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



U.S. Citizenship
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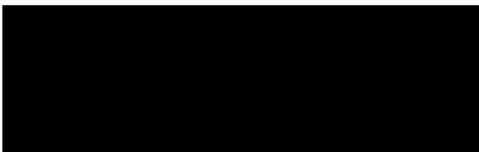
FEB 22 2005

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:
WAC 02 282 54785

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

Ca 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 sustained and the petition will be approved.

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 Christian education missionary. 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 not established that the position qualified as that of a religious worker, that the petitioner has the ability to pay 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) 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 September 19, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as a Christian education director throughout the two-year period immediately preceding that date.

The petitioner states that the beneficiary has been employed as its full-time education director and Christian family counselor since November 1999. Although the petitioner initially stated that the proffered position was that of a Christian education missionary, in subsequent documentation it named the position as Christian education director. The duties of the position are the same, and do not reflect that the petitioner changed the proffered position subsequent to the filing of the visa petition.

According to the petitioner, the beneficiary's duties include the following:

[P]lanning, developing, and administering church programs to provide Christian education for students . . . She attends minister's meeting to set church's vision and goals for upcoming year. She makes discretionary decisions for planning and leading students' and teachers' worship services, prayer meetings and fellowship activities. She educates and trains Sunday school teachers . . . She analyzes data from questionnaires and interviews to improve the quality of curriculum and teaching methods and she will also attend seminars to update teaching methods and materials. She is the head person to conduct summer and winter retreats and other educational activities. In summertime, she is responsible for VBS (Vocation Bible School); she plans and schedules for this event and recruits teachers from inside and outside of the church. She prepares and analyzes financial status and makes budget for education department.

The petitioner submitted a copy of a Form 1099-MISC that it issued to the beneficiary in 2000, reflecting nonemployee compensation of \$14,400 and a copy of the beneficiary's year 2000 Form 1040, U.S. Individual Income Tax Return. This Form 1040 reflected that it was a copy, and was neither signed nor dated. The petitioner also submitted a copy of a Form W-2, Wage and Tax Statement, that it issued to the beneficiary in 2001, reflecting wages, tips and other compensation of \$14,400, and a copy of the beneficiary's 2001 Form 1040EZ, Income tax Return for Single and Joint Filers with No Dependents. The beneficiary's 1040EZ also reflected that it was a copy and was unsigned and undated. The petitioner submitted copies of canceled checks it made payable to the beneficiary in the amount of \$1074.40 for the period February 2001 to June 2002. Copies of check stubs reflecting payroll deductions from total earnings of \$1,200 were also submitted for the same time period.

In a request for evidence (RFE) dated May 8, 2003, the director instructed the petitioner to submit the Internal Revenue Service (IRS) computer printouts of the beneficiary's Forms W-2 or Forms 1099 for the years 2000 through 2002. The IRS printout for 2001, submitted in response, reflects that the Cerritos Community College District paid the beneficiary wages of \$14,400.

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.

The director determined that the beneficiary's receipt of wages from Cerritos Community College District was inconsistent with evidence that she had worked for the petitioner since 1999 and reflected that she had not worked continuously in a religious occupation for two full years prior to the filing of the visa petition.

On appeal, counsel submitted printouts from the IRS dated March 26, 2004, which indicate that the beneficiary received \$14,400 in wages from the petitioner and \$298.00 from the Cerritos Community College District

reported on Form 1098-T, Tuition statement.¹ Counsel also submitted a letter from the interim payroll manager at the Cerritos Community College District, dated March 26, 2004, who states that the college district had never employed anyone with the beneficiary's name or social security number.

The evidence is sufficient to establish that the beneficiary has worked continuously in the religious occupation for two full years preceding the filing of the visa petition.

The director also determined that the petitioner had not established that the position was that of a religious worker. Pursuant 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work in a religious occupation.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions would reasonably be expected to perform services directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

Citizenship and Immigration Services (CIS) 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 duties of the proffered position are discussed above. The petitioner also submitted a weekly schedule of the beneficiary's duties, reflecting that she worked 41 hours per week developing, planning and coordinating Bible educational programs and activities, counseling congregation members, leading college students in fellowship, preparing Sunday school worship and sermons for the youth programs, and participating in worship services.

On appeal, counsel submits copies of pages from the Presbyterian Church (USA) website, in which the position of Christian educator is described and a suggested compensation guide for establishing the salary for the position is provided.

The evidence is sufficient to establish that the position is that of a religious worker, recognized and defined by the Presbyterian Church and is traditionally a compensated position.

¹ It is unclear as to why this document was filed as IRS regulations do not require the form for nonresident aliens, and there is no evidence that the beneficiary attended the school. See www.irs.gov/instructions.1098et.

The director determined that the petitioner had not established that it had the ability to pay the beneficiary the proffered wage. The evidence indicates that the petitioner has consistently paid the beneficiary \$1,200 per month, the proffered wage, since 1999. Additionally, other evidence submitted by the petitioner indicates that it has the financial capacity to continue paying the beneficiary. The evidence sufficiently establishes that the petitioner has the ability to pay the proffered wage.

The director further determined that the petitioner had not established that it will provide permanent, full-time religious work for the beneficiary and therefore had not established that it had extended a qualifying job offer to the beneficiary. The director's determination was based in part on the inconsistency in the reported earnings for the beneficiary in 2001. However, the evidence submitted by the petitioner adequately resolves the inconsistencies in the record regarding the beneficiary's employer in 2001. Further, the work schedule submitted by the petitioner indicates that the petitioner expects the beneficiary will continue to work at least 41 hours per week in the proffered position.

The evidence is sufficient to establish that the petitioner has extended a qualifying job offer to the beneficiary. The record also reflects that the beneficiary is otherwise qualified for the visa preference classification.

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 met that burden.

ORDER: The appeal is sustained. The petition is approved.