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U.S. Department of Homeland Security
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Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

[REDACTED]

CI

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date: **SEP 23 2004**

IN RE:

Petitioner:

[REDACTED]

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:

[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.

for Robert P. Wiemann, Director
Administrative Appeals Office

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 Form I-360, Petition for Amerasian, Widow or Special Immigrant, filed with Citizenship and Immigration Services (CIS) indicates that the Canaan Christian Church, Inc. of Houston, Texas is the petitioner. The petition, however, is signed by [REDACTED] all G-28s, Notice of Entry of Appearance as Attorney or Representative, in the record are signed by [REDACTED] and not by an authorized representative of the Canaan Christian Church, Inc. Therefore, the Canaan Christian Church, Inc. cannot be considered as having filed the petition on behalf of [REDACTED] shall be considered as the self-petitioner.

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 religious worker. 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, that the position qualified as that of a religious worker, or that the prospective employer had the ability to pay a wage.

On appeal, counsel submits no brief or 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 an 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.”

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 November 22, 2002. Therefore, the petitioner must establish that he was continuously working as a religious worker throughout the two-year period immediately preceding that date.

The petitioner submitted a letter from Jacobo Velásquez, pastor of the Canaan Christian Church, Inc., who states that the petitioner “collaborates” in the church by leading Bible studies twice a week and supervising Sunday school on Sunday. Another document in the record, which appears to be from the Canaan Christian Church, Inc. and submitted in response to the director’s request for evidence (RFE) dated June 25, 2003, is unaccompanied by an English translation. Therefore, its has no evidentiary value in these proceedings.¹

The petitioner submits no other evidence regarding his prior work experience, such as the title and duties of the religious position he held for the two years immediately preceding the filing of the visa petition, the hours that he worked and any salary that he may have received while working in the position, the duties of the religious position, or the name of his employer.

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.

¹ 8 C.F.R. § 103.2(b)(3) requires that documents submitted in a foreign language “shall be accompanied by a full English translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.”

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.

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

The regulation at 8 C.F.R. § 204.5(m)(3)(ii)(D) requires a petitioner for a special immigrant religious worker to show that the alien is qualified in the religious occupation. According to 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work in a religious occupation.

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.

The petitioner submitted no evidence that he had been offered a job, or the nature, duties or terms of employment for the position. The petitioner has not established that he has been offered a job that qualifies as a religious

occupation within the meaning of the regulation or that such a position would offer full-time, permanent, salaried employment.

The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part, that:

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 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 annual reports, federal tax returns, or audited financial statements.

The petitioner submitted no evidence to establish that the prospective employer has the ability to pay the petitioner the proffered wage.

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.