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U.S. Citizenship  
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FILE: [REDACTED]  
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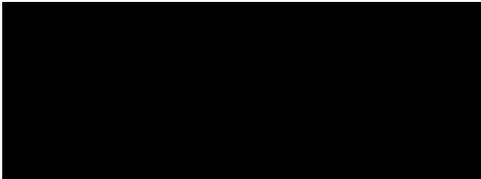
Office: VERMONT SERVICE CENTER

Date: AUG 17 2005

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.

*Mari Johnson*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. Following an appeal, the Administrative Appeals Office (AAO) remanded the matter to the service center with instructions to certify the decision to the AAO if the director's decision was adverse to the petitioner. However, the acting director failed to certify her May 14, 2004 decision. The petitioner's motion to reopen or reconsider the acting director's denial of the petition on remand was dismissed by the acting director on July 29, 2004. The petitioner's subsequent appeal of that decision was untimely filed; however, pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(2), the acting director treated the untimely appeal as a motion to reopen, which she ultimately dismissed on October 25, 2004. The matter is now before the AAO on appeal. The appeal will be dismissed.

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 associate minister. In his initial decision, 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. On appeal, the AAO determined that the petitioner had submitted documentation that it had paid the beneficiary as claimed, and that together with the "preacher's log" maintained by the beneficiary, the evidence was sufficient to establish that the beneficiary worked for the petitioner. However, the AAO questioned whether the beneficiary worked "solely" as a minister during his association with the petitioner, as evidence submitted in support of a previously filed petition indicated that the beneficiary had also worked as a security officer.

The AAO remanded the record for the director to give the petitioner an opportunity to establish that the beneficiary worked "solely" as a minister during the qualifying two-year period. In this regard, the AAO stated that only certified copies of income tax returns filed with the Internal Revenue Service would suffice as evidence.

We withdraw the statement by the AAO that the petitioner must establish that the beneficiary worked "solely" as a minister during the qualifying two-year period. The statute and regulation require that if the alien seeks entry into the United States as a minister, he or she must do so solely for the purpose of working as a minister. The statute and regulation do not, however, require that the petitioner establish that the alien's qualifying experience must be "solely" as a minister. The statute and regulation do require, however, that the petitioner establish that the beneficiary has been continuously employed in the religious occupation or vocation for two full years preceding the filing of the visa 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 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) 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 April 24, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as an associate minister throughout the two-year period immediately preceding that date.

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 generally 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.

The petitioner stated that the beneficiary was ordained as a minister with the petitioning church on July 12, 1998, and that he had worked as an associate minister for more than two years prior to the filing of the visa petition. The record contains a copy of a certificate of ordination issued to the beneficiary by the petitioner that corroborates the beneficiary's ordination as a pastor on July 12, 1998. In his letter of April 9, 2002, the petitioner's pastor, Reverend Paul Obadare, stated:

His primary duties include the overseeing of the Outreach Ministry by assisting in developing programs for the propagation of the good tidings; teaching classes in the Bible Doctrines and Tenets; reviewing and updating the programs of Counseling; scheduling, preparing and assisting in conducting weekday prayer meetings. He assists in regular visits to the sick and individuals according to their needs.

In a separate letter of the same date, Reverend Obadare outlined the beneficiary's weekly schedule, which included delivering the sermon on Sunday.

In the initial proceedings, the petitioner submitted excerpts from a document labeled as a "preacher's book." The document lists dates, times, preacher, text, attendance and "no. of communicat." The documents reflect dates from January 2, 2000 to January 28, 2001.

The petitioner stated that the beneficiary was "boarded and transported by the church, therefore he does not receive a salary but receives stipends." The petitioner submitted no evidence of the stipends or other financial support that it provided to the beneficiary and submitted no other documentation during the initial stages of these proceedings to corroborate the beneficiary's employment during the qualifying two-year period. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

With its first appeal, the petitioner submitted additional documentation that included copies of canceled checks made payable to the beneficiary by the Christ Apostolic Church of America, Takoma Branch in Mount Rainer or Langley Park, Maryland, and the Christ Apostolic Church of American in Hyattsville, Maryland. The annotations on these checks indicate that they are for "payment," stipend, rent or allowance. The checks covered relevant periods in 1999, 2000 and 2001. However, we note that they did not reflect payment throughout the entire two-year period established by the statute and regulation. We note this particularly as the checks do not reflect that the beneficiary was paid by the petitioning organization, and the evidence does not indicate that he was compensated for his services continuously throughout the qualifying two-year period.

On remand, the petitioner stated that the organization did not keep time sheets or schedules on file, and that the beneficiary had no individual tax returns because "the church cannot put him on salary before the approval of this petition. All that the church gives him is stipends," proof of which the petitioner stated that it had previously provided. On appeal of the director's denial of the petition on July 29, 2004, the petitioner submitted a copy of a letter from the Internal Revenue Service (IRS) enclosing information regarding the beneficiary's income tax returns for the years 1999, 2000, 2002 and 2003. The letter indicates that the beneficiary, despite the petitioner's statements, timely filed an income tax return for the year 1999. However, the tax return for the year 2000 was not filed until 2004. The letter does not reflect a return for 2001.

The 1999 and 2000 yearly returns indicate that the beneficiary claimed earnings from self-employment. The IRS letter does not indicate the source of the beneficiary's earnings. Further, as the evidence does not reflect that the petitioner issued the beneficiary a Form 1099-MISC, Miscellaneous Income, and the year 2000 return was not filed until 2004, there is no contemporaneous evidence of the beneficiary's employment during that period.

The evidence does not establish that the beneficiary was not dependent upon secular employment for his financial support or that he was continuously employed as a minister throughout the two-year period immediately preceding the filing of the visa petition.

Beyond the decision of the director, the petitioner has not established that it has the ability to pay the beneficiary the proffered wage. This decision constitutes an additional ground for dismissal of the appeal.

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 petitioner stated that it would pay the beneficiary a salary of \$1,200 per month "with room and board." To establish its ability to pay this wage, the petitioner submitted copies of its financial statement for the year 2000 accompanied by an accountant's compilation report.

As the compilation is based primarily on the representations of management, the accountant expressed no opinion as to whether they fairly present the financial position of the petitioning organization. In light of this, limited reliance can be placed on the validity of the facts presented in the financial statements that have been submitted. No further supporting documentation is included in the record to reflect the assertions made by the accountant in the financial documentation, or contained within the unaudited financial statements.

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 primary evidence.

The petitioner submitted copies of canceled checks reflecting that other Christ Apostolic Churches of America had provided monetary compensation to the beneficiary. However, the petitioner submitted no evidence of its relationship to these other churches or that the petitioner itself had ever compensated the beneficiary. The regulation requires that the petitioner establish the prospective U.S. employer's ability to pay the proffered wage.

The evidence submitted by the petitioner does not establish that it has the continuing ability to pay the beneficiary the proffered wage.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the decision of the director will be affirmed. The petition is denied.

**ORDER:** The petition is denied.