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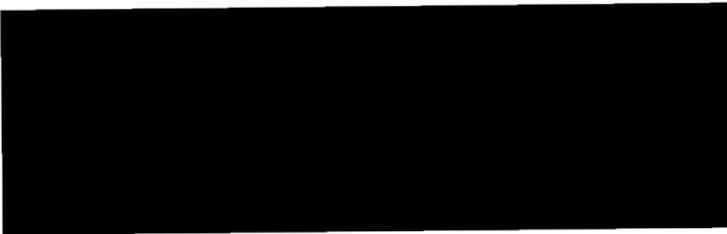
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U.S. Citizenship
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Services

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FILE: WAC 07 202 54512 Office: CALIFORNIA SERVICE CENTER Date: NOV 17 2008

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.

John F. Grissom, Acting 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 petitioner is a 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 deacon. The director determined that the petitioner had not established that the beneficiary had 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 neither the statute nor the regulation require that non-minister religious workers carry on their vocations on a full time basis for the two years preceding the filing of the visa petition. Counsel further asserts that the petitioner has submitted documentation that the beneficiary was employed for two years and had been compensated for his services.

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 issue presented on appeal 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.” 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 June 25, 2007. Therefore, the petitioner must establish that the beneficiary was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

With the petition, the petitioner submitted an October 12, 2006 certificate from the St. Shmouni Syriac Orthodox Church, [REDACTED] which certified:

[The beneficiary] has been a Deacon in our Syrian Orthodox Church for more than 5 years. He assists our priests in the service of the Holy Liturgy and the administration of other sacraments in the church. He has also taught in our Sunday school since 1997 and practiced Catechism in our Youth Centers.

[He] has served in the choir and taught our local faithful the various Syriac hymns of the Holy Liturgy.

The petitioner submitted no other information about the beneficiary's work history with the petition. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In a request for evidence (RFE) dated July 26, 2007, the director instructed the petitioner to:

Provide evidence of the beneficiary's work history for the two year period prior to the filing date. 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, the petitioner submitted an undated memorandum from Minister [REDACTED] a priest with St. Shmouni Syrian Orthodox Church at Malkia, in which he stated that the beneficiary had been working at the church as a deacon for over five years, and a schedule of the beneficiary's work for a typical week:

DAY	WORK	TIME
Sunday	Explaining the Holy bible and the [Divine] Mass and participating in the prayers	From 07:00 am to 02.00 pm
Monday	Administrative work at Church's library (files organization), religious education and explaining the Holy Bible for Preparatory stage.	08:00-11:00 am 05:00-08:00 pm
Tuesday	Scheduling appointments with the parish priest – Administrative work Teaching the Syriac Language for the Deacons and the religious chanting of the Mass	08:00-10:00 am 04:00-08:00 pm
Wednesday	Attending the divine Mass – Visiting the houses of the believers with the Parish priest and helping him in teaching the Arabic and Syriac Chants to the chorus of the Church	08:00-10:00 am 04:00-08:00 pm
Thursday	A day with the fourth scouting band in Malkia – Religious guidance and teaching religious subjects	08:00-12:00 am
Friday	Participating in the [Divine] Mass – (Computer printing and copying chants) plus administrative work at the Church's library, preparing for Sunday and discussing present issues fro a Christian point of view for academic stage and teaching the syriac chants.	08:00-11:00 am 05:00-08:00 pm

The petitioner also submitted an August 23, 2007 letter from Minister [REDACTED], in which he stated that the beneficiary received a monthly salary of 15,000 Syrian pounds for his work, and that he was paid in cash as “there is no [] other way to pay him his salary other than this direct way.” The petitioner submitted no documentation, such as a pay voucher, pay receipt, or similar documentation, to verify that the beneficiary received the salary stated or worked the hours indicated in the chart provided. *Id.*

The director denied the petition on November 28, 2007, finding that, as the petitioner had failed to provide evidence of any remuneration received by the beneficiary, it had provided insufficient evidence to establish that the beneficiary had worked continuously during the two-year qualifying period.

Counsel asserts on appeal that the beneficiary will be employed in a non-ministerial position and therefore there is no requirement that he must work full time during the two years immediately preceding the filing of the petition.

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).

Section 101(a)(27)(C)(iii) of the Act provides 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.

Counsel cites *Hawaii Saeronam Presbyterian Church v. Ziglar*, 243 Fed. Appx. 224, 2007 WL 1747133 (9th Cir. 2007), for the proposition that only ministers are required to work full time during the qualifying period. However, the court, while specifically addressing the position of minister, the proffered position of the petition before it, did not distinguish between ministers and those in other religious occupations when it determined that the AAO’s interpretation of the controlling case law requires a showing of full-time employment for qualifying experience for this visa preference petition.

Counsel also asserts that the director’s decision, beyond referring to a statement attributed to the AAO that “payments of wages must come directly from the petitioner for whom the beneficiary provide services,” is deficient in that it failed to explain or analyze why the evidence was insufficient. Counsel further asserts that the letter from the beneficiary’s church in Syria is sufficient evidence to demonstrate that he was, in fact, paid the amounts stated. Counsel cites to no law that requires Citizenship and Immigration Services or AAO to accept the unsupported statements of the petitioner or any other unsupported statements submitted on the petitioner’s behalf. Furthermore, *Matter of Soffici*, 22 I&N Dec. at 165, specifically holds that statements without supporting documentation are insufficient to meet the petitioner’s burden of proof. A simple assertion that the beneficiary was paid for his services does not satisfy the petitioner’s burden of proof.

The petitioner has provided no documentary evidence, other than uncorroborated statements from the beneficiary’s church in Syria that he worked for the church, that he worked continuously and full time, and that he was paid for his services.

Counsel also takes issue with the director’s reference to *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988), alleging that the director’s failure to analyze the evidence and point to any deficiencies were grounds for vacating the decision and remanding the matter, an action similar to the court’s decision in *Camphill Soltane v. DOJ*, 381 F.3d 143 (3rd Cir. 2004). Counsel then argues that the petition should be approved because of the director’s alleged failure to analyze the evidence.

The director’s reference to *Matter of Ho* appears gratuitous as it is not supported by any other findings or contradictions within the decision. Nonetheless, the director clearly stated that the petitioner failed to provide documented evidence of the beneficiary’s remuneration, other than an uncorroborated letter from the beneficiary’s current employer stating that he was paid in cash. The petitioner has provided no other evidence to verify that the beneficiary was employed by Shmouni Syrian Orthodox Church in any capacity during the two-year period immediately preceding the filing of the visa petition. Uncorroborated statements are insufficient to meet the petitioner’s burden of proof. See *Matter of Soffici*, 22 I&N Dec. at 165.

The evidence therefore does not establish that the beneficiary was continuously engaged in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition.

Beyond the decision of the director, the petitioner has not established that it has the ability to pay the proffered wage.

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

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner stated that it would pay the beneficiary a salary of \$34,500 annually. The petition was filed on June 25, 2007. Therefore, the petitioner must establish that it had the continuing ability to pay the beneficiary the proffered wage as of that date.

As evidence of its ability to pay the proffered wage, the petitioner submitted a partial copy of its unaudited financial statements for the year ending 2006 and partial copies of its monthly banking statements for the months of January and February 2006 and April 2006 through January 2007.

The above-cited regulation states that evidence of ability to pay “shall be” in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of primary evidence. Therefore, the petitioner has failed to establish that it has the ability to pay the proffered wage.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.