



U.S. Citizenship  
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FILE: EAC 02 267 52017 Office: VERMONT SERVICE CENTER Date: DEC 22 2005

IN RE: Petitioner:  
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.

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 (AAO) on appeal. The appeal will be dismissed.

We note that the record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, naming ██████████ of Solomon & Solomon as the petitioner's attorney. We have been notified, however, that Mr. ██████████ is deceased. There is no more recent Form G-28 from any other attorney or accredited representative. Therefore, while we will consider Mr. ██████████ arguments on appeal, we consider the petitioner to be without representation; the term "former counsel" shall refer to Mr. ██████████

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 missionary. The director determined that the petitioner had not established that the beneficiary's position qualifies as a religious occupation, or that the beneficiary had the requisite two years of continuous work experience as a missionary immediately preceding the filing date 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 first issue raised by the director is whether the petitioner seeks to employ the beneficiary in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) defines "religious occupation" as 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.

The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Citizenship and Immigration Services therefore interprets the term “traditional religious function” to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

The director denied the petition in part because the petitioner failed to establish “that the beneficiary’s activities for the petitioning organization require any religious training or qualifications.” Former counsel’s statement on appeal is devoted entirely to this issue. Former counsel argues that the position of a missionary requires “tactical training” and “extensive research” beyond the expertise of a typical member of the congregation.

After careful and prolonged consideration of this issue, the AAO finds that the director’s reliance on the “training” issue lacks regulatory and statutory support, and therefore has received a disproportionate amount of weight in adjudications of special immigrant religious worker petitions. Obviously, when a given position clearly requires specific training, 8 C.F.R. § 204.5(m)(3)(ii)(D) requires the petitioner to show that the alien possesses that training; but the issue of training should not be a primary factor when considering the question of whether that position relates to a traditional religious function. Of greater importance is evidence showing that churches or other entities within a given denomination routinely employ paid, full-time workers in comparable positions, and that those positions do not embody fundamentally secular tasks, indistinguishable from positions with secular employers.

The director’s finding in this regard cannot stand. Nevertheless, another issue remains, which is by itself sufficient grounds for denial of the petition and dismissal of the appeal. The next 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 experience in the religious work. The petition was filed on August 19, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a deaconess/missionary throughout the two years immediately prior to that date.

The petitioner’s initial submission shows that the beneficiary has been in the United States for several years, having never departed following her 1990 entry as a B-2 nonimmigrant visitor. Pastor John Jones, in a letter submitted with the initial filing, states that the petitioner “has worked consistently in the capacity of a missionary” but provides no more specific information, nor any documentation to establish that the beneficiary has, in the past, been working for the petitioning church or any other church within the denomination during the 2000-2002 qualifying period.

The director instructed the petitioner to “[s]ubmit additional evidence that the beneficiary has the continuous two years full-time experience in the . . . religious work” immediately prior to the filing date. In response, former counsel states:

I attorney Fergus M. [REDACTED] do verify that the beneficiary has been for a continuous period of two years prior to August 19, 2002 carried [sic] out the responsibilities in the said religious profession.

[The beneficiary], who acts in the capacity of a Missionary, has been performing her duties for a period of two years prior to August 19, 2002. . . .

In reiteration, this religious work began here, has continued to this day and has not terminated.

The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Former counsel does not explain how an attorney in New York City could be in a position personally to verify the beneficiary’s claimed employment at a church in Boston. Furthermore, former counsel does not claim to have reviewed any records or documentation to confirm that such claimed employment did in fact take place.

Former counsel continues:

[The beneficiary] has always observed the laws set forth by the United States of America, and has refrained from accepting employment which would incur taxes, etc. without employment authorization. She therefore agreed to work for the Church in a manner, which was legal for both employer and employee. [The beneficiary] is fortunate enough to have accepted odd jobs in her neighborhood for financial support of herself.

Overstaying a visa for over a decade is not “always observ[ing] the laws set forth by the United States,” and “odd jobs” are not exempt from taxation or federal law regarding employment of aliens. Remaining in the United States without a valid visa is not “legal for [the] employee,” whether or not the overstaying alien accepts remuneration for her work. Even if everything former counsel claims is true, the beneficiary simply violated those laws in a manner that was more difficult to trace and thus less likely to reveal her continuing unlawful presence. Therefore, the assertion rings hollow that the beneficiary refused payment in order to avoid violating immigration and tax law.

The petitioner submits what purports to be a new letter from John Jones, but this is simply a copy of his previous letter, with a new date written at the top in place of the original date. The petitioner’s response to the request for evidence fails to establish the two years of continuous employment required by the statute and regulations.

The director, in denying the petition, specifically stated that the lack of information regarding the beneficiary’s past work was one of the grounds for denial. The petitioner’s submission on appeal does not

even acknowledge this finding, let alone address it. The re-submission of previously submitted documents adds nothing of substance to the record. The petitioner has failed even to claim that the beneficiary worked continuously throughout the qualifying period, let alone to produce any kind of evidence that would lend any support to such a claim had it been made.

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 appeal will be dismissed.

**ORDER:** The appeal is dismissed.