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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] EAC 02 284 50823 Office: VERMONT SERVICE CENTER Date: APR 0 6 2005

IN RE: Petitioner: [redacted]
Beneficiary:

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:

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

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 an assistant pastor. The director determined that the petitioner had not established that: (1) the beneficiary had the requisite two years of continuous work experience as an assistant pastor immediately preceding the filing date of the petition; (2) the position offered qualifies as a religious occupation; or (3) the petitioner had made a qualifying job offer that would not leave the beneficiary dependent on supplemental employment.

On appeal, the petitioner asserts that the record does not support the director's findings.

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 first ground for denial concerns the beneficiary's past experience. 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 experience in the religious vocation, professional religious work, or other religious work. The petition was filed on September 11, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an assistant pastor throughout the two years immediately prior to that date.

In a letter submitted with the petition, R[redacted] senior pastor of the petitioning church, states "since his arrival in New York [the beneficiary] has given full time service to our local church. . . . For the time being he has voluntarily performed these pastoral duties and has not been paid any kind of formal

salary. He has been however, provided help as pastoral assistant. The church and people have been providing some food and other personal needs for himself and family."

The beneficiary was not in the United States for the entire two-year qualifying period, and therefore his experience with the petitioner cannot suffice to meet the experience requirement. Rev. Robinson states that the beneficiary "entered the full-time ministry in Nigeria and Africa since January, 1993 and has over ten years of full-time ministry and pastoral experience." Rev. Robinson wrote these words in August 2002, less then ten years after January 1993; therefore, this assertion is internally inconsistent.

In a letter dated June 15, 2002, Rev. Ethelbert Ogbaegbe, pastor in charge of Faithful Ambassadors Ministries (FAM), states that the beneficiary became the senior pastor and chairman of FAM in Gabon in January 2000. Rev. Ogbaegbe describes FAM as "a ministry to train Christian leaders and equip local churches and members to serve more effectively in the Christian service." Rev. Ogbaegbe continues:

> [The beneficiary's] duties during his entire ministry were preaching and teaching the Word of God, conducting revival and special religious services, conducting and administering weddings, funeral and baptism, children and youth services and bible school, training of young ministers and Christian workers, visiting and administering the sick and those under addiction of some kind, counseling members and people of the villages and communities etc.

The director instructed the petitioner to submit further evidence and information regarding the beneficiary's work during the 2000-2002 qualifying period. In response, the petitioner has submitted copies of promotional materials advertising appearances by the beneficiary, and a copy of a January 19, 2000 letter, affirming the beneficiary's appointment as the full-time, salaried senior pastor of FAM. A copy of the beneficiary's Gabonese identification card, identifying him as a missionary, is in the record. The beneficiary indicates that he visited the United States twice during the qualifying period before his latest arrival in June 2002. The beneficiary states that both of these earlier visits were for religious purposes. His passport, issued in 1996, lists his occupation as "clergy."

In denying the petition, the director stated "the beneficiary has been in and out of the United States" during the qualifying period, and apparently concluded that this travel interrupted the continuity of the beneficiary's work for the petitioner. While evidence is scant regarding the beneficiary's activities during these visits, there is no indication that the beneficiary ceased to perform religious work during these trips, and they were of only a few weeks duration, and therefore of less concern than major gaps of several months of apparent inactivity. Church officials in Gabon do not report any serious interruptions in the beneficiary's work. In this instance, we do not share the director's conclusion that the beneficiary's international travel is *prima facie* evidence that the beneficiary did not work continuously throughout the qualifying period.

The director's next finding is that the petitioner has not shown that it seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

> *Minister* means an 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.

> *Religious occupation* means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

Despite the director's several references to the regulatory definition of a religious occupation, the record indicates that the beneficiary seeks to work in the vocation of a minister. Rev. Robinson lists several requirements for "[a] minister of our church," including "at least three years of full-time preaching experience" and "some seminary training and education." Such an individual "must be [an] ordained minister." Rev. Robinson states "we are satisfied that [the beneficiary] has met all and more of the above ministerial requirements." The record contains copies of the beneficiary's certificate of ordination and other documentation of his ministerial credentials.

Rev. Robinson provides a schedule of the beneficiary's intended duties:

> He will be hired as a full-time permanent paid employee of our church working at least 45 hours per week from Monday to Sunday approximately from 10.00 AM to 6.00 PM. He will be present in each service to preach and conduct regular worship services, preaching and teaching the word of God from the pulpit; conducting prayer meetings and bible studies; conduct weddings, perform baptism and administer the Lord's supper and communion; conduct funeral services and basically be involved in counseling, visiting the sick and needy of the community; and these will be performed on a weekly basis.
>
> The day time schedule from 10 AM to 6 PM Monday to Friday to keep the church door open for himself and others to work in the missionary department and to render counseling to those with drug and alcoholic addiction. He will also help to manage the preschool and feeding department. . . .
>
> He will also work in our mission and Charitable department during the office hours and also in preparing and mailing out boxes and other items to our sister churches overseas.

In a separate letter, Rev. Robinson states that the beneficiary "will also serve . . . as our Mission Co-Ordinator."

In focusing, erroneously, on the regulatory standard for a religious occupation, the director neglected to consider the beneficiary under the standard for a minister. The record, including a description of the beneficiary's duties and copies of his educational and ordination credentials, supports the conclusion that the beneficiary has acted, and will act, in the vocation of a minister, rather than in a religious occupation, and therefore the standards relating to a religious occupation do not properly apply in this matter. The record does not support the director's unexplained finding that the beneficiary's position does not require "religious credentials"; the duties, as described, include functions such as weddings that are typically reserved for ordained clergy.

The final ground for denial concerns the terms of the petitioner's job offer to the beneficiary. 8 C.F.R. § 204.5(m)(4) requires the petitioner to explain how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration), and clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support.

Rev. Robinson states that the beneficiary "will work . . . more than 45 hours per week," will receive a starting salary of $350 per week, plus rent-free housing and traveling expenses, and "will not have to solicit employment or help elsewhere." Despite these assurances, the director concluded, without elaboration or explanation, that the petitioner had not "adequately established that the beneficiary will not be solely dependent on supplemental employment or solicitation of funds for support." The director did not find that the petitioner lacks the financial ability to pay the beneficiary's salary, nor did the director otherwise explain why the terms are deficient or lacking in credibility.

Our review of the record reveals no readily apparent grounds for ineligibility, and we concur with the petitioner that the documentation of record does not support the director's findings. We therefore withdraw those findings, seeing no evident basis to withhold approval of the petition.

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 met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The petition is approved.