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U.S. Citizenship
and Immigration
Services

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FILE:

EAC 03 025 50515

Office: VERMONT SERVICE CENTER

Date: MAR 04 2005

IN RE:

Petitioner:

Beneficiary:



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.

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 (lay) minister in charge of its children's church. 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.

On appeal, the petitioner submits a letter.

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) echoes the above statutory language, and 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 October 31, 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.

The petitioner stated that, upon her graduation from college in June 2000:

[The beneficiary] got deeply involved with mission work and subsequently became coordinator and president of the mission ministry in the church. She also served as:

- a. Vice President of the Youth Fellowship
- b. Coordinator of the Teenage Church
- c. Teacher in the Children's Church
- d. Leader of a house Fellowship Cell group
- e. Member, Evangelism and Follow-up Ministry and
- f. Member, prayer Vigil Ministry

The petitioner submitted no documentary evidence to corroborate the beneficiary's employment. 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 stated that upon her arrival in the United States in 2002, and after presenting a letter of introduction and a paper showing her ministerial training and service to the church, the beneficiary "was immediately absorbed into the church work." The petitioner did not state the specific nature of the beneficiary's work, but indicated that she had been "involved with the children [sic] church."

In response to the director's request for evidence (RFE) dated April 25, 2003, the petitioner submitted a letter from the Office of the General Overseer of the North America Zone 1 of the Redeemed Christian Church of God. The letter purports to provide a weekly work schedule for the petitioner, outlining the hours that she worked in specific duties. However, the letter does not state the basis of the overseer's detailed knowledge of the beneficiary's work schedule, particularly those duties that were performed in Nigeria. The petitioner submitted no documentary evidence to corroborate the statements contained within the letter. *Id.*

The petitioner further stated that, in addition to her "full time religious work," the beneficiary worked a mandatory one-year term in the National Youth Service Corps program. The petitioner submitted a letter from

Nigeria Airways Limited, which indicated that the beneficiary “did her one year National Youth Service Corps . . . from 3rd August, 2000 to 8th August, 2001. During this period, she was attached to our Administration (Establishment) Department.” The petitioner stated that the beneficiary received a monthly stipend for her services with Nigeria Airways Limited and was further supported by her parents. However, the petitioner again failed to provide evidence to substantiate these statements.

According to the overseer’s letter, the beneficiary began working with the petitioning organization in May 2002 and worked in excess of 60 hours per week. The petitioner submitted no documentary evidence to substantiate any work done by the beneficiary for 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).

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.

On appeal, counsel states that the statute and regulation do not require that the beneficiary’s prior experience to be full-time and paid.

Nonetheless, 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.

According to the petitioner, since her arrival in the United States in May 2002, her cousin has supported the beneficiary financially. The beneficiary's cousin executed an affidavit in which he stated that he intended to support his cousin, but did not indicate that he has supported her in the past or the nature of that support. The record does not establish that the beneficiary was not dependent upon secular income for her support.

The evidence is insufficient to establish that the beneficiary was continuously employed in a qualifying religious occupation for two full years prior to the filing of the visa petition.

Beyond the decision of the director, the petitioner has 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 \$1,200 per month plus room board and necessary living expenses. As evidence of its ability to pay this wage, the petitioner submitted copies of unaudited financial statements for 2001 and 2002.

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.

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.