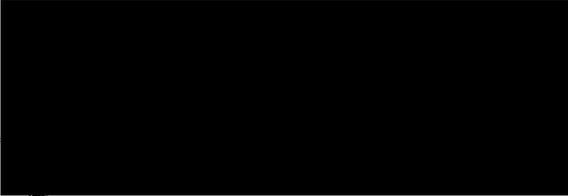




U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: OCT 07 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. § 101(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

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identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas 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 beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition, that the beneficiary was qualified for the religious worker position within the religious organization, or that it had extended a qualifying job offer to the beneficiary.

On appeal, the petitioner submits a letter and additional documentation.

In her decision, the director stated that the petitioner's response to her request for evidence (RFE) dated March 19, 2003, was submitted untimely. On appeal, the petitioner states that it understood that the response was to be submitted by June 19, 2003, and as it mailed the document on June 18, 2003, it was within the prescribed time frame. In the RFE, the director instructed the petitioner to respond within 12 weeks. Documentation submitted with the appeal indicates that the petitioner mailed its response to the RFE on June 19, 2003, and that it was received in the service center on June 23, 2003. Therefore, the petitioner's response to the RFE was untimely. It is noted, however, that the director considered the petitioner's response in her decision and determined that the petitioner's response did not address the issues raised in the RFE. Therefore, this issue raised by the petitioner on appeal is moot.

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 petition was filed on April 30, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as a pastor throughout the two-year period immediately preceding that date.

██████████ pastor principal of ██████████ Mexico, stated that the beneficiary has worked for its ministry in various capacities as a minister since 1989. Reverend Tobías stated that the beneficiary was sent from their church as senior pastor in partner with the petitioner to plant a church in San Bernardino, California. He further stated that his organization provides financial support to the beneficiary, and that it paid the beneficiary \$280,000 pesos in 2001 and \$350,000 pesos in 2002.

The petitioner provided no contemporaneous evidence, such as canceled checks or payment vouchers, to corroborate the beneficiary’s employment with ██████████ and submitted no evidence to indicate whether or not the beneficiary’s work with that organization was in a full time capacity. 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 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.

On appeal, the petitioner submitted documents that it identified as copies of the beneficiary's Mexican bank statements for January, August, October, November and December 2002, with highlighted amounts it states are from [REDACTED]. However, nothing in the documents identify the deposits as originating with Casa de Oración. Further, the petitioner provided no evidence to corroborate the beneficiary's employment and income from April 2000 through 2001, or for the period February through April 2002.

The petitioner's evidence fails to establish that the beneficiary was engaged in full time employment as a pastor for the two years immediately preceding the filing of the visa petition.

In a letter dated April 26, 2002, [REDACTED] missions pastor for the petitioner and secretary of its board of directors, stated that the beneficiary has been a pastor with [REDACTED] for five years, and that [REDACTED] was an affiliate church of the petitioner's Hispanic ministry. In his letter of June 13, 2003, [REDACTED] stated that the beneficiary was an ordained minister who had served as a pastor in the Casa de [REDACTED] ministry since 1989.

The petitioner submitted a copy of an ordination certificate issued to the beneficiary in February 1999; however, the certificate was not accompanied by an English translation. The petitioner also submitted a copy of a July 2002 ordination certificate issued to the beneficiary from the Peace in the Valley Ministries, Inc.

The director determined that the petitioner had not established that the beneficiary was qualified for the religious position within the organization, as it submitted no evidence to establish a relationship between the institutions issuing the ordination certificates and the petitioner. The director also noted that the ordination certificate from the Peace in the Valley Ministries, Inc. is dated after the filing date of the visa petition.

On appeal, the petitioner submits an English translation for the 1999 ordination certificate. The translated document indicates that the beneficiary was ordained a minister with Compañerismos de la Iglesia del Pueblo, en Mexico, with authority to conduct wedding ceremonies, funerals and "all other functions appertaining to this Christian Ministry for as long as he is affiliated with Compañerismos de la Iglesia del Pueblo, en Mexico. The petitioner stated that the church that the beneficiary is planting is "located in Peace in the Valley Ministries, Inc.'s facilities, but is not being financially supported by that organization."

The evidence does not establish an affiliate or denominational relationship between Compañerismos de la Iglesia del Pueblo, en Mexico, the Peace in the Valley Ministries, Inc. and the petitioner. Therefore, the certificates of ordination issued by the former organizations are not probative of the beneficiary's qualifications to pastor a church under the petitioner's cognizance.

The petitioner indicated that the duties of the proffered position include "conducting the sacraments of water baptism, Holy Communion, marriage ceremonies and funeral services." On appeal, the petitioner submits a copy of a card indicating that it is from [REDACTED] a ministry of the petitioner, and granting the beneficiary authority to perform ministerial functions and sacraments as an ordained minister with the organization. The card indicates that it expired on December 31, 2003, but does not indicate when it was issued or when the beneficiary became an ordained minister with the petitioner. On appeal, the petitioner submitted copies of diplomas, indicating that the beneficiary had attended classes at [REDACTED] bible school. However, although Reverend Tobías states that the beneficiary was an ordained minister with Casa de Oración, the petitioner submitted no evidence of his ordination with the church.

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.

A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The evidence fails to establish that the beneficiary possessed the qualifications necessary to serve as a minister with the petitioner prior to the filing date of the visa petition.

The director determined that the petitioner had not established that it had extended a qualifying job offer to the beneficiary.

The proffered position is that of pastor of the petitioner's new church in San Bernardino, California. The petitioner sets forth a comprehensive list of essential duties and responsibilities of the job, and the necessary qualifications for the position. The proffered salary is \$33,000 to \$38,000 yearly. The evidence is sufficient to establish that the petitioner has extended a qualifying job offer to the beneficiary.

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.