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Citizenship and Immigration Services

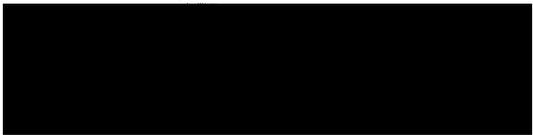
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ADMINISTRATIVE APPEALS OFFICE

CIS, AAO, 20 Mass, 3/F

425 I Street N.W.

Washington, D.C. 20536



File:



Office: VERMONT SERVICE CENTER

Date: DEC 16 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
Robert P. Wiemann, Director for
Administrative Appeals Office

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

The petitioner is self-petitioning for classification 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), in order to perform services as a pastor for Iglesia de Dios Pentecostal, M.I., at an annual salary of \$13,200.

In a decision dated July 12, 2002, the director determined that the petitioner had failed to establish that he had been continuously engaged in a qualifying religious vocation or occupation for the two years immediately preceding the filing date of the petition.

The regulation at 8 C.F.R. § 103.3(a)(2)(i) states, in pertinent part: "The affected party shall file an appeal on Form I-290B." The regulation at 8 C.F.R. § 103.3(a)(2)(v) states: "*Improperly filed appeal--(A) Appeal filed by person or entity not entitled to file it--(1) Rejection without refund of filing fee. An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed.*"

The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) states:

Meaning of affected party. For purposes of this section and §§ 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding.¹ It does not include the beneficiary of a visa petition. An affected party may be represented by an attorney or representative in accordance with part 292 of this chapter.

There is no Form G-28, Notice of Entry of Appearance of Attorney or Representative, contained in the record of proceeding. The Form I-290B, Notice of Appeal to the Administrative Appeals Unit (AAU),² was filed by Edwin Mendez, pastor of the petitioner's proposed employer, on August 13, 2002. The appeal has not been filed by the petitioner or any entity with legal standing in the matter; rather, the appeal has been filed by the petitioner's proposed employer. However, in the interest of due process, the matter will be reviewed on certification pursuant to 8 C.F.R. 103.4.

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

¹ The Immigration and Naturalization Service (INS or Service) is now known as Citizenship and Immigration Services (CIS).

² The Administrative Appeals Unit (AAU) is now known as the Administrative Appeals Office (AAO).

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 record reflects that the petitioner is a native and citizen of Venezuela who was last admitted to the United States as a nonimmigrant visitor for pleasure on April 9, 2001, with authorization to remain until May 8, 2001. The Form I-360, Petition for Amerasian, Widow or Special Immigrant, indicates that the petitioner has not been employed in the United States without CIS authorization.

The issue to be examined in this proceeding is whether the petitioner has established that he had been continuously engaged in a qualifying religious vocation or occupation for the two years immediately preceding the filing date of the petition.

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

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 24, 2001. Therefore, the petitioner must establish that he had been continuously engaged in a qualifying religious vocation or occupation since at least April 24, 1999.

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. 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. Comm. 1963); *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

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 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 be otherwise would be outside the intent of Congress.

In response to the director's request for evidence concerning the petitioner's work experience, the petitioner submitted generic monthly work schedules spanning the period from April 2001 through December 2002. The petitioner failed to submit copies of his individual income tax returns, time sheets, work logs, pay receipts, or other documentation to establish that he had been continuously employed in a religious vocation or occupation during the required two-year period.

On appeal, Pastor [REDACTED] submits a letter and additional documentation including: a letter from the regional secretary of Iglesia de Dios Pentecostal, M.I., inviting the petitioner and his spouse to practice ministerial functions in its churches in Puerto Rico; a description of the duties of a youth pastor; Reverend [REDACTED] daily work schedule; and a transcript of the petitioner's classes and grades received from the Assemblies of God Pentecostal Evangelical Seminary from 1991 through 1993. Pastor [REDACTED] states that his church, Iglesia de Dios Pentecostal, M.I., has supported the petitioner since his entry into the United States by providing him with food, transportation and household expenses, and that, in the future, the petitioner and his spouse will be paid a monthly salary of \$1,100.

The petitioner has failed to submit his individual income tax returns, wage and tax statements, time sheets, work logs, pay receipts, or other corroborative evidence in support of the petition. Pastor [REDACTED] statements are insufficient to establish that the applicant was continuously engaged in a qualifying religious vocation or occupation during the two years immediately preceding the filing date of the petition. Therefore, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has failed to establish that the proposed employer has had the ability to pay the petitioner the proffered wage since the filing date of the petition; the petitioner is qualified to engage in a religious vocation or occupation; and, the position offered is a qualifying religious vocation or occupation. As the appeal will be dismissed for the reason discussed, these issues need not be examined further at this time.

In reviewing an immigrant visa petition, the AAO 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 beneficiary in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of B. 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.