



U.S. Citizenship
and Immigration
Services



FILE: EAC 03 023 55104 Office: VERMONT SERVICE CENTER

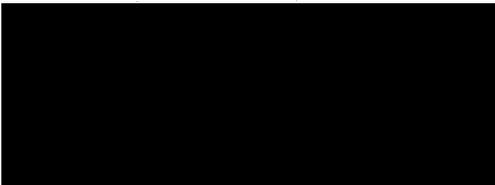
Date: DEC 21 2004

IN RE: Petitioner:
Beneficiary:



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:



PUBLIC COPY

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 information
invasion of personal privacy

C-1

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 self-petitioner seeks classification 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 minister. The director determined that the petitioner had not established that he had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition or that he had been extended a qualifying job offer.

On appeal, the petitioner submits a letter 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 Revenue 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)(1) echoes the above statutory language, and 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 regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

In a May 2, 2003 letter from the [REDACTED] the Charge treasurer and chairman of the pastor parish relations committee state that the petitioner had been compensated as a part time pastor of the Charge from June 1999 to November 2002. They further state "[t]he retirement practice of the church is that ministers retire at age 65 and a retiree may then continue to minister on a part time basis . . . [The petitioner] serves on that basis. In a letter of the same date, the petitioner stated "[m]y salary is approximately 50 percent of a full time elder." He further states "(I have been blessed with a hospital, a doctor and a dentist who care for me at no cost to myself) as a part time preacher I do not qualify for health insurance."

On appeal, the petitioner states that despite receiving half pay for his ministry, his work consumes more than 50 percent of his time, and that he is, in effect, a preacher on part-time pay.

According to [REDACTED] the district superintendent of the [REDACTED] District of the United Methodist Church, the Troy Charge is comprised of six churches, and that the petitioner is the "sole pastor and [has] full ministerial duties for all six churches [REDACTED] also states that the petitioner is not listed as a part-time employee in the United Methodist Appointive System; however, the petitioner submitted no evidence of the church's appointive system. [REDACTED] also states that ministering to six churches requires full-time service.

On appeal, the petitioner submits a copy of a page that his representative states is from the United Methodist Appointment Book, and which shows that, for 2003-2004, the petitioner was appointed to the charge at Troy.

In a request for evidence (RFE) dated April 25, 2003, the director instructed the petitioner to submit a "weekly work schedule for a typical workweek." The petitioner stated that his work consumed more than 50 percent of his time, and listed several of his job duties; however, he provided no documentary evidence that he was engaged 35 hours or more per week (considered full time employment) as a minister.

The evidence does not establish that the petitioner's prospective U.S. employer will provide him with permanent, full-time religious work. Part-time work is not a qualifying job offer for the purposes of this employment-based visa petition.

The petitioner has not established that he has been extended a qualifying job offer.

As his work experience during the two years preceding the filing of the visa petition was part-time work, the petitioner has also failed to establish that he has been engaged continuously in the religious occupation for two full years prior to the filing of the visa petition. The petition was filed on September 9, 2002. Therefore, the petitioner must establish that he was continuously working as a minister throughout the two-year period immediately preceding that date.

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. Rpt. 101-723, at 75 (Sept. 19, 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 or 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 salaried. To hold otherwise would be contrary to the intent of Congress.

The letter from the treasurer and chairman of the pastor parish relations committee of the Troy charge indicate that the petitioner was paid as a part-time employee from June 1999 to November 2002. The petitioner provided no documentary evidence, such as pay vouchers or canceled checks, to substantiate that the beneficiary was paid a salary during this time frame, and failed to submit other documentary evidence to establish the beneficiary's employment. 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).

The petitioner has not established that he has been engaged continuously in the religious occupation for two full years prior to the filing of the visa petition.

Beyond the decision of the director, the petitioner has not established that the prospective employer has the ability to pay the 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.

The charge indicates that it paid the petitioner approximately \$1154.00 per month with a proposed 10% increase "assuming [he] stays with us." In a "Report of Clergy Support" dated October 8, 2002, the total "pastoral cost to charge" is listed as \$16,430.60 for 2003.

The above-cited regulation states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of evidence. This deficiency constitutes an additional ground for dismissal of the appeal.

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.