

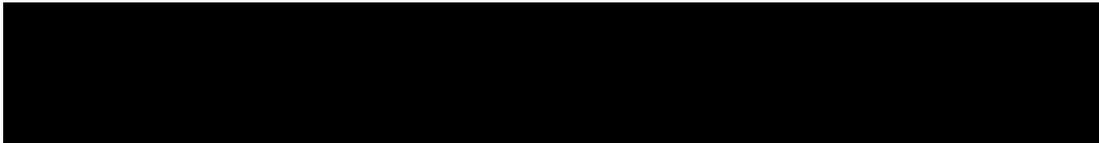
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U.S. Citizenship
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Services

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FILE: LIN 03 248 51264 Office: NEBRASKA SERVICE CENTER Date: MAY 02 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:
[Redacted]

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 Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office 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 minister of evangelism and outreach ministries. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition.

On appeal, the petitioner submits letters indicating that the beneficiary has volunteered at the petitioning church while on sabbatical from his home church in Nigeria.

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) 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 of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on September 2, 2003. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a minister throughout the two years immediately prior to that date.

Pastor [REDACTED] of the petitioning church states that the beneficiary “has worked as a dedicated Pastor in the ministry for the past four years (February 1999 – Present date).” The letter is dated August 5, 2003. The beneficiary’s resume indicates that the beneficiary was the “Parish Pastor” of a church in Lagos, Nigeria, from February 1999 to March 2003 (the beneficiary entered the United States on March 25, 2003). The same document indicates that, from January 2000 to March 2003, the beneficiary was a part-time “Field

Officer” with The [REDACTED], with the following duties: “counseling and coordination of the NGO [non-governmental organization] on health, STD’s and HIV related issues. Create awareness, organize symposiums, lectures and workshop.”

Nothing in the petitioner’s initial submission indicated where, if at all, the beneficiary had worked after March 2003, nor did any of the materials indicate that the beneficiary was on sabbatical from the Nigerian church.

The initial submission did not satisfactorily establish the beneficiary’s continuous ministerial work. The director, therefore, instructed the petitioner to submit further information and evidence about the beneficiary’s work during the qualifying period, including “the specific duties, the date(s) these duties were performed, and the time spent performing these duties.”

In response, Pastor [REDACTED] national protocol coordinator for the Redeemed Christian Church of God, North America, states that the beneficiary undertook “full-time ministering, coordinating and church management from February 1999 to March 2003” at the aforementioned church in Lagos. A newly revised resume by the beneficiary lists no work after March 2003. As with the initial filing, the new submission contains no indication as to where (or whether) the beneficiary has carried on the vocation of a minister after March 2003, or whether such work was full-time or part-time, despite the director’s specific request for such information.

The director denied the petition, stating “there is at least a four-month gap in employment,” interrupting the continuity of the beneficiary’s employment during the qualifying period. On appeal, counsel claims that the beneficiary has remained employed, albeit on unpaid sabbatical, by the church in Nigeria, and that the beneficiary has volunteered at the petitioning church because, as a B-2 nonimmigrant, he is not authorized to work in the United States. In an affidavit, the beneficiary repeats these details and states “I have never stopped performing as a Pastor since the day I was ordained.”

Pastor [REDACTED] of the Redeemed Christian Church of God, [REDACTED] Nigeria, states: “On March 25, 2003, [the beneficiary] took a long deserved vacation to the United States. While visiting the United States, [the beneficiary] met other church leaders from our church,” ultimately agreeing to work for the petitioning church. Pastor [REDACTED] states that, while the beneficiary has technically been on sabbatical, “he cannot bring himself to stop doing the Lord’s work, whether on vacation, or otherwise.”

Pastor [REDACTED] in a new letter, states that the beneficiary “has volunteered for various duties, such as leading Sunday School classes for adults, giving sermons on my behalf when I am unable to do so, leading prayer groups, and various other activities in and around the church.” Several members of the petitioner’s congregation assert that they have witnessed the beneficiary’s work for the church. None of the witnesses indicate that there exists any contemporaneous documentation to corroborate these after-the-fact assertions.

We cannot ignore that neither the petitioner, the beneficiary, nor anyone else ever mentioned this claimed sabbatical until after the denial of the petition. The appeal is also the first time that the petitioner has specifically claimed that the beneficiary has been working at the petitioning church. Even then, the petitioner has not indicated when the beneficiary began working at the church, or whether this work has been part-time or full-time. The beneficiary states that, when he traveled to the United States, he originally intended only to visit and then to return to Nigeria, and a Nigerian church official refers to the beneficiary’s visit as a “vacation,” a term that does not lead us to conclude that the beneficiary’s first impulse upon arriving in the United States was to resume, without pay, the same work for which he could have been paid had he returned to Nigeria.

The beneficiary's duties, as described on appeal, seem to be occasional rather than full-time duties. The record still lacks this detail, despite the director's having put the petitioner on notice that this information was needed to adjudicate the petition. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Part-time, uncompensated ministerial work is non-qualifying. *See Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

We do not find that the materials in the record are sufficient to establish the beneficiary's continuous (i.e., full-time, compensated and uninterrupted) work as a minister throughout the entire qualifying period.

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.