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U.S. Citizenship  
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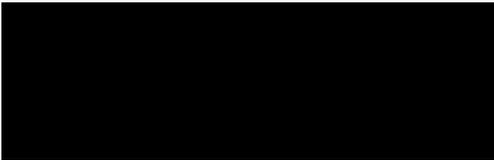
Office: TEXAS SERVICE CENTER

Date:

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.

for Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center denied the special immigrant religious worker petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification of 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 missionary. The director determined that the beneficiary did not have the requisite experience during the two-year period prior to the filing of the petition.

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-year period 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 April 26, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working in essentially the same position as being offered by the petitioner for the two years immediately prior to that date, the period covering April 26, 1999 to April 26, 2001. The Form I-94, Arrival and Departure Record, indicates that the beneficiary initially entered the United States on March 16, 1998, as a B-2 nonimmigrant. There is no evidence that the beneficiary received an extension of her stay or approval to change her nonimmigrant status. Thus, although the beneficiary was in the United States for the entire qualifying period, any work performed by the beneficiary appears to have been performed without work authorization.

In support of the initial filing [REDACTED] of the petitioning church, describes the beneficiary's past duties and the job offered [REDACTED]

The duties of this position are centered solely on providing daily living needs to the elderly. The daily living needs of the elderly stem from a direct need for spiritual guidance, as well as physical care in hygiene, nutrition, and companionship. The Missionary will provide routine medical assistance to the elderly, such as blood pressure screening, assist them in the procurement of prescriptions, read to them, and provide access to prayer and counseling. In addition, the Missionary will help the elderly patients to participate in social activities to keep them cheerful and active. As part of her duties, the Missionary will also participate in bible classes for the elderly both during the week and in the Sunday Service.

The Missionary will be paid a salary of \$250.00 per week, and will work from Sunday through Saturday. She will report directly to the Pastor who is responsible for Elder Care. The Missionary will not participate in any fundraising activities and will not be paid from any such funds. Further, she will not be dependent upon any supplemental income.

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We have identified [the beneficiary] to fill the position of Missionary at ESPHC. [The beneficiary] has been a member of ESPHC for more than 2 years, and is an ordained licensed Missionary. She has been working continuously for the past 2 years as a Missionary.

With the original filing, the beneficiary also submits a copy of the beneficiary's membership and ordination certificates, but provides no documentary evidence of the beneficiary's continuous experience as a missionary during the two-year period prior to the filing of the petition. The petitioner provides no specific details regarding the beneficiary's past experience, such as the number of hours worked per week and compensation, and does not identify whether the beneficiary's past experience as a missionary was performed for the petitioner. 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).

Accordingly, on June 27, 2002, the director requested further evidence of the beneficiary's work experience. Specifically, the director requested, "a detailed description of the beneficiary's prior work experience including duties, hours and compensation . . . accompanied by appropriate evidence (such as copy of pay stubs or checks, W-2s or other evidence as appropriate.) This must include the 2 years preceding the filing of this petition."

In response to the director's request, counsel for the petitioner states:

[The beneficiary] has been working continuously in the vocation of Missionary for the 2 years immediately preceding the filing of the petition. The petitioner has submitted a detailed job description listing the duties, hours and compensation.

The petitioner has submitted copies of cancelled checks showing payments to [the beneficiary] from 2000 to present. They have been unable to locate checks from 1999. These checks are in the amount of \$200.00 which is supplemented with cash of \$50.00, and other tangible goods such as food supplies, etc.

The evidence submitted by the petitioner in response to the director's request for evidence does not reflect that the beneficiary was paid prior to August 2000. Notwithstanding the lack of evidence dating back to the time of filing April 1999 until August 2000, the remaining checks, dated April 2001, June 2001, July 2001, September 2001, December 2001, January 2002, February 2002 and March 2002, do not indicate continuous employment. The petitioner provides no explanation for the lack of the beneficiary's tax documentation, even though specifically requested by the director, to corroborate counsel's assertion that the beneficiary was paid but that the petitioner was "unable to locate checks from 1999." Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Additionally, counsel argues that the director has applied a "heightened requirement and special emphasis...for evidence of prior compensation" that is not required by regulation, statute or "legislative historical material." We do not agree with counsel's argument.

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. 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 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. Com. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Com 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 salaried. To hold otherwise would be contrary to the intent of Congress.

The director denied the petition noting that the record lacked "a detailed statement of the terms and nature of the beneficiary's past service with the church . . . [as well as] conclusive evidence as to hours worked, salary/remuneration, detailed and specific duties and/or responsibilities." The director further noted that the petitioner failed to "furnish a comprehensive description of the beneficiary's means of financial support for the two-year period [including] [o]bjective proof such as certified tax documents, wage and tax statements . . . or other comparable evidence . . . ."

On appeal, counsel for the petitioner states that the petitioner complied with the requirement of the regulation by submitting a letter from an authorized official of the petitioning church to establish that immediately prior to the filing of the petition, the beneficiary had the required two years of membership in the denomination and the required two years of experience in the religious work. Counsel then argues that the director "discredit[s]" the regulation by stating that the petitioner has not provided any supporting documentary evidence to meet its burden and that the director did not properly analyze the evidence submitted.

It is true that 8 C.F.R. § 204.5(m)(3)(ii)(A) calls for "[a] letter from an authorized official of the religious organization in the United States which . . . establishes . . . [t]hat, immediately prior to the filing of the petition, the alien has . . . the required two years of experience in the . . . religious work." Nevertheless, the regulations do not indicate that such a letter will always, under all circumstances, serve as incontrovertible proof of the required experience. 8 C.F.R. § 204.5(m)(3)(iv) states: "[i]n appropriate cases, the director may request appropriate additional evidence relating to the eligibility . . . of . . . the alien."

In this instance, the petitioner has made the assertion that the beneficiary began employment with the petitioner in 1999. Counsel asserts that the checks submitted sufficiently demonstrate the beneficiary's employment. We do not agree. Review of the record reflects scant evidence to demonstrate that the beneficiary's

employment was continuous from 1999 to the time of filing. As previously noted, despite being given ample opportunity to provide documentary evidence of the beneficiary's employment dating back to the beginning of the required period, the petitioner has provided copies of paychecks that cover only nine months out of the entire 2-year period. Counsel states that "the [p]etitioner had advised that some checks had not been submitted, (due to the relocation of the church and the fact that some things are in storage.) If, in fact, the evidence in question is "in storage," counsel provides no explanation for the petitioner's failure to get this information on appeal given that such evidence could conclusively settle the matter of the beneficiary's continuous employment. Counsel further states there is no evidence of tax documentation "due to [the beneficiary's] lack of a social security card." This argument is not persuasive as aliens who work in the United States illegally can still pay taxes using an individual tax identification number (ITIN).<sup>1</sup> This evidence does not readily indicate that the petitioner has employed the beneficiary on a continuous basis during the requisite period.

Counsel reiterates the petitioner's claim that it supplemented the beneficiary's paychecks with "cash payments and . . . other non-monetary compensation." Again, the petitioner has failed to corroborate its statements of cash payments with documentary evidence, such as receipts. Further, while *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982), indicates that religious work can count as "employment" even if the compensation took the form of room, board, stipends, etc., rather than a fixed hourly salary, we are not persuaded that the "other non-monetary compensation" provided by the petitioner was in the form of room, board or stipends, or that any other non-monetary compensation was even provided. As continually noted in this decision, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings.

As the record does not demonstrate the beneficiary received remuneration for her services, the petitioner is unable to show that the beneficiary had the requisite two years experience immediately preceding the filing date of the petition. The petitioner has not submitted any documentation at all from the qualifying period that unambiguously establishes the beneficiary's full-time, continuous work for the petitioner.

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.

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<sup>1</sup> For tax purposes, the Internal Revenue Service (IRS) issues ITINs to those who are not eligible for a Social Security Number (SSN), including aliens who are residing illegally in the United States. See <http://www.sss.gov.pubs/10096.html> (4/19/05).