



U.S. Citizenship  
and Immigration  
Services

C1

[REDACTED]

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: SEP 15 2004

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:  
[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, Director  
Administrative Appeals Office

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The 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 missionary coordinator for youth at Radio Paz, a radio station operated by the Roman Catholic Archdiocese of Miami. The director determined that the petitioner had not established that he had the requisite two years of continuous work experience in the position sought immediately preceding the filing date of the petition.

On appeal, counsel asserts that a brief will follow within 30 days. To date, a year after the filing of the appeal, the record contains no further submission. We will consider counsel's arguments on the appeal form, but we consider the record to be complete as it now stands.

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) 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 November 23, 2001. Therefore, the petitioner must establish that he was continuously performing the duties of a missionary coordinator for youth throughout the two years immediately prior to that date.

The petitioner arrived in the United States on September 4, 2001, and thus spent most of the qualifying period outside the United States.

Rev. Fr. Alberto R. Cutié, general director of Radio Paz, states:

[The petitioner] will be devoted exclusively to a wide missionary work, with special emphasis in a direct apostolate in the breast of the families, incentivating [sic] their integrity and especially the transmission of moral values to the youth. . . .

As the General Director of Radio Paz, I would like to offer him a job which entails working primarily with the youth. His position will be as Missionary Coordinator for the Youth and I will pay him a salary of \$12,000 a year.

Fr. Cutié does not state that the petitioner currently works for Radio Paz. Rather, he refers to the petitioner as "a missionary religious of the 'Heralds of the Gospel,' consecrated integrally to that institution for more than fifteen years."

A letter from an official of the Catholic University of Colombia indicates that the petitioner "has promoted the Marian Devotion of the first Saturdays of the month and he has done apostolic work with the persons of this University, during the period from February 1997 through December 2000." The president of the Catholic Federation of Conaced Education, Bogotá, states that the petitioner "is a Catholic Missionary, exclusively dedicated to the religious apostolship, in which he has worked in the Archdiocese of Bogotá for four years." The president of the Cultural Association of Our Lady Of Fatima states that the petitioner "collaborated with our institution in the Apostolic University work and in the family Apostolic work of the Catholic University of Colombia, consecrated full time, visiting homes with the Peregrine Image of Our Lady of Fatima, in the cities of Cali, Bogotá and Villavicencio."

The initial submission provides very little information about the nature of the petitioner's past work in Colombia, or his intended work for Radio Paz. The director therefore requested additional information about the petitioner's past and intended future duties, as well as evidence regarding the extent to which he has performed those duties.

In response, counsel asserts that the petitioner "has been a religious brother for the Herald of the Gospel, [a] Catholic organization. He has received a salary compensation of \$500.00 U.S. Dollars for over the required time of more than two years, before coming to the United States to perform his religious work for the Archdiocese of Miami. In the United States he has been fully support[ed] by Mary Queen of the Third Millennium, a non profit US organization of which the Herald of the Gospel are their members [sic], with housing, food, clothing, transportation, stipend, insurance and retirement. The proposed position is going to be salaried . . . but the Heralds of the Gospel will still be responsible for [the petitioner's] needs."

Fr. Cutié, in a new letter, states that the petitioner performs several missionary duties including "Missionary Visits to Families and Prayer Groups," "Visits to Elderly Homes and Hospitals," and "School Missions." Fr. Cutié states that the petitioner "has accomplished an important apostolate work with our radio station," but does not explain how any of the identified activities are associated with the operation of a radio station.

Fr. Cutié states "Mary Queen of the Third Millennium is a United States not for profit organization. . . . [The petitioner] has been living with them in community and they are responsible for his support and maintenance." The record contains nothing from Mary Queen of the Third Millennium to corroborate this assertion. The record also lacks documentation from Heralds of the Gospel, the organization which, counsel claims, is where the petitioner is residing, and which is responsible for the petitioner's support. The record

also lacks documentation to establish what connection, if any, exists between Mary Queen of the Third Millennium and Heralds of the Gospel.

A letter from an official of the Colombian Association for the Defense of Natural Rights (PRODENAL) states that the petitioner is a "religious missionary of the Heralds of the Gospel," and that the petitioner "has worked in our institution from October 1996 up to December 2000" as the "coordinator of [a] bulk mail campaign," receiving compensation equivalent to \$500 U.S. dollars per month.

The director denied the petition, stating that the director has not adequately documented continuous engagement in the religious occupation throughout the two-year qualifying period. The director emphasized the lack of financial documentation to prove that the petitioner received the compensation that witnesses claim he received.

On appeal, counsel asserts that the position of a "missionary" is a traditional religious occupation. The regulatory definition of "religious occupation" indeed lists missionaries among the examples of qualifying occupations. The crucial factor, however, is the *nature* of the petitioner's duties, rather than the job title applied to those duties; otherwise, religious employers could simply accommodate intending immigrants by ensuring that their job titles conform to the regulatory list of qualifying examples. While the petitioner has generally worked under the umbrella job title of "missionary," his work as "coordinator of [a] bulk mail campaign" appears to have little in common with his intended work visiting families and hospitals on behalf of a radio station. The statute requires that an alien who seeks to perform religious work in the United States must have been performing "such" work during the preceding two-year period. Here, there is no evidence that the petitioner had been performing the duties described by Fr. Cutié before his September 2001 arrival in the United States, less than three months before the filing date.

Counsel maintains that Heralds of the Gospel has compensated the petitioner during his time in the United States, but the record is devoid of evidence to support this claim. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Correspondence from officials of Heralds of the Gospel refers to past payments to the petitioner, but contains no indication that payments to the petitioner continued after his departure for the United States.

For the above reasons, we affirm the director's finding that the record does not adequately demonstrate that the petitioner possessed, at the time of filing, the experience necessary to qualify as a special immigrant religious worker.

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.