

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



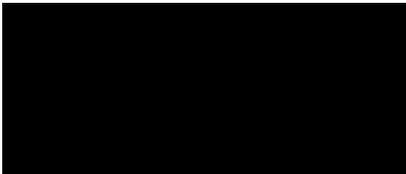
C /

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: APR 06 2005
WAC 03 006 55120

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. § 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.

2 Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is an association of churches. 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. The director further determined that the petitioner had failed to establish that it had the ability to pay the beneficiary the proffered wage or that it had extended a qualifying job offer to the beneficiary.

On appeal, counsel submits a brief and 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 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 October 23, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister throughout the two-year period immediately preceding that date.

With the petition, the petitioner submitted an August 15, 2002 “certification” from the district superintendent of the Southern Tagalog District Council of the Assemblies of God, Reverend Anacleto P. Lobarbio. Reverend Lobarbio stated that the beneficiary served full time as a minister with the Word of Hope Assembly of God from 1988 to “the present,” and that his duties included: conducting worship services, Bible studies, and prayer meetings; administering the Sunday school department; conducting home visitations, family devotions and counseling; administering the Holy Communion, conducting funerals, baptizing believers, and performing marriages; and performing other tasks designated by the church board or congregation.

In response to the director’s request for evidence (RFE) dated May 13, 2003, the petitioner submitted details of the beneficiary’s duties during the qualifying two-year period. The evidence included a document labeled “Religious Occupation/Employment History,” and purports to show the beneficiary’s work at the Word of Hope Ministries Foundation and the Word of Hope Accelerated Christian Training School. The record does not reflect who prepared this document or the source of the information contained within it. The document reflects that the beneficiary served on the senior pastoral staff of the Word of Hope Ministries Foundation, and served as music pastor and advisor and cell district pastor. The majority of the beneficiary’s time, according to the document, was involved in leading the “more than 115 cell groups in [the] Quezon City area.” However, the document does not indicate what these duties involved.

In a letter from the Word of Hope Assembly of God in the Philippines, the church’s pastor, Reverend Doctor David A. Sobrepena, stated that the beneficiary was a full-time minister with the church from 1988 until 2002. Reverend Sobrepena stated that the beneficiary’s duties during that time included minister of music, district pastor “handling” over 115 cell groups, midweek service coordinator, MIS administrator, teacher in the Accelerated Christian Training School and service on the senior pastoral staff.

The petitioner submitted copies of the church’s BIR Form 2316, the Republic of the Philippines Employer’s Certificate of Compensation Payment/Tax Withheld. The forms indicate that the Word of Hope Christian Ministries paid the beneficiary a salary of 77,500 Filipino pesos in 2001 and that the church compensated him 62,625 pesos in 2000. The petitioner also submitted a “certification” from the head of the Financial Stewardship Department of the Word of Hope Church, indicating that the beneficiary was paid 11,000 pesos per month beginning in January 2002. The petitioner submitted a copy of one pay slip indicating that the beneficiary

received approximately 4,621 pesos for the period March 26 through April 10, 2002. The petitioner submitted no other evidence of the beneficiary's employment with the Word of Hope Assembly of God in 2002.

The petitioner also submitted an undated "work history" from the Full Gospel Assembly of God in San Jose, California, reflecting that the beneficiary worked there from May 2002 to "the present" as pastor of the college group, music pastor/head, and as "pastor-in-charge for Purpose driven life campaign." The document reflects that the beneficiary worked 21 hours per week with the majority of his time involving his work as "pastor-in-charge" of the "purpose driven life campaign." In that position, the beneficiary trained leaders for small groups ministry, conducted cell leaders' meetings, and prepared cell group materials for the small group ministry. The petitioner submitted no documentary evidence to corroborate the beneficiary's work with the Full Gospel Assembly of God in San Jose. 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).

In response to a second RFE from the director dated September 30, 2003, the petitioner submitted a letter from the Full Gospel Assembly of God in San Jose "certifying" that the beneficiary "was not compensated by [the church] for his involvement in the church and ministry." The petitioner submitted a letter from [REDACTED] the beneficiary's brother-in-law, who stated that he was financially supporting the beneficiary and his spouse during their stay in the United States. Mr. [REDACTED] submitted a copy of his June 2003 savings account statement as evidence of his ability to financially support the beneficiary. The statement reflects that Mr. [REDACTED] had a closing balance of over \$7,000 in the account at the end of June 2003, as well as a certificate of deposit in the amount of \$1,000.

The beneficiary's sister-in-law also signed a letter stating that she was supporting her sister and brother-in-law during their stay in the United States. As evidence of her ability to provide this support, she submitted a copy of a bank statement, reflecting a balance of approximately \$80,323 in savings and \$48.00 in checking accounts as of June 30, 2003.

The petitioner also suggested that the beneficiary depended upon personal savings while in the United States and submitted a copy of the beneficiary's December 2001 bank statement indicating that he had approximately 405,082 pesos in savings as of December 26, 2001.

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 salaried. To hold otherwise would be contrary to the intent of Congress.

In the rare case where volunteer work might constitute prior qualifying experience, the petitioner must establish that the beneficiary, while continuously and primarily engaged in the traditional religious occupation, was self-sufficient or that his or her financial well being was clearly maintained by means other than secular employment.

We note that in his "certification" of August 15, 2002, Reverend Lobarbio stated that the beneficiary was working for the Word of Hope Assembly of God as of that date. The church's pastor, Reverend Sobrepena, did not indicate the termination date of the beneficiary's employment, stating only that the beneficiary had worked at the church from 1988 to 2002. In an undated letter submitted on appeal, Reverend Sobrepena identifies himself as the general superintendent and president of the Philippines General Council of The Assemblies of God, and states that the beneficiary worked as a full-time minister with the Word of Hope Church from 1988 to 2002.

The evidence reflects that the beneficiary received at least one payment from the Word of Hope Assembly of God in April 2002. However, no further evidence of the beneficiary's employment with the church in 2002 was submitted. The beneficiary's unverified work history submitted during the earlier stages of these proceedings reflects that he taught at the Word of Hope Accelerated Christian Training School until May 2002. An expanded version of this document submitted on appeal reflects that the beneficiary taught at the school through May 2003. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The record reflects that the beneficiary entered the United States on May 21, 2002 pursuant to a B-2, temporary visitor for pleasure, nonimmigrant visa. The work history from the Full Gospel Assembly of God in San Jose reflects that the beneficiary began his involvement with the church in May 2002. The petitioner, however, submitted no documentary evidence to corroborate the beneficiary's association with the church. Further, work history from the Full Gospel Assembly of God reflects that the beneficiary worked only 21 hours per week. Part-time work is not qualifying work experience for purpose of this visa preference petition.

On appeal, counsel asserts that the statute imposes no requirement of “continuous” employment during the qualifying two-year period, and that by imposing such a requirement, Citizenship and Immigration Services (CIS) “effectively eliminate[s] any applicant who was physically present in the United States, due to the necessary break in employment experience by an alien while in the U.S.” Counsel’s argument is clearly without merit as the Act specifically states in section 101(a)(27)(C)(iii), 8 U.S.C. § 1101(a)(27)(C)(iii), that the petitioner must establish that the alien seeking entry into the United States “has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i) of the Act.

The evidence is insufficient to establish that the beneficiary has worked full-time and continuously as a minister for two full years prior to the filing of the visa petition.

The director also determined that the petitioner had not established that it has the ability to pay the beneficiary the proffered wage.

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

Ability of prospective employer to pay wage. 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 proffered 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 copies of annual reports, federal tax returns, or audited financial statements.

The record reflects that the Full Gospel Assembly of God in San Jose, California is the beneficiary’s prospective U.S. employer. To establish the church’s ability to pay the proffered wage, the petitioner submitted with the petition, a September 3, 2002 letter from the pastor of the San Jose church, stating, “The total revenue for the fiscal year period as corrected by the auditors was \$248,833.10. The total expenditures for the same period was \$185,693.83, leaving a balance of \$63,139.27.” The petitioner also submitted a copy of a financial report for the period January 1, 2001 through December 31, 2001, signed by the church’s treasurer and pastor, reflecting these amounts. However, the petitioner failed to submit a copy of the auditor’s report and failed to submit evidence of the prospective U.S. employer’s ability to pay the proffered wage as of October 23, 2002, the date the petition was filed.

In response to the director’s RFE of May 13, 2003, the petitioner resubmitted copies of the pastor’s letter and the financial statement. In response to the director’s second RFE of September 30, 2003, the petitioner submitted a copy of a document labeled “Financial Report for Year 2002” and a copy of a document labeled “Full Gospel A/G Financial Report 1/1/03 Through 8/31/03.”

The above-cited regulation states that evidence of ability to pay “shall be” in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of evidence.

On appeal, the petitioner submitted a copy of a 2002 audit for the petitioning organization. Although the petitioner stated in its letter accompanying the petition, that it would “guarantee the remuneration and/or

living expenses” for the beneficiary and his family, the regulation requires that the petitioner establish the ability of the prospective U.S. employer to pay the proffered wage.

The evidence does not establish that the Full Gospel Assembly of God in San Jose, California, the beneficiary’s prospective U.S. employer, has the ability to pay the proffered wage.

The director further determined that, as the petitioner had not enumerated the “terms of payment for services or other remuneration, . . . [t]he petitioner has not adequately established that the needs of the petitioning entity will provide permanent, full time religious work for the beneficiary in the future.” The director therefore determined that the petitioner had not established that it had extended a qualifying job offer to the beneficiary.

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.

We note first that the petitioning organization is not the prospective U.S. employer. We further note that, in its letter accompanying the petition, the petitioner stated that the beneficiary’s starting salary will be based on the Minimum Wage Law, plus other fringe benefits.”

Although counsel states on appeal that the beneficiary will work 40 hours per week, this is contrary to the evidence of record. In response to the director’s May 13, 2003 RFE, the petitioner submitted a detailed job description for the proffered position. The petitioner indicated that the beneficiary was expected to work 32 hours per week. Consistent with the requirements of the U.S. Department of Labor’s Bureau of Labor Statistics and other regulations pertaining to employment based visa petitions, CIS holds that employment of less than 35 hours per week is not full time employment. The petitioner has not established that the Full Gospel Assembly of God will provide permanent full-time employment to the beneficiary. Part-time employment is not a qualifying job offer for the purpose of this employment based visa petition.

The petitioner has not established that it 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.