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

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street NW
Washington, DC 20536

CI



FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

NOV 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:



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 of the 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 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) in order to employ him as a 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 years immediately preceding the filing date of the petition. The director further determined the petitioner had not established that it had the ability to pay the beneficiary the proffered salary.

On appeal, counsel submits a statement and additional documentation.

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).

Pursuant to 8 C.F.R. § 204.5(m)(1):

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

The director determined that the beneficiary's two years of service as a volunteer youth pastor and pastor did not qualify as full-time, salaried work experience in a qualifying religious vocation or occupation.

On appeal, counsel asserts that an alien who engages in theological studies while serving as a minister may be considered to be carrying out the duties of a religious vocation or occupation, if the study is consistent with the ministerial vocation and the alien continues to perform the duties of a religious vocation or occupation. Counsel cites two unpublished AAO decisions and correspondence issued by Lawrence Weinig, then Acting Assistant Commissioner for Adjudications, U.S. Immigration and Naturalization Service (now CIS), on May 8, 1992.

Pursuant to 8 C.F.R. § 204.5(m)(1):

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 August 2, 2001. Therefore, the petitioner must establish that the beneficiary was engaged continuously in a qualifying religious vocation or occupation during the period from August 2, 1999 to August 2, 2001.

The record shows that the beneficiary last entered the United States on July 18, 2000 as a nonimmigrant F-1 student to study pastoral ministry at Trinity Theological Seminary in Newburgh, Indiana. The beneficiary was expected to complete his studies no later than May 31, 2002.

The beneficiary states on his resume that he holds a bachelor's degree in electrical engineering from California State University of Fresno, California, and a master's degree in business administration with emphasis on marketing from National University, Fresno, California. The beneficiary further states that he worked as the marketing director for PT Bintang Jaya Pastika Rubber Industry in Indonesia from September 1989 to July 2000. The beneficiary states that he also served an Indonesian church as a youth pastor on a voluntary basis from March 15,

1990 to July 2000. The beneficiary asserts that he served the petitioning church as a youth pastor and pastor on a voluntary basis during the period from July 2000 to August 2, 2001.

The legislative history of the religious worker provision of the Immigration Act of 1990 reflects that a substantial amount of case law has 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).

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).

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).

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 find otherwise would be outside the intent of Congress.

In this case, the beneficiary's experience as a volunteer youth pastor and pastor during the period from August 2, 1999 to August 2, 2001 do not constitute qualifying work experience because the work was not full-time, salaried employment in the religious vocation or occupation.

On appeal, counsel states that the AAO has previously held that the religious work must be continuous, but need not be full-time during the requisite two-year period. In support of his assertion, counsel cites two unpublished AAO decisions. The record does not contain copies of the petitions and their supporting documentation. If those petitions were approved based on evidence that is similar to the evidence contained in this record of proceeding, however, the approval of the prior petitions may have been erroneous. Further, the AAO is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). As to the correspondence cited by counsel, the AAO notes that a statement made in official correspondence in response to inquiries does not have the effect of policy, regulation, or statute.

In *Matter of Z-*, 5 I&N Dec. 700 (Comm. 1954), it was held that continued study by an ordained member of the clergy was not interruptive of his or her continuous practice of a religious vocation. The petitioner has submitted an undated "ordination certificate" and an undated "certificate of missionary license" issued to the beneficiary by the petitioning church, along with two certificates reflecting that the beneficiary completed "[l]eadership [c]ourse [t]raining" on September 26, 1987 and "Fresno Bible Training" on January 17, 1986. The petitioner has not, however, provided any evidence describing the content of

these courses or demonstrating that these courses qualified the beneficiary for ordination as a minister. The issuance of a document entitled "certificate of ordination" by a religious organization does not conclusively establish that an alien qualifies as a minister for immigration purposes. *Matter of Rhee*, 16 I&N Dec. 607, 610 (BIA 1978).

The beneficiary's Form I-20 Certificate of Eligibility for Nonimmigrant (F-1) Student Status from Trinity Theological Seminary indicates that the beneficiary began a two-year program leading to a Master of Divinity Degree on July 20, 2000. He was expected to complete his studies no later than May 31, 2002.

On appeal, counsel submits a letter dated November 27, 2002, from an official of Trinity College & Theological Seminary in Indiana stating that the beneficiary is "currently" a student enrolled in the seminary's Distance Learning Program. The official indicated that the beneficiary was enrolled in 30 semester credit hours, and his registration is scheduled to expire on November 30, 2003. The petitioner has not submitted a current Form I-20 reflecting an expected completion date of November 30, 2003, or a copy of the beneficiary's original Form I-20 showing that the beneficiary's program had been extended until that date. Further, the petitioner has not provided any documentation setting forth the seminary's admission requirements or a syllabus describing the courses required to complete a Master of Divinity degree in pastoral ministry. Additionally, the petitioner has not provided a copy of the beneficiary's transcripts from the seminary reflecting the courses actually completed by the beneficiary. Therefore, the petitioner has not shown that the beneficiary was an ordained minister engaged in study leading to a degree in ministry while also serving the petitioner as a full-time, salaried minister during the two-year qualifying period. For this reason, the petition must be denied.

The second issue to be determined in this proceeding is whether the petitioner has shown that it has the ability to pay the beneficiary the proffered salary.

Pursuant to 8 C.F.R. § 204.5(g)(2):

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 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 annual reports, federal tax returns, or audited financial statements.

The petitioner has submitted letters from Wells Fargo Bank listing the accounts of Indonesian Full Gospel Fellowship and current balances. These documents do not satisfy the regulatory requirement. The petitioner has not furnished the church's annual reports, federal tax returns, or audited financial statements. Therefore, the petitioner has not established that it has the ability to pay the beneficiary the proffered wage.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified for a religious worker position within the religious organization. As the appeal will be dismissed on the grounds discussed above, this issue will not be addressed further in this proceeding.

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 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.