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FILE: WAC 07 010 54298 Office: CALIFORNIA SERVICE CENTER Date: OCT 16 2008

IN RE: Petitioner:
Beneficiary:



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:



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 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 its senior pastor. 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 or that it has extended a qualifying job offer to the beneficiary.

On appeal, counsel asserts that the “statute and regulations do not require that the religious worker perform all his duties in the church,” and “do not provide that the fact the petitioner has petitioned for other religious workers in the past is a basis to deny the I-360 petition.” The petitioner submits additional documentation in support of the appeal.

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 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 October 13, 2006. Therefore, the petitioner must establish that the beneficiary was continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

In its undated letter accompanying the petition, the petitioner stated that the beneficiary worked as a pastor at the Englewood Grace & Peace Reformed Church (in Englewood, New Jersey) from April 2004 to May 2006, and that he currently serves as senior pastor of the petitioning church. The petitioner submitted copies of its monthly checking account statements for January through June 2006. The statements contain copies of checks made payable to the beneficiary; however, the petitioner did not state why it issued checks to the beneficiary during the time he was allegedly working for another church. The petitioner submitted no documentation to verify the beneficiary’s employment with Englewood Grace & Peace Reformed Church.

In a request for evidence (RFE) dated December 11, 2006, the director instructed the petitioner to:

Provide evidence of the beneficiary’s work history for the years 2004, 2005 and 2006. 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 resubmitted the copies of its checking account statements and submitted partial copies of the monthly checking account statements, consisting only of the images of checks processed by the bank, for the remainder of 2006. The petitioner also submitted copies of pay stubs, indicating that it paid the beneficiary \$2,170 per month in 2006, consisting of regular pay of \$1,300 and a housing allowance of \$870 per month. The petitioner again provided no explanation as to why it was issuing checks to the beneficiary even though he allegedly worked for another church.

In a second RFE dated March 21, 2007, the director instructed the petitioner to "Provide documentary evidence to establish whether a connection exists between the petitioner and any other church the beneficiary has worked at between 10-13-04 and 10-13-06." The director also again instructed the petitioner to provide documentary evidence of the beneficiary's work history, including a "detailed description" of his exact duties.

In response, the petitioner, for the first time, acknowledged that the beneficiary worked at the petitioning church. In providing the beneficiary's work history, the petitioner stated that the beneficiary was appointed as education pastor at Englewood Grace & Peace Reformed Church in April 2004 and was "[a]ppointed and dispatched" to the petitioning organization as "Mission Pastor" from October 2005 to June 2006, and served as the petitioner's pastor since July 2006. The petitioner also submitted a May 14, 2007 letter from [REDACTED], the senior pastor of Englewood Grace & Peace Reformed Church, in which he verified that the beneficiary served as its education pastor from April 2004 to June 2006 on a full-time basis. However, Reverend [REDACTED] also stated that, in October 2005, the beneficiary "was appointed and dispatched" to the petitioning church at its request as it did not have a pastor at the time.

The petitioner provided a copy of the beneficiary's IRS Form 1040, U.S. Individual Income Tax Return, for the years 2004, 2005 and 2006, on which the beneficiary reported wages paid of \$24,300, \$25,200 and \$15,600, respectively. The beneficiary's IRS Form W-2 attached to his 2006 return indicates Social Security wages of \$26,040.

The petitioner provided details of the beneficiary's duties and hours, as follows:

1. Worship Lead (8 hours 8 times of week / Worship, Prayer meeting)
2. Preaching (3 hours 8 times of week / Daybreak, Sunday, Wednesday, Cellgroup)
3. Education (1 hour 1 time of week / Doctrine, Bible)
4. Training (3 hours 1 time of week / Disciple, Teacher)
5. Bible Study (17 hours 6 times of week)
6. Pray (6 hours 6 times of week)
7. Visit (7 hours 2 times of week / Family, Business)
8. Counsel (3 hours anytime / Personal, Family, Couple)
9. Evangelism (7 hours 2 times of week / Personal, Area)
10. Administration (5 hours 3 times of week / Arrangement, Plan of week, month, year.)
11. Meeting (6 hours 3 times of week / Management group, Religious worker)

The petitioner also provided a chart of the beneficiary's weekly work schedule by hour:

Time	Sun	Tue	Wed	Thu	Fri	Sat
6:00		Daybreak	Daybreak	Daybreak	Daybreak	Daybreak
7:00		Pray	Pray	Pray	Pray	Pray
8:00		Bible study				
9:00		continue	continue	continue	continue	continue
10:00		Evangelism	continue	Evangelism	Evangelism	Evangelism
11:00	Pray	continue	continue	continue	continue	continue
12:00	Bible Study	continue	continue	continue	continue	continue

1:00 PM	Continue		continue	continue	continue	continue		
2:00	Worship		Management	continue	Management	Management	Management	
3:00	continue		continue	continue	Training			
4:00	Education				continue			
5:00					continue			

The petitioner stated that it leases its church premises and provided a copy of its lease agreement with Cornerstone Community Church. The lease provides that the petitioner may use the facilities of Cornerstone Community Church on the following schedule:

- (1) The Sanctuary Sundays 1:30 – 3:30 p.m.
- (2) Fellowship Hall Sundays 3:30 – 4:00 p.m.
- (3) Three Classrooms Sundays 4:00 – 5:00 p.m.
(Bible studies)
- (4) Two Classrooms Tuesdays 7:00 – 8:30 p.m.
(Mid-wk Prayer)
- (5) Choir Room (w/piano) Thursdays 4:30 – 6:00 p.m.
- (6) The Nursery and kitchen will be used only on Sundays

Thus, according to the lease agreement, the petitioning organization has access to the facilities of Cornerstone Community Church for only 6½ hours. Additionally, during a CIS compliance review verification visit on April 5, 2007, the pastor of Cornerstone Community Church, [REDACTED] advised the investigating officer that the petitioning organization used the church building on Sunday afternoons for worship service and for choir practice on Friday or Saturday evenings. He also stated that the beneficiary “would come by sometimes during the week,” but no one from the petitioning organization worked at the building at any time during the week.

On September 8, 2007, the director issued the petitioner a Notice of Intent to Deny (NOID) in which she informed the petitioner of the results of the compliance review and questioned the petitioner’s statement that the beneficiary worked in excess of 60 hours per week, as the petitioner did not have access to the church building for more than seven hours per week. The director noted that the petitioner did not state where the beneficiary allegedly performed the duties outlined in his weekly schedule.

In response, the petitioner submitted a letter signed by its Board of Trustees and by some of its members, in which they stated that the petitioning church had “over 50 members,” and that the beneficiary worked over 44 hours per week in the church and 20 hours “off church campus.” The petitioner also submitted an undated letter from Pastor [REDACTED] from the Cornerstone Community Church, in which he stated:

The [petitioning organization] meets in our buildings for worship, religious studies and related services.

Their pastor, [the beneficiary], leads this congregation and is present a minimum of six days each week during the day as well as leading his church in worship on Sundays, Wednesday evenings and Thursday evening discipleship class.

The information provided by Pastor [REDACTED] is inconsistent with the information that he provided during the compliance review, in which he stated that the beneficiary “would come by sometimes during the week,” and that no one from the petitioning organization worked at the building at any time during the week. Additionally, the lease agreement does not provide for the petitioner’s use of the church facilities on Wednesdays. 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. Doubt cast on any aspect of the petitioner’s proof may, of course, 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). Furthermore, the record is not clear as to Pastor [REDACTED] knowledge of the activities of the beneficiary.

The petitioner also submitted a revised work schedule for the beneficiary, which now consisted of the following:

- 1. Preaching & Leading Worship Service (Sun, Wed. Tue-Sat) - 12 hours
- 2. Teaching (Sun, Wed, Thurs) - 5
- 3. Training Discipleship Class and Staff - 5
- 4. Outreaching/ Visitation and Consulting - 10
- 5. Administration: Preparing Weekly Bulletins, Bible material and aids, meetings - 12
- 6. Research and Prepare for Sermons, Intercessory Prayers - 20

Total Minimum Work Hours 64 Hrs

His Daily Work Schedule:

Time	Sun.	Tue	Wed	Thu	Fri	Sat
6:00a		Early Svc				
7:00		Inter Pray				
8:00		Bible Study				
10:00-12:00		Outreach/ Visitation				
1:00p	Prep Svc	Admin	Admin	Admin	Admin	Admin
2:00	Worship Sv	“	“	“	“	“
4:00	Bbl Study	Cell mtg	“	Discip Class	“	“
6:00			Choir Prac	“		
7:30			Wed Svc			
8:30			“			

The director denied the petition on November 6, 2007, finding that the evidence established that the petitioning organization was run on a part-time basis, and that the petitioner’s statements that the beneficiary worked in excess of 60 hours per week were not credible. The director therefore determined that the petitioner had not established that the beneficiary was engaged in full-time employment as a minister for two full years preceding the filing of the visa 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.

On appeal, the petitioner submits another statement from Pastor [REDACTED], in which he stated that he unintentionally misled the compliance review investigating officer when he told him that the petitioner “has no office in our facility and that [it] rented our buildings for their use. I did not know at that time when [the beneficiary] could be found at our church.” Pastor [REDACTED] now states that the beneficiary, “while not having a study or office in our facility, comes to the church five days per week to study and prepare for his teaching to his church.” Pastor [REDACTED] does not indicate where in the church the beneficiary studies and works or his knowledge of the beneficiary’s activities. The lease agreement provides no other access to the leased church facilities.

The petitioner submits another modified work schedule for the beneficiary, showing that the beneficiary uses the church sanctuary from 6:00 am to 9:00 am on each of his work days and for Wednesday services from 7:30 to 9:00 p.m. As discussed previously, the lease agreement with Cornerstone Community Church does not include use of the church facilities on Wednesday. Further, in the schedule submitted in response to the director’s March 21, 2007 RFE, the petitioner did not indicate that the beneficiary held Wednesday services or any other evening service.

The petitioner has submitted conflicting evidence regarding the beneficiary’s working hours. The compliance review revealed that the petitioner used leased facilities on a part-time basis. While Pastor

attempted to clarify his comments regarding the beneficiary's work at the church, he merely raises more questions. The petitioner submitted no competent objective evidence to resolve the inconsistencies involving the beneficiary's work. *Matter of Ho*, 19 I&N Dec. at 591-92. While the petitioner submitted evidence that it paid the beneficiary during the qualifying period, we note that it initially failed to state that the beneficiary had served as its pastor since October 2005.

It is noted that the petitioner has filed at least three Forms I-360, Petition for Amerasian, Widow(er), or Special Immigrant, and three Forms I-129, Petition for a Nonimmigrant Worker, for four different beneficiaries, including the beneficiary of this petition. Counsel asserts that the fact that the petitioner has filed other petitions for religious workers is not a basis for denying the present petition.

The petitioner alleged that the beneficiary was its only paid employee. The director correctly questioned this assertion by the petitioner in light of the three other petitions for religious workers that it had filed, and specifically that of its most recent petition in which it stated that the beneficiary of that petition was in a paid position. This unexplained inconsistency in the petitioner's evidence cast further doubt on the credibility of the petitioner's documentation, and the director's questions about the other petitions was consistent with attempting to clarify the record. The director did not deny the petition because the petitioner had filed other petitions. Rather, she denied the petition because the petitioner provided inconsistent statements and failed to establish that the beneficiary had worked, and would work, in full-time employment for the petitioning organization.

The evidence presented by the petitioner is insufficient to establish that the beneficiary worked continuously on a full-time basis for two full years prior to the filing of the visa petition.

The second issue on appeal is whether the petitioner has extended a qualifying job offer to the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

The petitioner stated that the beneficiary would be compensated with an annual salary of \$20,400. The director determined that, as the petitioner had failed to establish that it operated a full-time church, it had failed to establish that it offered the beneficiary permanent employment.

We concur with the director's determination. The petitioner alleges that the beneficiary spends 44 hours at the church conducting church business and 20 hours per week "off church campus." However, the evidence presented shows that the petitioner has access to the church building for no more than 6½ hours per week. Thus, at best, the petitioner can only show that the beneficiary will be engaged in ministerial work for less than 30 hours per week. Therefore, it has failed to establish that the beneficiary will be solely carrying on the work of a minister and will not be engaged in secular employment.

The evidence does not establish that the petitioner has extended a qualifying job offer to the beneficiary.

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.