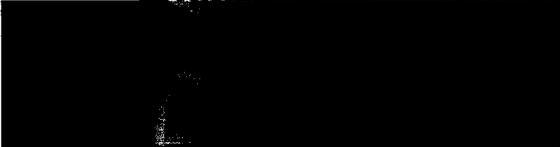


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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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

identifying data deleted to
prevent clearly unwarranted
invasion



File: [Redacted] Office: VERMONT SERVICE CENTER

Date:

SEP 04 2007

IN RE: Petitioner: [Redacted]
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

PUBLIC COPY

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 the Bureau of Citizenship and Immigration Services (Bureau) 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 minister. The director determined that the petitioner had not established that the beneficiary qualifies for classification as a minister, or that the beneficiary's position requires any specialized religious training or education.

On appeal, the petitioner argues that such training is necessary for workers in a religious occupation, but not in the vocation of a minister.

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).

The regulation at 8 C.F.R. § 204.5(m)(3)(ii)(B) requires the petitioner to submit evidence to show "[t]hat, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested." 8 C.F.R. § 204.5(m)(4) requires the petitioner to "state how the

alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration)." 8 C.F.R. § 204.5(m)(2) offers the following relevant definitions:

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

██████████ Mullings, senior pastor of the petitioning church, states that the church has "no salaried religious or non-religious employees at this time," but that "this church found it only prudent to establish a permanent, salaried, full-time pastoral staff to replace the 'revolving door' system that was once common but no longer effective." To that end, the petitioner proposes to employ the beneficiary as a minister. ██████████ states that the beneficiary "has been a Licensed Minister of the Gospel in the Pentecostal Denomination for the past seventeen years and Ordained Minister for the past eleven years . . . and has been performing his ministerial duties since April of 1999 at our church." Documents in the record confirm that the West Indies Pentecostal Assemblies issued the beneficiary's license to preach on June 12, 1983 (at which time the beneficiary was 18 years old), and that the First Community Church of God ordained the beneficiary as a minister on February 17, 1990. The ordination certificate indicates that the church then ordained the beneficiary "had full and sufficient opportunity for judging his gifts, and after satisfactory examination by us in regard to his Christian experience, call to the ministry and views of Bible doctrine."

██████████'s assertion that the church has "no salaried religious or non-religious employees" is inconsistent with the financial statement in the record, which reflects entries for "Pastor's Salary" and "Sexton's Salary." Rev. Mullings further asserts that, rather than a regular salary, "our religious workers were compensated in the form of 'Salaria' . . . [a] stipend, wages, or compensation for services." A ledger from September 1999 reflects "disbursements" in varying amounts to ██████████ himself and various other individuals, but there is no mention of the beneficiary.

██████████ describes the beneficiary's duties:

[The beneficiary's] duties include and will not be limited to the following: preaching sermons on an average of twice per week, teaching the Bible Doctrine



and Spirit Principles, preparing converts for Baptism and fellowship, as well as
 instructing teaching new members, the structure and doctrine of the church. [The
 beneficia will also, continue to visit the sick and shut-in, in nursing homes, and
 hospitals ss and dedicate new homes and apartment[s] acquired by members,
 when ne ary, conduct and officiate at funeral services, when necessary. He will
 also su e the accountability of moneys collected, supervise and coordinate the
 ministric the church namely: Evangelism Ministry, Outreach Ministry and the
 Men's M ry. He will also provide individual religious counseling to members
 of the cc gation and community.

The director ins ed the petitioner to submit evidence to show that the beneficiary's past and
 proposed future les "require specific religious training beyond that of a dedicated and caring
 member of the gious organization." In response, the petitioner has submitted substantial
 background doc entation which does not address the issue of what the requirements are to
 become a minist [redacted] states "[a]pproximately twenty-three years of religious training
 . . . set [the ben ary] apart from a dedicated and caring member of this organization." At the
 time Rev. Mulli wrote this, the beneficiary was thirty-six years old. [redacted] does not
 specify or docu the training that the beneficiary began receiving at the age of thirteen beyond
 the usual religio ducation provided to young members of the petitioner's denomination. The
 knowledge that beneficiary has accumulated as a member of the religious denomination does
 not set him ap from other long-standing members of the denomination, and exceptional
 devotion to ene b is not tantamount to specialized training.

Rev. Mullings s e that the beneficiary "has habitually worked in excess of forty hours" per
 week at the pe g church since April 1994. Rev. Mullings states "[a]s [was] previously
 mentioned, the ary shall continue to receive wages in the form of Salaria." This is not,
 however, what previously mentioned. In his initial letter, [redacted] stated that the
 church's employ ve in the past received Salaria, but that this system had become unworkable
 and therefore " church found it only prudent to establish a permanent, salaried, full-time
 pastoral staff." Rev. Mullings asserts that, because the petitioner is tax exempt, "there are no . . .
 Quarterly With g Statements." Whatever the status of the church, the individual employees
 are private citiz and therefore subject to paying income tax, whether that income is labeled
 "Salaria" as in Rev. Mullings' letters, or "salary" as reflected in the church's financial documents.

We note that e the aforementioned financial records say nothing about payments to the
 beneficiary, the l contains no evidence at all to establish the beneficiary's means of support
 during the two y prior to the April 12, 2001 filing of the petition.

The legislatio y of the religious worker provision of the Immigration Act of 1990 states
 that a su bstant of case law had developed on religious organizations and occupations,
 the implicat g that Congress intended that this body of case law be employed in
 impleme ntion, with the addition of "a number of safeguards . . . to prevent abuse."
 See H.R. Rep. N 1-722, at 75 (1990).



The statute on 101(a)(27)(C)(iii) that the religious worker must have been carrying on the professional work, or other work continuously for the immediately preceding period. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking a visa for religious 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 current law a minister of religion was required to demonstrate that he/she had been engaged 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 have concluded that, if the worker is to receive no salary for church work, that he/she would be required to earn a living by obtaining other employment. See *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Com. 1963) and *Matter of Sinha*, 10 I&N Dec. 713 (Reg. Com. 1963).

The term "minister of religion" is also discussed in a 1980 decision where the Board of Immigration Appeals held that a full-time student who was devoting only nine hours a week to religious duties was not a minister of religion. *Matter of [redacted]*, 17 I&N Dec. 399 (BIA 1980).

In line with these decisions and the intent of Congress, it is clear, therefore that to be continuously engaged in the religious work means to do so on a full-time basis. That the religious worker is not paid, the assumption is that he/she is engaged in religious work. The idea that a religious undertaking would be unsalaried is not consistent with the regulations. The primary examples in the regulations being nuns, monks, and priests. Clearly, therefore, the qualifying two years of religious work must be full-time otherwise would be contrary to the intent of Congress.

In denying the application, the director stated that several of the beneficiary's duties "do not appear to require religious training." The director also noted "if [the beneficiary] had been working for ten years, he would have begun when he was thirteen years old." The director concluded that the beneficiary's work does not qualify as a religious occupation.

On appeal, the Board states that "the beneficiary's duties such as visitation, Bible studies and religious training which [the beneficiary] possess[es]." Rev. Mullings asserts that "prior to License and Ordination of church duty is ten years" along with "for a minimum of 40 hours weekly for nine months" and "counseling, drugs, Outreach, social ills, poverty and crimes."

If, as Rev. Mullings asserts, "the years" of "church duty" is necessary "prior to License," then the beneficiary must have performed this duty no later than June 12, 1973, which is ten years before the



beneficiary before

his case. On June 12, 1973, the beneficiary was eight years old. Ten years after his ordination, the beneficiary was fifteen years old.

Rev. Mullings because of his theological profession and definition

there are no transcripts" to prove that the above training took place, as . . . were conducted at local district churches rather than a seminary or . . . Mullings asserts that seminary training "is required for religious ministers" and that the beneficiary's job duties fully conform to the regulatory requirements of 8 C.F.R. § 204.5(m)(2).

Case advanced by Appellant classified as a sacramental case and follows

support [redacted] assertion that an ordained minister need not show that he is a minister. In *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978), the Board of Immigration and Naturalization held that an alien claiming to be an ordained minister did not qualify for the benefits of the Immigration and Naturalization Act because the ordination was "not [based] on any theological training or education" and there was no evidence that the alien had actually participated in the performance of the generally understood definition of "minister." The alien in that case was similar to this petitioner's argument, and the Board offered the

fact that the fact that she is recognized as an ordained minister by a religious organization should be the end of the inquiry and cannot be used to deny her status. We do not agree that the issuance of a piece of paper entitled "ordination" by a religious organization should be conclusive as to whether she is a minister for immigration purposes.

Id. at [redacted] than "Ordination" of a beneficiary of a denomination. *Rhee*. The determination of an individual's qualifications for benefits under the Bureau's purview rests with the Bureau. *Rhee*, [redacted] secular. *Rhee*, [redacted]

the beneficiary's ordination appears to have been contingent on little more than a "call to the ministry," and because there is no evidence that the beneficiary performs the full range of duties reserved for authorized clergy in his denomination, the facts in this proceeding appear to mirror those factors in *Matter of Rhee*. The determination of an individual's status or duties within a religious organization is not within the Bureau's purview, the determination as to the individual's eligibility for benefits under the immigration laws of the United States rests with the Bureau. The determination lies not with any ecclesiastical body but with the Bureau of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of*

For the reasons demonstrated by the law

is, we find that the director properly found that the petitioner has failed to demonstrate that the beneficiary has been, and will continue to be, employed as a minister as the

The burden of proof in the proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. [redacted] dismiss

in the proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. [redacted] has not sustained that burden. Accordingly, the appeal will be

ORDER

appeal dismissed.