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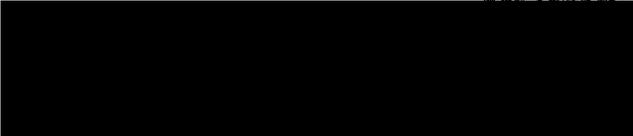


U.S. Citizenship
and Immigration
Services

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FEB 15 2005



FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date:
WAC 01 151 52216

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:
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 employment-based immigrant visa petition was denied by the Director, California Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion to reopen will be granted, the previous decision of the AAO will be affirmed and the petition will be denied.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

The director found that the evidence established that the beneficiary had volunteered his services to the petitioning organization for approximately 27 hours per week. The director therefore determined that the petitioner had not established that the beneficiary had been working continuously in the religious vocation or occupation for two full years preceding the filing of the visa petition.

On appeal, the petitioner stated that the beneficiary had worked for the petitioning organization more than 35 hours per week on a volunteer basis during the qualifying two-year period. In its previous decision, the AAO held that, without corroborating evidence, the AAO was unable to conclude that the beneficiary had been engaged in any employment, regardless of the nature of that employment.

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).

On motion, the petitioner submits affidavits from two of its board members and the beneficiary, who all state that the beneficiary worked full-time as a minister on a "non-paid" basis from March 23, 1999 to March 23, 2001. However, these sworn statements do not provide objective evidence of the beneficiary's work, and without more, are insufficient to resolve the inconsistencies in the record regarding the beneficiary's working hours.

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 supported himself financially during the qualifying two-year period. However, the petitioner submitted no documentary evidence to corroborate this statement. 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).

The petitioner also submitted copies of photographs and video and audiotapes that it states depict the beneficiary providing services as a minister. Assuming that the evidence is as the petitioner purports it to be, the evidence would not establish that the beneficiary worked continuously as a minister during the qualifying time frame.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. As no new evidence has been presented to overcome the grounds for the previous dismissal, and no reasons set forth indicating that the decision was based on an incorrect application of law, the previous decisions of the AAO and the director will be affirmed. The petition is denied.

ORDER: The AAO's decision of September 12, 2003 is affirmed. The petition is denied.