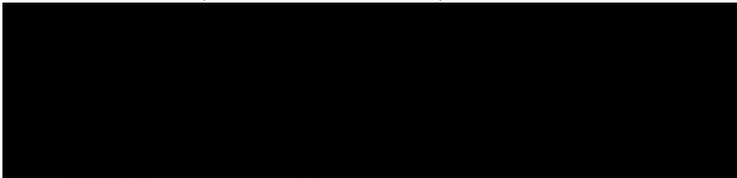




U.S. Citizenship
and Immigration
Services



FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: AUG 26 2004

IN RE: Petitioner: [Redacted]
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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent disclosure of unwarranted
invasion of personal privacy

PUBLIC COPY

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont 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 to classify 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 pastor. The director determined that the petitioner had not established that the position qualified as that of a religious worker or that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition. The director also determined that the petitioner had failed to establish that it had extended a valid job offer to the beneficiary.

On appeal, the petitioner submits a brief 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), the alien must be coming to the United States at the request of the religious organization to work in a religious occupation.

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 would reasonably be expected to perform services 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. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

Citizenship and Immigration Services (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 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.

The petitioner states that, in the proffered position, the beneficiary would administer the "Tenets of Faith," which is the "equivalent to sacraments;" conduct religious worship and regular services of the Lord's Supper; oversee the teaching of the doctrine of the church; perform baptism of new members, funeral services and marriage ceremonies; and provide counseling to members of the church. According to the petitioner, only an ordained minister can perform these services. As evidence, the petitioner submits a copy of its bylaws, which state that an ordained minister is provided to lead the church in evangelism, worship and building a "body of saints." The record contains a copy of a resolution from the petitioner's board of directors authorizing it to transfer the beneficiary's position from Argentina to Puerto Rico.

The regulation at 8 C.F.R. § 204.5(m)(2) defines minister as:

[A]n 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.

The evidence is sufficient to establish that the duties of the proffered position are directly related to the religious creed of the denomination, and encompass the traditional duties normally accompanying that of a minister as defined by the regulation.

The regulation at 8 C.F.R. § 204.5(m)(1) states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. 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 regulation indicates that the "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 regulation at 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 June 28, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as a pastor throughout the two-year period immediately preceding that date.

The petitioner states that the beneficiary has been performing pastoral duties within its organization for over ten years. The record contains a summarized transcript of the beneficiary's 1989 examination by a board of pastors, who voted to recommend to the church that it proceed with ordaining the beneficiary. Although the petitioner stated that it was submitting a copy of the beneficiary's certificate of ordination, no copy appears in the record.

The petitioner also stated that the beneficiary worked over 50 hours per week as a minister within its organization but was not compensated for his services. According to the petitioner, the beneficiary worked in secular employment as a data analyst. The petitioner submits what appears to be a February 2001 pay voucher from the company for which the beneficiary apparently worked. However, as the document is not accompanied by an English translation, it has no evidentiary value.¹ Further, the petitioner presents no evidence to establish the basis of the beneficiary's financial support for 2000.

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).

¹ The regulation at 8 C.F.R. § 103.2(b)(3) requires that documents submitted in a foreign language "shall be accompanied by a full English translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English."

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. Comm. 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 generally salaried. To hold otherwise would be contrary to the intent of Congress.

On appeal, the petitioner acknowledges that the beneficiary supported himself through secular employment but argues that this does not detract from the fact that he also worked as a minister, and that he was employed by a religious organization subject to its authority and supervision. As evidence, the petitioner submits a copy of a contract entered into by the beneficiary and the petitioner in April of 1999. In that contract, the beneficiary agrees to work for the petitioner without compensation.

Nonetheless, while volunteer work might rarely constitute prior qualifying experience, the petitioner must establish that the beneficiary, while continuously and primarily engaged in the traditional religious occupation, was self-sufficient or that his or her financial well being was clearly maintained by means other than secular employment. The petitioner has failed to do so in this case. Additionally, the petitioner states that the beneficiary entered the United States March of 2002, but has not actually worked for the petitioner since his arrival. According to the president and general pastor of the petitioner, he has personally supported the beneficiary since his entry into the United States.

The record does not establish that the beneficiary worked continuously as a pastor for two full years immediately preceding the filing of the visa petition.

The director determined that, as the petitioner had not established that the proffered job was that of a religious worker, it had not established that it had extended a valid job offer to the beneficiary. As discussed above, the petitioner has sufficiently established that the proffered position is that of a minister within the meaning of the regulation. The petitioner submitted copies of resolutions by its board of directors, authorizing the hiring of the beneficiary in a full time position with an ultimate salary of \$1,500 per month. The duties as outlined by the petitioner would require a 50 plus hour workweek. The evidence establishes that the petitioner has made a valid job offer.

Beyond the decision of the director, the petitioner has not established that it has the ability to pay the proffered salary. This deficiency constitutes an additional ground for dismissal of the appeal.

The regulation at 8 C.F.R. § 204.5(g)(2), which 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 states that it intends to pay the beneficiary \$1,500 per week. While the petitioner's audited financial statements for the year 2002 indicate that it had assets in excess of \$5 million and a cash balance at the end of the year of approximately \$126,000, we note that the petitioner's current liabilities far exceed its current assets. The majority of the petitioner's assets are in the form of equipment, buildings and land; assets that are not readily convertible to cash or that could reasonably be expected to be liquidated in order to pay the beneficiary's salary. The petitioner's "Statement of Financial Position" for the year 2002 does not indicate that it had the ability to pay the beneficiary the proffered 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.