PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

C1

[redacted]

FILE: [redacted] WAC 01 218 50862 Office: CALIFORNIA SERVICE CENTER Date: DEC 02 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:

[redacted]

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.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen or reconsider. The motion to reconsider will be granted, the previous decision of the AAO will be affirmed and the petition will be denied.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Citizenship and Immigration Services (CIS) policy. 8 C.F.R. § 103.5(a)(3). A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

On motion, counsel argues that the CIS position that voluntary service is not qualifying employment for purposes of the two-year continuous employment requirement is not based on any statute or regulation. Counsel further argues that the AAO improperly determined that a minister is not employed in a vocation, and that, as a result, also improperly determined that a minister must therefore be a salaried position. Citing the Immigration Law Sourcebook, counsel states that under certain circumstances, religious workers may receive visas as a B-1, temporary visitor for business, or F-1, student, and not receive compensation for work performed.

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. 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.

In the rare case where volunteer work might 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.

On appeal, counsel argued that the evidence established that the beneficiary had worked from 1982 to 2000. In its previous decision, the AAO held that the evidence did not establish that the beneficiary had been continuously engaged in the religious occupation for the two years immediately preceding the filing of the visa petition.

According to the Form I-360, Petition for Amerasian, Widow or Special Immigrant, the beneficiary entered the United States on a B-2 visa on December 8, 2000. The petitioner stated that, after visiting for four months, the beneficiary began volunteering his services with the petitioner. The petitioner stated that the beneficiary did not receive "monetary remuneration in the U.S.," but that the petitioner provided him with transportation and expenses.

On appeal, the petitioner submitted a January 26, 2002 letter from Archbishop Gorun Babian of the Armenian Prelacy of Isfahan, informing the beneficiary that, per his request of January 16, 2002, he was released from his employment as priest of New Julfa as of the date of the Archbishop's letter. Counsel argues that this is evidence that there has been no interruption in the beneficiary's work as a minister despite his not having been in Iran since December 2000.

The statute requires that the alien must have been continuously carrying on the religious vocation or occupation for two full years prior to the filing of the visa petition. Although not officially released from his position at New Julfa until 2002, it is obvious that the beneficiary was not carrying on his work as priest at the church while he was in the United States. The evidence also does not indicate that he was on paid vacation or leave from the church during the four months he spent vacationing in the United States before he began an association with the petitioner.

The petitioner submitted no evidence, such as pay vouchers, canceled checks or other contemporaneous evidence to corroborate the beneficiary's work in Iran. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Although the beneficiary stated in an affidavit that he and his family have been residing with his mother-in-law since his arrival in the United States and supported by his brother-in-law, the petitioner submitted no evidence to corroborate the beneficiary's

statement or to indicate the amount of support he received from others while volunteering with the petitioner. *Id.*

The evidence submitted by the petitioner is insufficient to establish that the beneficiary has been continuously employed in a religious vocation or occupation for two full years prior to the filing of the visa petition.

Counsel appears to argue generally that, in denying the petition, the AAO has adopted an interpretation that impairs the free exercise of religion by the Armenian Church and by those who are served by the church. This argument is without merit and counsel cites no evidence that supports his assertion.

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. As no new evidence has been presented to overcome the grounds for the previous dismissal, and no reasons set forth indicating that the decision was based on an incorrect application of law, the previous decisions of the AAO and the director will be affirmed. The petition is denied.

ORDER: The AAO's decision of June 27, 2003 is affirmed. The petition is denied.