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Citizenship and Immigration Services

CI

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

[REDACTED]

File: [REDACTED] Office: VERMONT SERVICE CENTER

Date: NOV 17 2003

IN RE: Petitioner:
Beneficiary:

[REDACTED]

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 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.



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 deaconess. The director determined that the petitioner had not established: (1) that the beneficiary's position is traditionally a full-time paid position within the petitioner's denomination; (2) the beneficiary's continuous employment in the position offered throughout the two-year period immediately preceding the filing of the petition; or (3) its ability to pay the beneficiary's proffered wage.

On appeal, Rev. [REDACTED] founder and pastor of the petitioning church, states "[t]he purpose of this letter is to request the file for an appeal." It is not clear whether Rev. Paul merely means that he seeks to file an appeal, or that he requests a copy of the record of proceeding. It is not clear why the petitioner would require a copy of the record in this instance, because the record of proceeding consists entirely of documents submitted by the petitioner, and correspondence from the director to the petitioner. Thus, the record of proceeding contains nothing that the petitioner has not already seen. Given the ambiguity of the petitioner's statement, we do not construe the petitioner's statement as a request for a copy of the record of proceeding (although the petitioner remains free to request such a copy, if desired, from the Freedom of Information Act/Privacy Act office of the Vermont Service Center).

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).

The first issue in this proceeding is whether the petitioner has made a qualifying job offer. 8 C.F.R. § 204.5(m)(4) states that each petition for a religious worker must be accompanied by a job offer from an authorized official of the religious organization at which the alien will be employed in the United States. The official must describe the terms of payment for services or other remuneration.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

CIS therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, 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.

Further, while the determination of an individual's status or duties within a religious organization is not under CIS's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with 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).

The pastor of the petitioning church, Rev. [REDACTED] in a letter accompanying the petition, identifies the beneficiary as a deaconess but does not describe her duties in that capacity.

In response to a request for further information regarding the beneficiary's work, the petitioner has submitted a "form" letter, transcribed below. The underlined portions represent "blanks" which the petitioner filled in with a typewriter.

This letter is to verify that Ms. [the beneficiary's name] has been a member of our church since June Of 1997. She is currently working for the church as

DEACONESS

Her duties are:

To assist in preparing the holy communion, to count church monies, to evangelize, to visit the sick [sic], to conduct prayer meetings, to conduct bible studies, to teach adult Sunday school classes, to visit the prisons, etc

For the present time our church is only remunerating Ms. [the beneficiary's surname] for the services rendered. Our church pays rent in the amount of \$ 600.00 monthly.

Rev. [REDACTED] has indicated "[w]e have a church membership of 30." Given this very small membership, it is not clear how the church could support so many employees that it would be necessary for the church to prepare employment verification "form" letters bearing the church's letterhead. We note that the feminine pronouns in the letter are part of the prepared form, rather than text added later.

The petitioner also has submitted copies of two certificates. A certificate of training, dated March 21, 1999, indicates that the beneficiary "has successfully completed the prescribed special training course on Ministry Skills Training." A certificate of ordination indicates that the petitioner ordained the beneficiary as a deacon on June 4, 1999. The only stated criterion for ordination is "satisfactory examination" by the church's six-member board of trustees.

The petitioner has submitted a work schedule, indicating that the beneficiary's duties include prayer meetings, field evangelism, conducting Bible study, hospital prayer visits, and teaching adult Sunday school classes. The schedule, as submitted, shows only 34 hours per week rather than the 35 previously claimed.

The director instructed the petitioner to submit documentation to show that the beneficiary's occupation is recognized as a traditional religious function within the denomination. The record contains no such documentation. The director therefore denied the petition, in part because the petitioner has failed to establish that the beneficiary works in a qualifying religious occupation.

On appeal, Rev. [REDACTED] notes that he has submitted the beneficiary's certificates of training and ordination. In *Matter of Rhee, supra*, the Board of Immigration Appeals found that the existence of a certificate of ordination, by itself, is not sufficient to establish eligibility. Rev. [REDACTED] denies any "intent to place [sic] fraud or deception," but it is not credible that a church with only 30 members would have the need for a full-time deaconess, or for that matter that a church of such exceedingly small size would have so many employees, all in need of employment verification letters and all female, that it was necessary to create a "form" letter using the petitioner's letterhead. The alternative explanation, that only one letter was necessary but the person

preparing the letter did not know who the employee was, suggests the involvement of an unidentified third party for undisclosed reasons. It remains that the director did not allege fraud; the issue is the lack of supporting evidence. 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 next issue concerns the beneficiary's past experience in the position offered. The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that "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 May 18, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a deaconess throughout the two-year period immediately preceding that date.

Rev. [REDACTED] in his introductory letter, states that the beneficiary is a deaconess who "has ministered to our Church and to the community very faithfully, volunteering 35 hours per week."

The director requested further documentation of the beneficiary's past work. The only subsequent submission that relates to this request is the above-mentioned certificate of ordination.

As noted above, this certificate is dated June 4, 1999, less than two years before the petition's May 18, 2001 filing date.

In denying the petition, the director noted the lack of evidence of past employment, and specifically noted that the petitioner has submitted no payroll records to corroborate the claim that the beneficiary has worked for the petitioner in the past. On appeal, Rev. [REDACTED] states that the beneficiary "has held the position of Deaconess in our assembly since 1999," but this statement does not overcome the grounds for denial. One of the very few documents submitted by the petitioner indicates that the beneficiary was ordained as a deaconess less than two years before the filing of the petition. Thus, the documentation on its face indicates that the beneficiary does not meet the two-year experience requirement.

The final issue concerns the petitioner's ability to pay the beneficiary's proffered wage. The regulation at 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.

Rev. [REDACTED] states that the petitioner's income in 2000 was \$9,000, derived from "tithes and offerings from our members; offerings from various programs sponsored by the Church and from our sister Churches throughout the tri-state area." As noted above, Rev. Paul indicates that the church has 30 members.

The director had requested evidence to show the number of salaried employees working at the petitioning church, as well as payroll records to substantiate this number. The record contains no documentation addressing these claims.

The director found that the petitioner's modest income calls into question its ability to pay the beneficiary's salary in the future. The director also questioned whether the petitioner has any intent to pay the beneficiary any salary in the future. On appeal, Rev. Paul asserts that the petitioner has submitted "a financial statement," but the record contains no such document. The materials in the record indicate only that the church is reliant on member donations and contributions from other area churches.

We note that the petitioner has never stated what the beneficiary's salary would be, or even indicated that the beneficiary would be paid at all, although the regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to explain the terms of remuneration. The petitioner has described the beneficiary's past work as "volunteering." The beneficiary has thus far been reliant on room, board, and cash supplied by Pierre Jean Arnold, whose relationship to the beneficiary is unexplained.

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/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/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. 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, 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/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.

The petitioner has indicated that the beneficiary was “volunteering” throughout the qualifying period, and that she did not become a deaconess until less than two years before the filing of the petition. The only documented training is a single course of unexplained duration, and the petitioner has not shown that its denomination traditionally regards “deaconess” as a paid, full-time occupation rather than a function assigned to dedicated church members. The record contains no financial information at all to establish that the petitioner has paid, will pay, or can afford to pay the beneficiary any salary.

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.