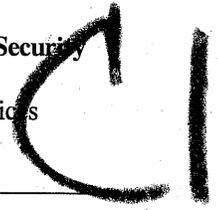


**PUBLIC COPY**

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

U.S. Department of Homeland Security  
Citizenship and Immigration Services



ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N.W.  
Washington, DC 20536



File: LIN 01 163 52115

Office: NEBRASKA SERVICE CENTER

Date: DEC 13 2003

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: 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 Citizenship and Immigration Services (CIS) 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.

*Cindy M. Honey for*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a religious organization. It seeks classification of 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 "Religious Instructor." The director determined that the petitioner had not established that the position offered is a qualifying religious vocation or occupation. The director also determined that the petitioner had not established that the beneficiary is qualified to engage in a religious vocation or occupation. The director also determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for the two full years immediately preceding the filing of the petition. The director determined that the petitioner had not established that it has had the ability to pay the beneficiary the proffered wage since the filing date of the petition. Finally, the director determined that the petitioner has not established that it qualifies as a bona fide nonprofit religious organization.

On appeal, the petitioner submitted a letter from the Rector of its organization.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

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).

8 C.F.R. § 204.5(m)(1) states, in pertinent part:

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 alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or 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. All three types of 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 petition was filed on April 23, 2001. Therefore, the petitioner must establish that the beneficiary was engaged continuously as a religious worker from April 23, 1999 until April 23, 2001. The petitioner indicated that the beneficiary last entered the United States on November 21, 1999. The petitioner has

left blank the section of the I-360 petition pertaining to the beneficiary's current status in the United States. On Part 4 of the I-360 petition, the petitioner indicated that the beneficiary has not worked in the United States without permission.

The first issue raised by the director to be addressed in this proceeding is whether the petitioner established that the position offered is a qualifying religious vocation or occupation.

8 C.F.R. § 204.5(m)(2), in pertinent part, defines "Religious Occupation" as "an activity which relates to a traditional religious function." The regulations do not define "traditional religious function," but do provide a non-exhaustive list of examples that includes religious instructors. The director requested that the petitioner provide a complete, detailed description of the duties to be performed by the beneficiary as a religious instructor, and the percentage of time performing each duty.

In response, the petitioner submitted a letter from Father Parfiri Toran, Rector, of "Church of the Holy Ascension of Our Lord." This letter states, "[The beneficiary] is teaching a class of 12 children the reading and grammar, Slavonic literature and history, with application in religious field. [sic]" This letter provides a schedule indicating that the beneficiary works approximately 25 hours a week, Monday through Sunday.

On appeal, Father Toran, states:

Not every person can teach these things, it is not easy to understand the Slavic language much less translate it and try to get others to get others to understand it... Please understand, [the beneficiary] must translate Church Slavonic into Russian and then into English, which is not an easy task.

The record contains no further documentation concerning the duties of the position. The petitioner has not demonstrated that the duties of the position are directly related to the religious creed 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. Therefore, the petitioner has not established that these duties constitute a qualifying religious occupation, and the petition must be denied.

The next issue raised by the director to be addressed in this proceeding is whether the petitioner established that the beneficiary is qualified to engage in a religious vocation or occupation.

The letter dated March 22, 2001, from the Archbishop of the religious organization, states that the beneficiary "has lived among us long enough for us to have been the judge of his qualifications." While the determination of an individual's status or duties within a religious organization is not under the purview of CIS, the determination as to the individual's qualifications to receive benefits under the immigration laws if the United States rests within CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

On appeal, the Rector of the petitioning organization states:

We would like to explain the circumstances surrounding [the beneficiary's] training. In the years between 1963-1965, Romania was a communist country and very anti-religious, therefore it was very difficult and dangerous both for training and participating in religion or religious activities. [The beneficiary] got his training in the city of Slava Rusa at the Church of Vovidenia; this is a monastery for men only. In a monastery he was an apprentice and in that way got all his training, at the time it was the only kind available for the Russian Old Orthodox Traditionalist. When it was time for them to leave there were no diplomas to give out, the state did not acknowledge their training; the only document given to them was given from the head of our church, which is our See Metropolitan Leonti from Braila, Romania [letter provided]... We requested from our See to please send the pertinent document and this was what they have sent us, as it states at the bottom of the document we have sent you. It is the only thing available. While it may not be sufficient for your records it is very pertinent to us and has a profound effect on our parish.

The document dated March 4, 2001, from the "Church of the Old Tradition," Mitropolit in Charge, Leonti, City of Braila, Romania, states that the beneficiary is a:

... member of the above named Orthodox Church of Old Tradition and he was taught all of Church requirements in order to perform any of the Church duties. The knowledge was apprehended by God kindness at the Church of Vovidenia in the City of Slava Rusa, county Tulcea between 1963-1965.

These letters from authorized officials of the religious organization state that the beneficiary has received religious training. However, these letters and the supporting documentation do not specify the topics of study, the structure of the religious organization, or the specific positions within the religious denomination that training at a monastery would qualify one to perform. The record does not articulate what qualifications are required to perform the duties of this particular position, and whether the beneficiary has fulfilled those requirements. In addition, the duties as described appear to consist of activities that might normally be performed by an active member of a religious congregation with appropriate language skills, rather than a position that would be filled by a salaried employee who completed training in preparation for a career in religious work. Therefore, the petitioner has not established that the beneficiary is qualified to engage in a religious vocation or occupation, and the petition must also be denied for this reason.

The next issue raised by the director to be addressed in this proceeding, is whether the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing date of the petition.

The two-year period for this petition, during which the petitioner must show that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation, runs from April 23, 1999 until April 23, 2001. The I-360 petition indicates that the beneficiary entered the United States on November 21, 1999. A letter from the petitioner indicates that "[i]n December of 1999, [the beneficiary] came to the United States and joined our parish..." Copies of the passport and the Form I-94, Arrival and Departure Record, were not submitted.

The petitioner's letter of March 22, 2001, states:

In Romania [the beneficiary] was the head of an organization in the Russian Old Orthodox (Old Believer-Old Ritualist) community in Galati from 1995 to 1999 and hld [sic] that position for five years before coming to the

United States. In Romania he organized Russian Old Orthodox festivals under the name of Belovodie. The aim of which was to foster and keep Russian Old Orthodox folklore [sic], history, traditions [sic] and customs alive.

The petitioner has not provided information concerning the duties, hours of service, remuneration and other details of the beneficiary's work in Romania; this is significant because the beneficiary spent eight to nine months of the requisite two-year period for this petition while he was still in Romania.

An undated letter from the petitioner indicates that, in the United States, the beneficiary "is teaching a class of 12 children the reading and grammar, Slavonic literature and history, with applications in the religious field," and notes that the beneficiary's services "are now done under voluntary circumstances." The schedule as provided amounts to 25 hours of work per week.

On appeal, the statement on the petitioner's behalf indicates that, "Even though it may seem that the hours he works teaching are not long, the preparation time required into [sic] putting together each lesson is enormous." The letter also states that "some" members of the parish, in addition to emotional support, are "giving [the beneficiary] a little financial support to help until this can be cleared up."

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 or 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).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he or she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Com. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Com 1963).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals (BIA) 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 or 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 salaried. To hold otherwise would be contrary to the intent of Congress.

In this case, the record reflects that the beneficiary's religious work in the United States has been on a voluntary basis, and the record is silent concerning the beneficiary's remuneration in Romania. Furthermore, the petitioner has not shown that the position and the duties performed in Romania and those performed in the United States for the remainder of the requisite two-year period are the same. In light of the discussion above, the petitioner has not established that the beneficiary worked continuously in a religious occupation during the required timeframe, and the petition must also be denied for this reason.

The next issue raised by the director to be addressed in this proceeding is whether the petitioner established that it has had the ability to pay the beneficiary the proffered wage of \$800 per month since the filing date of the petition.

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 initial petition contained no evidence of the petitioner's ability to pay the beneficiary the proffered wage. In response to the director's request for more evidence, the petitioner submitted a letter dated March 30, 2002, on letterhead of the "Church of the Holy Ascension of Our Lord," bearing an illegible signature, which does not match any other signature provided in the record. The name of the person signing the letter was not provided. This letter states:

As of December 31, 2001 the Church generated income of \$38,000 through private donations and income producing activities. The Church's expenses and charitable donations amounted to \$27,000. As of March 30, 2002 the Church had \$20,000 of cash in reserve.

The director's decision reiterated that the petitioner had been requested to provide evidence of its ability to pay the proffered wage, noted that the petitioner had not provided supporting evidence to substantiate the petitioner's statements regarding its financial status, and noted the forms of evidence required by the regulations.

On appeal, in reference to this issue, the petitioner states only:

... and some [the parish] are even giving him a little financial support to help until this can be cleared up.

The petitioner has not submitted annual reports, federal tax returns, or audited financial statements that would illustrate the assets and liabilities of the church and permit a conclusive determination on the church's ability to pay the proffered wage in

accordance with 8 C.F.R. § 204.5(g)(2). Therefore, the petition must also be denied for this reason.

The final issue raised by the director to be addressed in this proceeding is whether the petitioner established that it qualifies as a bona fide nonprofit religious organization.

8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

- (3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:
  - (i) Evidence that the organization qualifies as a nonprofit organization in the form of either:
    - (A) Documentation showing that it is exempt from taxation in accordance with § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or
    - (B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations...

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement which applies to churches, and a copy of the organizing instrument of the church which contains a proper dissolution clause and which specifies the purposes of the organization.

The record contains a copy of one page entitled "Restated Articles of Incorporation," indicating that these "Articles" were filed with

the State of Oregon, Secretary of State, Corporation Division, on March 22, 1995. The record does not include a complete copy of the Articles of Incorporation, or any evidence of a proper dissolution clause. The record also contains a one-page copy of filing instructions from the State of Oregon, Secretary of State, Corporation Division, for the submission of a "2002 Annual Report" for a "Domestic Non-Profit Corporation." It is noted that the address of the church is listed as Barlow Road in Woodburn, Oregon, as opposed to the address as provided on the petitioner's letterhead, Articles of Incorporation, and the I-360 petition.

As noted in the director's decision, the petitioner was requested to submit additional evidence establishing its federal tax-exempt status.

On appeal, the letter on behalf of the petitioner states:

According to our records, we have sent you the information relating to the tax-exempt status of our church and that it is a non-profit organization. Our Federal Tax I.D. # is 93-0873090. This number was issued to us in 1984 or 1985. The first 3 numbers will show to you that our church is tax exempt.

In this case, the record does not include a letter of recognition issued by the Internal Revenue Service (IRS) to the petitioner, nor does it include a listing of the petitioner's recognition as an approved subordinate operating under the umbrella of an organization granted tax-exempt status as a religious organization. The record does not include a completed IRS Form 1023, the Schedule A supplement which applies to churches, or a copy of the organizing instrument of the church which contains a proper dissolution clause and which specifies the purposes of the organization. The submissions do not meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A) or (B). Therefore, the petition also must be denied for this reason.

In reviewing an immigrant visa petition, CIS must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.