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U.S. Department of Homeland Security  
20 Mass, Rm. A3042, 425 I Street, N.W.  
Washington, DC 20529



U.S. Citizenship and Immigration Services



FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: JUL 19 2004  
WAC 01 217 53559

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.

*Robert P. Wiemann*  
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 reconsider. The motion to reconsider will be granted, the previous decision of the AAO will be affirmed and the petition will be denied.

On motion, counsel asserts that the AAO misapplied the law when it held that the beneficiary's qualifying work experience could not be satisfied by her volunteer work. Referencing the 2000 unpublished decision of a New York district court in *St. John the Baptist Ukrainian Church v. Novak*, counsel states that CIS has stipulated that the two-year qualifying experience does not have to be paid employment. Counsel further asserts that the AAO based its dismissal of the appeal on an incorrect review of the evidence submitted. Counsel argues that the evidence submitted establishes that the proffered position requires much more than the "common participation" of a devoted volunteer church member. Counsel further states that the record contains evidence that while the beneficiary was not paid a salary during the two years prior to the filing the visa petition, she did receive a monthly stipend of \$480.00.

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). The statute and regulations require continuous engagement in a religious occupation, and part time religious work is not continuous. *Black's Law Dictionary*, 7<sup>th</sup> Ed., 1106, defines "occupation" as "[a]n activity or pursuit in which a person is engaged, esp., a person's usual or principal work or business. CIS therefore interprets the term "religious occupation" to require that the position is traditionally a permanent, full-time, compensated occupation within the denomination.

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.

Although the petitioner states it compensated the beneficiary with a \$480.00 monthly stipend, no evidence was presented to corroborate the petitioner's statement. The petitioner provided no copies of cancelled checks, payment vouchers or receipts from the beneficiary acknowledging receipt of monies from the petitioner. The petitioner provided no 1099 Miscellaneous tax form for the years it paid her the monthly stipend to corroborate its statement. The beneficiary has not submitted her form 1040 tax returns indicating any payments from the church.

The record indicates that the beneficiary supported herself by tutoring, acting as a wedding and quinceaneras planner, and from monthly rental income from property she owns in Mexico. Without the rental income from the Mexican property, which is a passive investment and not secular employment, the record reflects that the beneficiary earned approximately \$8,260 annually from these additional jobs. Compensation allegedly received from the petitioner would amount to approximately \$5,760 per year. This evidence indicates that the beneficiary has been primarily dependent on secular employment for her financial support, and that she has not been continuously and primarily engaged in the religious occupation 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. Here, the petitioner has not sustained that burden. As no new evidence has been presented to overcome the grounds for the previous dismissal, the previous decisions of the AAO and the director will be affirmed. The petition is denied.

**ORDER:** The AAO's decision of June 5, 2003 is affirmed. The petition is denied.