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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

**NOV 12 2003**

File: [REDACTED]

Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner:  
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 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 N. Somers for*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director, Vermont 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 "Minister of Evangelism/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 the two full years immediately preceding the filing of the petition.

On appeal, counsel asserts that the denial of the petition "was unwarranted and constitutes an egregious misinterpretation of the statute and applicable case law..." Counsel submitted a brief and additional evidence, and maintains that the beneficiary has more than the required two years experience in a religious occupation.

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

The sole issue raised by the director that will 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.

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 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 30, 2001. Therefore, the petitioner must establish that the beneficiary was engaged continuously as a religious worker from April 30, 1999 until April 30, 2001. The petitioner indicated that the beneficiary entered the United States on January 1, 2000, as an F-1 student. The Form I-797A indicates the beneficiary received approval for R-1 religious worker non-immigrant status valid initially from April 30, 2001 to January 9, 2003, and extended from January 10, 2003 to January 9, 2005.

The director's decision mistakenly referred to the beneficiary's date of entry into the United States as January 8, 2001. The correct date of entry is January 8, 2000. Therefore, this portion of the director's decision is withdrawn.

The beneficiary was outside of the United States during the requisite period, for approximately eight months from April 30, 1999, until January 1, 2000. The record reflects that the beneficiary received a "Bachelor of Ministry" degree, dated October 14, 1995, from the International Institute of Church Management (India/U.S.A.). The degree is signed by the Rev. Dr. [REDACTED] President, (who is also the petitioner), and notes that the Institute is "A Division of International Faith Christian Church." The same "Institute" awarded an "Ordination Certificate" at Chennai, India, dated November 14, 1989. The "Ordination Certificate" is also signed by the petitioner, as Founder/President. The International Institute of Church Management also issued another "Ordination Certificate" to the beneficiary, dated January 1, 2002, at Chennai, India. The new certificate indicates that it is valid for the calendar year and is renewable annually thereafter. Other documents, including secondary school leaving certificates, and a diploma in Electronics, were submitted.

On appeal, the petitioner submitted (on the letterhead of International Faith Christian Church at Chennai, India) a statement that the beneficiary "pastored" a congregation of around 200 members from November 1989 until December 1999, "fulfilling all the responsibilities of a fully ordained pastor including baptizing believers, serving communion, conducting weekly worship services, preaching in all of the services, visiting members of the congregation periodically, dedicating babies, and praying/counseling for the sick, the suffering, the needy and the bereaved." The petitioner also submitted photographs and additional statements from five pastors of other churches in

Chennai, India, attesting to the beneficiary's service as a pastor for ten years in India.

The beneficiary entered the United States on January 8, 2000, as an F-1 student. The approved Form I-20 indicates that the beneficiary<sup>1</sup> was accepted for a full course of study in "Practical Theology" at Christ for the Nations Institute in Dallas, Texas. With the exception of "Private Piano" courses, the transcript reflects that all other coursework relates to theology, evangelism, video ministry and other religious topics. The petitioner also submitted a "Leadership Certificate" from the institute, given at Dallas, Texas, on December 15, 2000. No documentation included in the record reflects the denomination of the Christ for the Nations Institute.

The petitioner has not established that the beneficiary's studies and the time spent obtaining the "Leadership Certificate" would qualify as a full-time religious occupation. It was found in *Matter of Z-*, 5 I&N Dec. 700 (Comm. 1954), that an ordained priest engaged in advanced religious studies, who continues to function as a minister during the period of study, would meet the experience requirement.

A letter from the petitioner dated April 17, 2002, states that while the beneficiary was a full-time student in Texas, "he was actively involved in a wide range of ministerial activities on campus including Praise and Worship and Music ministries." The number of hours spent by the beneficiary and a detailed identification of the types of activities performed were not articulated. A second letter submitted by the petitioner of the same date, indicates that the beneficiary maintained his membership in the International Faith Christian Church in India, while he was a student in Texas.

The record also includes a recommendation letter dated December 12, 2000, from the Production Manager, Clear Vision Productions, at Waxahachie, Texas, stating that the beneficiary worked for nearly one year as a "camera operator, engineer, and director at Clear Vision Productions in Dallas, Texas." These secular duties performed during the requisite time period would preclude a finding that the beneficiary was continuously performing as a religious worker.

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<sup>1</sup>The I-20 and accompanying certificate along with certain other documents refer to the beneficiary as [REDACTED]

It is noted that 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 the instant matter, the record does not reflect to what extent and in what manner the beneficiary was engaged in religious duties during the time he was a student. The record does not discuss the beneficiary's role with any United States religious organization during the one year of studies in Dallas, Texas, nor does it elaborate on how he may have continued to pastor his church in India while he was in the United States. The course of study began in January 2000, and the Leadership Certificate was awarded in December 2000. This falls within the two-year period immediately preceding the filing of the petition, during which the beneficiary must have been continuously engaged in religious work. The petitioner has not established that the beneficiary was continuously engaged in a qualifying religious vocation or occupation for the two years immediately preceding the filing date of the petition. Therefore, the petition must be denied.

Beyond the decision of the director, another issue that will be addressed in this proceeding is that the petitioner must establish that it has provided a qualifying job offer to the beneficiary, and that it has had the ability to pay the beneficiary the proffered wage 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.

In this case, the petitioner has submitted an unaudited income and expense statement for Golden Heights Christian Center Church for the year ending December 31, 2000. This report indicates a total income of \$179,865.80 and total expenses of \$183,447.48, with a net

total of \$-3,581.68. The petitioner states, in a letter dated April 12, 2001, that the:

[R]evenue disclosed is for the church only. The income of the school run by the church is not included whereas, in the original application, we have indicated the gross annual revenue of the entire non-profit organization in which the church is just one division... The fact that we have adequate revenue to pay this amount [\$24,000] to the applicant is reflected in the letter from Golden Heights Christian Center Church which indicates that the annual revenue of the church for the calendar year 2000 was \$179,000.00.

The petitioner submitted earnings statements and the beneficiary's 2001 Internal Revenue Service (IRS) Forms 1040A and W-2, demonstrating that he has been paid by the petitioner since October 8, 2001, when he received his approved R-1 status. No further evidence of the petitioner's financial status is included in the record. The documentation for the year ending 2000 shows a net loss. 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).

Additionally, the letter of April 12, 2001, states that the term of employment is to commence on May 1, 2001, or as soon as the R-1 petition is approved, and will terminate two years from the date of employment, with a provision to extend the contract for another term. The terms of the contract reflect the temporary nature of the employment as an R-1, and appear to end after a maximum period of four years. No documentation has been submitted to indicate the offer of a permanent position to the beneficiary.

Another issue not raised by the director that will be addressed in this proceeding is whether the petitioner qualifies as a bona fide non-profit religious organization. The Certificate of Incorporation dated May 27, 1970, states "the name or title by which such society shall be known in law is Christian Center Church of Monroe County New York." A letter from Reverend Donald P. Riling, D.D., dated April 1996, certifies that "Christian Center Church of Monroe County, Inc." at 77 Bethel Drive, Brockport, New York, is a Christian religious non-profit organization. This letter, however, is on "Golden Heights Christian Center Church" letterhead. The IRS

letter of recognition dated August 29, 1984, is issued to the "Christian Center Church of Monroe County New York", at 4907 Lake Road South, Brockport, New York. The Constitution and By-Laws of February 1992, are in the name of "Golden Heights Christian Center Church of Monroe County, Inc.," yet state that "The name of this church shall be Christian Center Church of Monroe County, State of New York." The record does not clearly document that the Church that was granted tax-exempt status in 1984 relocated to 77 Bethel Drive, nor does it document that the "Golden Heights Christian Center Church" is recognized by the IRS as a bona fide religious organization.

As the appeal will be dismissed on the grounds discussed, these issues need not be examined further.

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.