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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

File:  Office: VERMONT SERVICE CENTER

Date: **AUG 15 2003**

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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office 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, 8 U.S.C. § 1153(b)(4), to perform services as a minister. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary.

On appeal, the petitioner attempts to explain discrepancies and omissions in the record.

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, 2003, 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, 2003, 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 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) echoes the above statutory language, and states, in pertinent part, that “[a]n alien, or any person in behalf of the alien, may file an 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.”

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 April 21, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister throughout the two-year period immediately preceding that date.

Beginning in 1998, the petitioner employed the beneficiary under an R-1 nonimmigrant religious worker visa, which expired on March 1, 2000. The petitioner has stated that the visa expired owing to a dereliction on the part of the service that the church had hired to handle immigration matters.

Reverend [REDACTED] describes the beneficiary’s duties as “preaching the gospel, conducting services, administering the sacraments, coordinating the monthly work schedule and assisting [and] conducting meetings and assemblies called by the Council.” Rev. [REDACTED] states that the beneficiary will receive a monthly stipend, estimated to be between \$900 and \$1,000, depending on donations from the congregation.

The director instructed the petitioner to submit additional evidence including “[a] detailed description of the job offered,” “[a] detailed weekly work schedule for the job offered,” the beneficiary’s tax returns, and other documentation regarding the beneficiary’s employment and immigration status.

In response, the petitioner has submitted letters and various documents. Rev. [REDACTED] states that the petitioner’s average monthly compensation is “estimated at \$600 plus lodging.” He adds “[t]he work we do is voluntary. At present, our Council has no salaried employee. We who are ministers file income tax returns on, and take out Social Security from, our lay work, not the Council.” Rev. [REDACTED] thus indicates that the ministers perform “lay work” in addition to their unpaid work on behalf of the church council.

The petitioner submits copies of the beneficiary's tax returns from 1999, 2000 and 2001. In each of those years, the beneficiary identified his occupation in English as "worker" and in Spanish as "obrero," which translates roughly as "laborer" or "blue collar worker." On one return, the beneficiary specified that he was self-employed. The beneficiary reported \$6,000 in income in 1999, \$7,000 in 2000 and \$7,500 in 2001. The source of the income was identified as "professions and commissions."

The director denied the petition, stating that the petitioner had failed to resolve several issues raised in the request for evidence mentioned above. The director determined that the petitioner has not established that the beneficiary worked for the petitioner throughout the two-year qualifying period, or that the job is full-time and permanent.

On appeal, the petitioner submits a two-page letter from Rev. [REDACTED]. Rev. [REDACTED] states that the beneficiary "has always worked more than forty hours due to the small size of our church and the fact that each and every one of us, including all of the Pastors, have to constantly work and prepare for all of the Services during the week." Rev. [REDACTED] does not explain why the "small size" of the church generates more work, rather than less, for the unspecified number of pastors who work there. Rev. [REDACTED] assertion that "all of the Pastors have to constantly work" at the church seems to be inconsistent with his earlier assertion that the ministers are all unpaid volunteers who derive their income from secular jobs. The beneficiary's identification of himself as a "worker" or "obrero" does not indicate that the beneficiary has worked solely as a minister as the statute and regulations require.

With regard to the lack of a detailed work schedule, to explain how the beneficiary is occupied full-time, Rev. [REDACTED] states that the church is understaffed and thus there is no time to prepare such a schedule. Rev. [REDACTED] blames the "church's lack of a sophisticated infrastructure that would have allowed us to previously do everything in a correct and timely manner."

Rather than submit any evidence to overcome the director's stated grounds for denial, the petitioner's appeal consists primarily of attempts to explain why such evidence is unavailable. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

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.