 2006 filing date. Many of the checks are consecutively numbered or nearly so; for instance, in the August-September 2006 check sequence numbered [REDACTED] to [REDACTED], six of the eight checks were issued to the beneficiary. The account information printed on each check includes the phrase “school account,” although the petitioner had not claimed that the beneficiary worked at the petitioner’s school. Rather, the beneficiary’s stated duties were specifically liturgical in nature.

Copies of Internal Revenue Service Form W-2 Wage and Tax Statements and Form 1099-MISC Miscellaneous Income statements indicate that the petitioner paid the beneficiary \$12,880.00 in wages in 2006, as well as \$1,820.00 in "Other income" that same year. Earlier Forms 1099-MISC from the petitioner indicate that the beneficiary earned \$2,550.00 in "Nonemployee compensation" in 2003, \$2,750.00 in "Other income" in 2004, and \$2,975.00 in "Other income" in 2005. At a weekly salary of \$460.00, the petitioner should have paid the beneficiary approximately \$23,920.00 per year. The above figures suggest that the petitioner did not begin paying the beneficiary at that rate until mid-2006, which coincides with the petition's filing date.

Forms W-2 from other employers indicate that Recco Home Care Services paid the beneficiary \$26,234.99 in 2003, \$29,342.50 in 2004 and \$15,490.50 in 2005, and that West Islip Physical Therapy paid the beneficiary \$948.75 in 2006. Thus, 91% of the beneficiary's 2004 income and 84% of her 2005 income derived from secular employment.

The director issued a second RFE on March 19, 2007, requesting further details about the beneficiary's work history during the qualifying period. In response, in a letter dated May 4, 2007, [REDACTED] stated: "The Beneficiary served as a salaried cantor in [the petitioning] Church since February 18, 1997 . . . on a full-time basis." [REDACTED] stated that a typical work week as a cantor occupies 39 hours, not including additional time for weddings and other special events.

The director denied the petition on July 13, 2007, stating that the beneficiary's earnings, as reported on her tax documents, are not consistent with full-time religious work. The director stated that these documents contradict the petitioner's claim to have employed the beneficiary full-time since 1997. 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, 591 (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, 591-92.

On appeal, counsel claims: "The facts show that the beneficiary has been continuously been [*sic*] working for the church since 1997 in a valid R1 status." The record shows nothing of the sort. At the time of filing, the petitioner admitted that the beneficiary was "out of status" in 2006, and the documentation relating to her R-1 status indicated that such status expired in 2002. The record not only fails to support, but outright contradicts, counsel's assertion on appeal.

Furthermore, counsel's claim that the beneficiary has been "in a valid R1 status" "since 1997," *i.e.*, for ten years, is impossible on its face. An R-1 nonimmigrant's total period of stay may not exceed five (5) years. 8 C.F.R. § 214.2(r)(5). An alien who has spent five (5) years in the United States under section 101(a)(15)(R) of the Act may not be readmitted to the United States under the R visa classification unless the alien has resided and been physically present outside the United States for the immediate prior year, except for brief visits for business or pleasure. 8 C.F.R. § 214.2(r)(7). The available evidence indicates that the beneficiary completed her maximum five years as an R-1 in 2002, and since then has not spent the required year outside the United States to qualify her for renewal of R-1 status.

Counsel, on appeal, offers no response to the director's finding that the petitioner's payments to the beneficiary during the qualifying period are substantially below the stated full-time salary. As discussed above, the record contains documentary evidence showing that the vast majority of the beneficiary's 2004-2005 income derived from secular employment. **The petitioner, on appeal, submits a copy of the beneficiary's 2006 Form W-2 from Recco Home Care Services, showing only \$184.00 in wages. This is substantially less than the beneficiary's earnings there in previous years. The most reasonable conclusion to be drawn from the available evidence is that the beneficiary worked full-time for Recco Home Care Services and part-time for the petitioner prior to 2006, reducing or eliminating her secular work and taking up full-time duties at the petitioning church around the time the petition was filed.**

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.