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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, DC 20536

[REDACTED]

File: [REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date:

NOV 13 2003

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. Gomeny for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, California 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 an "Evangelist/Bible Teacher." 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 factual situation differs from that which was relied on in the director's decision. Counsel asserts that although the position was voluntary, the beneficiary's work was more than full-time, and was performed continuously for more than two years. Counsel writes that this, in combination with her educational background, entitles her to classification as a special immigrant religious worker. Counsel further notes that the beneficiary has held no secular employment and was supported by her family. Finally, counsel states that the case of *Matter of Treasure Craft of California* relied on by the director is not applicable, because the beneficiary's work has been full-time and continuous and is supported by a certificate of service from a pastor in Korea.

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 to be addressed in these proceedings 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, 2003, 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, 2003, 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 November 28, 2000, as a B-2 visitor. Copies of the passport and I-94 were not submitted. It is noted that the petitioner stated in a letter dated April 16, 2001, that the beneficiary "has been visiting the United States since May 28, 2000 on a visitor's visa. She applied for a student visa in October of 2000." The petitioner's letter of May 15, 2002, however, states that the beneficiary "came to the United States on April of 2000 [sic]. Ever since their move to the US, they have been attending my Young Nak Presbyterian Church of San Francisco." A "Certificate of Service" letter dated March 23, 2001, by Soo Il Shin, Pastor of Hong Kwang Presbyterian Church in Seoul, Korea, states that the beneficiary served his church "until May of 2000." The record contains a letter of recommendation dated March 8, 2001, from Soo Il Shin, recommending the beneficiary for staff of a Korean church in California, though she had purportedly served with the petitioner since her arrival in the United States. Without additional documentation in the record, the beneficiary's date of arrival in the United States is in question. Part 4 of the Form I-360, Petition for Amerasian, Widow, or Special Immigrant, indicates that the beneficiary has not worked in the United States without permission.

The requisite two-year period during which the beneficiary must have been continuously engaged in religious work, occurs, in part, while the beneficiary was in Korea, and part, while the beneficiary was working for the petitioner in California.

Regarding her work in Korea, the petitioner submitted a letter dated March 23, 2001, by Soo Il Shin, Pastor of Hong Kwang

Presbyterian Church in Seoul, Korea, attesting that the beneficiary worked since 1995 as an evangelist. The letter indicates she put in "a minimum of 40 to 50 hours of voluntary work to promote Christianity and for the cause of the church." The letter does not specify whether the 40-50 hours were performed on a weekly, monthly, or on some other basis. The letter details activities performed by the beneficiary on Wednesdays through Sundays. The petitioner's letter of May 15, 2002, indicates that based on his "direct contact with Pastor Soo Il Shin," he can state that the beneficiary worked 35 hours a week in Korea, on a voluntary basis, on activities including: establishing a youth choir; visiting orphanages, senior homes, and other organizations; conducting prayer meetings and youth activities; training senior citizens on Korean Tai Chi and acupuncture basics; training homemakers to be "better wives and mothers"; and conducting bible study, door-to-door evangelism and church neighborhood meetings.

Regarding the beneficiary's religious work in the United States, the petitioner writes that shortly after she began attending the petitioning church, the beneficiary was asked to serve as "Evangelist/Bible Teacher" on a voluntary basis. The petitioner states that her duties involve: conducting bible study programs; visiting Korean community events to spread the gospel; visiting the poor, sick and shut-ins; and, encouraging non-Christians to receive the benefits of Christian life. The petitioner notes that the mornings are to be spent in the office "to work on organizational and administrative work," the afternoons are for visitation, and the evenings for bible study. The petitioner also notes that the beneficiary has been supported by: fund transfers from her husband's interest in a commercial/residential property in Seoul, Korea; funds from her husband's former water distribution business in Korea; and, relatives in Korea and the United States.

The director's decision states that the regulations and statute do not stipulate that work experience must be full-time, paid employment, in recognition of special circumstances of religious workers engaged in a religious vocation, and the taking of vows. The director writes that the regulations "recognize a distinction between someone practicing a life-long religious calling and a lay employee." The director continues that the "absence of specific statutory language requiring that the two years of work experience be conventional full-time, paid employment does not imply, in the case of religious occupations,

that any form of intermittent, part-time, or volunteer activity constitutes continuous work experience in such an occupation."

On appeal, counsel states, "Traditionally, the position was held by dedicated volunteers who require no salary or payment for services." This echoes the March 23, 2001, letter of Soo Il Shin, Pastor of Hong Kwang Presbyterian Church in Seoul, Korea, which states, "As our church policy, evangelists are voluntary workers, and as such they receive no monetary compensations [sic]."

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/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 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 was engaged on a voluntary basis during the two-year period prior to the filing date of the petition. In light of the discussion above, the petitioner has not established that the beneficiary worked continuously in a religious occupation during the required timeframe. The evidence of record reflects that the petitioner has not established that, during the two years immediately preceding the filing of the petition, the beneficiary was continuously engaged in a religious vocation or occupation. Therefore, the petition must be denied.

Beyond the decision of the director, the petitioner has not established that the beneficiary's activities for the petitioner require any religious training or qualifications. The petitioner states in a letter dated May 15, 2002, "No formal degree or educational training is required for this position. A thorough knowledge of bible and dedication to Christian belief are the only requirements to be our evangelist/bible teacher." The petitioner has not shown that the beneficiary is performing duties above and beyond those of a caring member of the denomination.

Another issue not addressed by the director is whether the petitioner has established its ability to pay the beneficiary's proffered wage of \$1,500 per month.

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 petitioner submitted copies of Bank of America Business Checking Statements, in the name of the petitioning church, for the month of March 2002. This statement shows an ending balance of \$10,196.34 for the month. The petitioner also submitted "Current Cycle" reports for February and March 2002, from an unidentified source. The record contains an unaudited balance sheet, "Budget for Year 2001 - Income," showing \$61,600 for the year. The sheet "Budget for Year 2001 - Expenses" details expenses totaling \$28,300, while the cover sheet lists Total Income and Total Expenses as equal at \$61,600. The "Statement of Revenue and Expenses" submitted to the Internal Revenue Service (IRS), in connection with Part IV of the petitioner's IRS Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, details "Revenue over Expenses" as follows: for the period from July (the date of incorporation under the new name) to December 2000, \$1,131.41; for the year 2001, \$200.00; for the year 2002, \$550.00. These balances are insufficient to support the proffered wage of \$1,500 per month, or \$18,000 per year. The petitioner has not submitted annual reports, federal tax returns, or audited financial statements that would illustrate the petitioner's ability to pay the proffered wage in accordance with 8 C.F.R. § 204.5(g)(2). As the petition will be denied for the reason noted, these issues will not be discussed further in this proceeding.

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.