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CI

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **AUG 31 2005**  
WAC 03 151 53677

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:  
[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.

*Mari Johnson*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Acting Director, California Service Center, and is now before the Administrative Appeals Office (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 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 or that it had the ability to pay the beneficiary the proffered wage.

On appeal, counsel submits a brief.

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 issue on appeal is whether the petitioner established that the beneficiary had been continuously employed in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition.

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 17, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a pastor throughout the two-year period immediately preceding that date.

In its letter accompanying the petition, the petitioner stated that, since the year 2000, the beneficiary has been working at the petitioning organization as its pastor for the youth adult group, and that he was also pursuing a doctor of philosophy degree in theology. The petitioner stated that the beneficiary's duties consisted of leading the weekly service for the young adult group; guiding the group in serving the church; serving the community, including preparing food for the poor and homeless, visiting hospitals, and playing sports with underprivileged children; providing transportation for the petitioner's senior citizens; and leading the main Sunday and early morning services in the absence of the senior pastor.

The petitioner stated that the beneficiary worked a minimum of 40 hours per week and, in lieu of a salary, was awarded a "scholarship" by the petitioning organization in the amount of \$1,000 per month. As evidence, the petitioner submitted a copy of its 2003 budget, reflecting an amount of \$13,200 for the beneficiary; copies of its 2001 and 2002 budget reports with a line item for the beneficiary under scholarship; and copies of its cash flow reports for 2002 with a line item for the beneficiary under scholarship. We note that the 2001 budget report reflects that the petitioner budgeted \$12,000 for "scholarship" for the beneficiary, but the report does not reflect that any payments were made to the beneficiary for that year. The petitioner submitted no other evidence with the petition to corroborate any employment of the beneficiary 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)).

In a request for evidence (RFE) dated August 28, 2003, the director instructed the petitioner to:

Provide evidence of the beneficiary's work history beginning April 17, 2001 . . . Provide a breakdown of duties performed in the religious occupation for an average week . . . Ideally, this evidence should come in a way that shows monetary payment, such as W-2 forms, pay stubs, or other items showing the beneficiary received payment. Documentation showing the withholding of taxes is good evidence. However, you may also show payment through other forms of remuneration. If any work was on a volunteer basis, provide evidence to show how the beneficiary supported himself (and family members, if any) during the two-year period or what other activity the beneficiary was involved in that would show support.

In response, the petitioner submitted copies of check stubs dating from March 25, 2001 to April 27, 2003. These documents reflect payments in each of these months to "J.C.O."<sup>1</sup> and reference a number (581) that corresponds to one of the petitioner's budget account categories. The petitioner did not submit copies of the corresponding canceled checks. Further, although the check stubs suggest payments made under the specific accounting category for scholarships, the petitioner's budget for 2001 does not reflect that any payments were made to the beneficiary from this account for the year 2001.<sup>2</sup> The petitioner submitted no evidence to explain this inconsistency in its records. 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).

With its response to the RFE, the petitioner also submitted a November 5, 2003 letter from the beneficiary, who stated that, in addition to working for the petitioner, he also worked part-time for the Claremont School of Theology, Center for Process Studies, and received financial support from his family in Korea. An October 29, 2003 letter from the Claremont School of Theology indicated that the beneficiary worked 20 hours per week at the school from May 16, 2002 until the date of the letter. The letter indicated that the beneficiary was currently earning \$12.00 per hour, and that his visa limited his work to the campus, "with exempt tax status." Documentation contained in the record includes information from The Center for Process Studies website, which reflects that the beneficiary worked on the bibliography and citation index for Association of Process Psychology. The website, accessed on October 2003, indicated that the beneficiary was currently working on the Hartshorne Archive.

In response to a second RFE dated April 29, 2004, the petitioner stated that, as it compensated the beneficiary with a scholarship rather than a salary, it did not issue the beneficiary a Form W-2, Wage and Tax Statement, or a Form 1099-MISC, Miscellaneous Income. The petitioner further stated that as the compensation that it provided to the beneficiary was below the level required for filing a federal income tax return, the beneficiary was not required to file a return and therefore the petitioner could not provide evidence of this nature.

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

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<sup>1</sup> The April 28, 2002 check stub reflects payment to the beneficiary of \$1,000.

<sup>2</sup> The year 2001 budget report (labeled Year 2002 Budget Report) indicates that none of the designated scholarship recipients received money from the accounting category for scholarship. The document reflects that the budgeted amount was used for scholarship "other." There is no explanation for "other," nor is there evidence that the beneficiary was paid from the "other" budget category in 2001.

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.

On appeal, counsel stated that the beneficiary "resorted" to working at Claremont College of Theology to financially support himself. No evidence in the record supports counsel's statement. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported 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).

The petitioner submitted no other documentary evidence on appeal to corroborate the beneficiary's claimed employment during the qualifying two-year time frame, and specifically submitted no evidence to explain the inconsistency in its 2001 budget report and the check stubs submitted as evidence. See *Matter of Soffici*, 22 I&N Dec. at 165; *Matter of Ho*, 19 I&N Dec. at 591-92.

The evidence does not establish that the beneficiary was continuously engaged as a pastor for two full years preceding the filing of the visa petition.

The second issue on appeal is whether the petitioner 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 petitioner stated that it would pay the beneficiary \$1,000 per month. In addition to the check stubs, budget reports and cash flow reports discussed above, the petitioner also submitted copies of its balance sheets for 2001 and 2002. As this documentation is prior to the filing date of the petition, it has no evidentiary value in establishing the petitioner's ability to pay as of the filing date of the petition.

The petitioner submitted a copy of its 2003 budget, reflecting that it had budgeted \$13,200 for the beneficiary. The petitioner also submitted copies of check stubs reflecting that it paid the beneficiary \$1,100 per month from January through April 2003.

The evidence is sufficient to establish that the petitioner has the ability to pay the beneficiary the proffered wage as of the date the petition was filed.

Beyond the decision of the director, the petitioner has not established that it has 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.

The petitioner stated that it would pay the beneficiary \$1,000 per month. The record reflects that the beneficiary currently relies upon this income from the petitioner, assistance from his family and part-time work at Claremont School of Theology to meet his financial needs. The statute and regulation require that the alien seeking entry into the United States as a minister, must do so solely for the purpose of carrying on the vocation of a minister. The petitioner's evidence does not establish that the beneficiary will be solely carrying on the vocation of minister. Therefore, the evidence does not establish that the petitioner has extended a qualifying job offer to the beneficiary. For this additional reason, the petition may not be approved.

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.