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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
EAC 03 051 51711

Office: VERMONT SERVICE CENTER

Date: FEB 25 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.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont 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 "bible worker." The director determined that the petitioner had not established that the position qualified as that of a religious worker, that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition, or that the petitioner had the ability to pay the proffered wage.

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).

Pursuant to 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 petitioner states that the position requires a 40-hour workweek, in which the beneficiary will work 1) 20 hours in connection with the Sabbath school where her duties will include preparing and teaching various classes on the Bible, planning a branch Sabbath school for children and the sick and shut in, calling those who had visited the church and arranging to give Bible studies, and assisting the pastor in crusades and other evangelistic efforts; 2) 8 hours teaching in church school, including developing and implementing the weekly lesson plan, selecting the appropriate teaching aids, and conducting sessions with parents; and 3) 12 hours in the "prison ministry," visiting, conducting Bible studies, and following up with released prisoners. The petitioner stated that two other people have held this post in the past, both in part-time positions.

The petitioner submitted an excerpt from the *Seventh-day Adventist Church Manual*, which addresses the position of the Bible instructor. The position appears to be the same as that which the petitioner describes as a "Bible worker." The excerpt states that the position of Bible instructor is a "very important line of service," and describes the role within the Seventh-day Adventist Church structure.

The evidence is sufficient to establish that the position of Bible worker or Bible instructor is a religious occupation within the meaning of the statute and regulation.

The director also determined that the petitioner had not established that the beneficiary worked continuously as a Bible worker for two full years preceding 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 December 3, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working in the religious occupation throughout the two-year period immediately preceding that date.

In his letter of November 8, 2002, the petitioner's pastor, Reverend [REDACTED] stated that the beneficiary had worked on a full-time continuous basis for the petitioner as a Bible worker for at least two years preceding the filing of the visa petition. In his letter of October 14, 2002, [REDACTED] stated:

[The beneficiary] has been a volunteer staff member of this church and has been an integral part of our Sabbath School, Prison Ministry, and Church School in efforts to minister to the community. Because of the experience, training, and recognition that [she] has received, we have offered her employment. She is the Superintendent of our Sabbath School, Director of our Prison Ministry Outreach Program, and she also works in our Church School.

The petitioner submitted copies of checks made payable to the beneficiary and drawn on the joint checking account of the Seventh-day Adventist Church and the [REDACTED] SDA School. The checks cover a period from February 2002 to July 2002, and January 2001 (with a memo stating that it is for December's salary). The petitioner also submitted a copy of what appears to be a pay stub, which reflects that the beneficiary was paid \$2,100 in September 2002 by the Allegheny East Conference of Seventh-day Adventists. The petitioner submitted no documentary evidence of the beneficiary's employment with the petitioning organization in 2001 and no explanation of the payment made to the beneficiary in September 2002 by the Allegheny East Conference of Seventh-day Adventists. 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).

In a request for evidence (RFE) dated May 14, 2003, the director notified the petitioner that it had submitted insufficient evidence to establish the two years experience requirement for the beneficiary. The director advised the petitioner that it should submit "[o]bjective documentary evidence, such as payroll records, tax return forms, contracts, etc., . . . to confirm the claimed employment dates and compensation for services performed." The petitioner was also instructed that "[i]f some of the past experience was gained on a volunteer basis, submit evidence that explains how the beneficiary supported herself."

In response, the petitioner submitted a copy of a December 2002 check drawn on its account and made payable to the beneficiary in the amount of \$150.00, and a copy of what appears to be a counter check made payable to the beneficiary in the amount of \$1,800.00. The check is also dated in December 2002 and appears to be drawn on a separate account of the petitioner's. The petitioner also submitted a copy of a September

2002 check to the beneficiary by the Allegheny East Conference of Seventh-day Adventists corresponding to the pay stub previously submitted.¹

The petitioner submitted a copy of the beneficiary's year 2000 tax returns, including a Form 1040X, Amended U.S. Individual Tax Return, which contains a statement that the amended return was submitted to reflect income that the beneficiary received from the Seventh-day Adventist Church. However, all of the beneficiary's tax return documentation are copies without the taxpayers' signatures. Further, there appears to be inconsistencies in the tax documentation, in the reporting of the beneficiary's income from the petitioner. The record does not reflect that the returns, dated by the paid preparer on August 6, 2003, were ever filed with the Internal Revenue Service. The beneficiary's tax returns therefore do not constitute credible contemporaneous evidence of compensation for past employment. Further, the petitioner again failed to submit evidence of the beneficiary's employment during 2001.

In his letter accompanying the response to the RFE, counsel stated:

The beneficiary did not retain a copy of all paychecks that were issued her in the two years preceding the filing of the I-360 petition . . . However, . . . check #1069, which is dated January 4, 2001, and is marked "For December salary[,] . . . confirms that the beneficiary was employed by the petitioner at least two years prior to December 3, 2002.

Counsel's argument is without merit. As the petitioner submitted no evidence of the beneficiary's employment during 2001. Further, most of the evidence presented for the year 2002 reflects that the beneficiary was paid by the Allegheny East Conference of Seventh-day Adventists; however, the petitioner submitted no evidence of the work performed by the beneficiary for the conference or that the conference was compensating the beneficiary on behalf of the petitioner.

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).

¹ The petitioner also submitted copies of 2003 pay stubs reflecting payment to the beneficiary by the Allegheny East Conference of Seventh-day Adventists. However, these documents are outside of the qualifying two-year period and are not relevant in establishing the two-year experience requirement.

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 submitted no additional evidence on appeal in support of this statutory requirement. The evidence does not establish that the beneficiary was continuously employed as a Bible worker/Bible instructor for two full years preceding the filing of the visa petition.

The director also determined that the petitioner had not 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 indicates that it will pay the beneficiary \$13.00 per hour. With the petition, in addition to the copies of the checks it submitted, the petitioner also submitted copies of bank statements from September 2001 to September 2002, and a copy of a "financial comparison" for the years 2001 and 2000. It is noted that

all of these documents are prior to the filing date of the petition, and the petitioner submitted no evidence of its financial status from October 2002 until the date of the petition.

In response to the RFE, the petitioner submitted an October 11, 2000 letter from the auditor of the Allegheny East Conference of Seventh-day Adventists, indicating that he had performed a financial review of the church. The petitioner submitted no similar documentation for the year 2001 or 2002. The petitioner also submitted a copy of a document labeled "Cash Summary" for the month of June 2002, a copy of a "Weekly Contribution Report" for the month of June 2002, and a copy of a graph indicating "monthly contributions for 2002," reflecting contributions for "member givings" from January to June. The latter document does not reflect the source or for whom the document applies (the conference or the local church). We note again that this documentation precedes the filing date of the petition by several months.

On appeal, counsel states that the petitioner's ability to pay the proffered wage is established by the fact "that it has consistently paid the beneficiary since at least two years before the filing of the I-360 petition." However, as discussed above, the petitioner has not provided evidence that it has consistently paid the beneficiary at least the proffered wage prior to the date the petition was filed.

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 evidence. Further, the evidence submitted by the petitioner reflects that it paid the beneficiary in December 2002, but that the Allegheny East Conference of Seventh-day Adventists paid the beneficiary's compensation subsequent to that date.

The petitioner has not established that it had the continuing ability to pay the beneficiary the proffered wage from the date the petition was filed.

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.