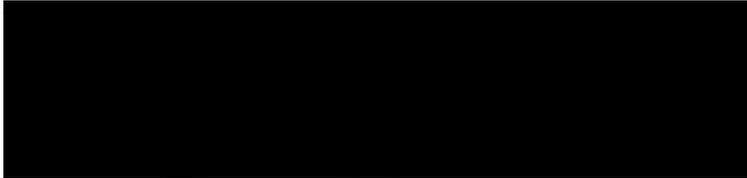




U.S. Citizenship
and Immigration
Services

C-1



FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUL 13 2012

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

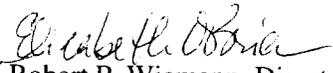
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:



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

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prevent security and intelligence
invasion of personal privacy

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DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California 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 had the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition.

On appeal, the petitioner submits affidavits and copies of previously submitted documents intended to establish that the beneficiary is the pastor of the petitioning church.

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).

The regulation at 8 C.F.R. § 204.5(m)(1) 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.” 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate 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 April 17, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a minister throughout the two years immediately prior to that date.

In a letter accompanying the initial filing, [REDACTED] of the petitioning church states that the beneficiary “has been in this position [pastor] since late 1998.” The I-360 petition form indicates that the beneficiary has been in the United States since March 1998, a claim supported by information in a copy of the beneficiary’s passport.

The initial submission, however, also contains a letter from an official of the General Assembly of Presbyterian Churches in Korea, indicating that the beneficiary “worked for our member church [in Seoul] from April 16, 1991 up to the . . . present.” The letter, dated February 1999, contains no mention of the beneficiary’s departure from Korea nearly a year earlier.

The director requested further evidence of the beneficiary’s work history during the 1999-2001 qualifying period. In response, the petitioner submits copies of programs from weekly worship services, which contain the beneficiary’s name and refer to him as “pastor.” The earliest such program is dated February 28, 1999. The petitioner asserts that the beneficiary “has always been paid during this period. His compensation has been \$1500 plus housing, insurance, and automobile expense.” Elsewhere, the petitioner specifies that the \$1,500 payments are monthly, and a schedule purports to reflect monthly payments to the beneficiary in the amount of \$375. The petitioner submits what purport to be monthly financial balance sheets, showing the petitioner’s expenses and income, but the itemized list of expenses does not include the weekly payments of \$375 claimed elsewhere in the record. The petitioner does not acknowledge or explain this significant discrepancy. The record contains no canceled checks or other first-hand evidence that the petitioner paid the beneficiary as claimed.

The director denied the petition, stating that “the submitted evidence is insufficient to establish that the beneficiary has been performing full-time work or compensated as a religious worker for the two-year period immediately preceding the filing of the petition.” The director also noted the denial of previously filed nonimmigrant petitions, filed on the beneficiary’s behalf, and concluded that “the beneficiary was found working in violation of his B-2 [nonimmigrant visitor] status.” The director concluded with a citation of case law, stating “[i]t is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 586 ([BIA] 1988).” That same precedent decision indicates that doubt cast on any aspect of the petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

On appeal, counsel states that the director has arrived at contradictory findings, stating that the petitioner has failed to establish the beneficiary’s employment, but that the beneficiary has worked for the petitioner in violation of his nonimmigrant visa. We submit that these findings are not inherently contradictory, because the director specifically found that the petitioner had failed to establish the beneficiary’s *full-time, salaried* work as a minister. Employment need not be full-time to constitute a violation of B-2 status.

It is not entirely clear why the director cited the denials of the beneficiary’s nonimmigrant visa petitions, or the violation of the beneficiary’s B-2 status. These may be issues of concern in the context of a visa application or application for adjustment of status, but they are not inherently disqualifying factors at the visa petition phase. The director’s inclusion of this information serves to confuse matters, but it did not prejudice the outcome of the petition.

Counsel argues that the petitioner has provided, as requested, “a week by week break down” of the beneficiary’s duties. As the director noted, however, in the column headed “Specific Duties,” this weekly breakdown simply repeats the phrase “Conduct Religious Services” for each week. The document is a table prepared after the fact, rather than contemporaneous evidence of full-time employment.

The beneficiary is clearly connected to the petitioning church. His name is on the weekly programs, and he signed the articles of incorporation of the petitioning church, dated October 6, 1998. The articles of

incorporation list the beneficiary as the president, secretary, and treasurer of the petitioning church, as well as a member of its board of directors. At issue is not whether the beneficiary has worked for the church – he clearly has – but whether he has done so *full-time* to the exclusion of all other employment.

The petitioner offers affidavits from parishioners, who attest that the beneficiary has worked over 40 hours per week. Pursuant to 8 C.F.R. § 103.2(b)(2)(i), such affidavits are probative only when the petitioner has proven (and explained why) both primary and secondary evidence are unobtainable.

The statute and regulation require that the beneficiary have worked *continuously* in the vocation of a minister throughout the two-year qualifying period. The term “continuously” has been interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948). 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). Clearly, the burden is on the petitioner to establish that the beneficiary has worked full-time. The evidence presented in this proceeding is insufficient to meet that burden.

Other 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 petitioner claims to have paid the beneficiary \$1,500 per month or \$375 per week (the two sums do not annualize to the same amount), but its purported financial records fail to document these claimed payments. There is no indication that the church ever issued Forms W-2 or 1099-MISC to the beneficiary, or that the beneficiary has ever paid income taxes in the United States (illegal employment does not exempt aliens from federal tax laws).

If the petitioner did in fact pay the beneficiary, then the financial records in the record cannot be accurate, and would appear to have been falsified, perhaps to cover up the petitioner’s unlawful employment of the beneficiary. If the petitioner did not pay the beneficiary, then the above-cited case law justifies the presumption that the beneficiary has derived his income through other employment. Neither of these options is strongly conducive to the petitioner’s overall credibility.

For the above reasons, we concur with the director’s finding that the beneficiary has not credibly established that the beneficiary was a full-time, paid minister for the petitioning church throughout the two-year qualifying period.

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.