



U.S. Citizenship
and Immigration
Services

CI



FILE:

[Redacted]
SRC 04 238 51958

Office: TEXAS SERVICE CENTER

Date:

NOV 21 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:



Identification data deleted to
protect privacy of the individual
represented herein

BEARING COPY

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

2 Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Acting Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Catholic diocese. 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 missionary coordinating its Hispanic ministries. The acting director determined that the petitioner had not established that the position qualifies as that of a religious worker or 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, 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 first issue on appeal is whether the petitioner established that the position qualifies as that of a religious worker.

According to the regulation at 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 as a religious worker. The regulation at 8 C.F.R. § 204.5(m)(2) states, in pertinent part:

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious

hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters.

As discussed above, the petitioner described the job responsibilities to include home visitations, encouraging participation in liturgies and masses, formation and training of lay leaders, sacramental preparation, and promoting Hispanic traditions related with the expression of the Catholic faith. These duties are not inconsistent with those of a missionary.

The petitioner submitted documentation on the history and role of the Institute of Lay Missionaries, and on appeal, submits an excerpt from the *New Commentary on the Code of Canon Law*, which discusses the role of the missionary in the Catholic Church.

The evidence sufficiently establishes that the proffered position is that of a religious worker. The other issue on appeal is whether the petitioner established that the beneficiary had been continuously employed in a qualifying religious vocation or occupation for two full years prior to 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 September 8, 2004. Therefore, the petitioner must establish that the beneficiary was continuously working as an Hispanic missions coordinator missionary throughout the two-year period immediately preceding that date.

In its letter of August 20, 2004, the petitioner stated that the beneficiary began serving in the proffered position in July 2001 after approval of her R-1 nonimmigrant religious worker visa. According to the petitioner, the beneficiary performed the following duties:

- Home visitations
- Encouraging participation in liturgies and masses
- Formation and training of lay leaders
- Collaborating on faith formation of children, youths, and adults

- Sacramental preparation for all participants
- Procedures for the Christian initiation of all participants
- Promote Hispanic traditions related with the expression of the Catholic faith
- Visitation of the sick and spiritual assistance given in specific situations
- Assist in the physical and social needs of the Hispanic population
- Inform and promote the civil obligations/rights of the Hispanic community in the US

With the petition, the petitioner submitted a copy of a June 15, 2004 letter from the Institute of Lay Missionaries, indicating that the beneficiary had been a member of that organization since 1997, and in 2001, had been “invited to work” for the petitioning organization as its coordinator of Hispanic missions. The petitioner also submitted a copy of its newsletter with an article about the beneficiary and copies of various photographs. The petitioner submitted no evidence with the petition to corroborate the beneficiary’s work during the qualifying two-year period. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In response to the director’s request for evidence (RFE) dated March 21, 2005, the petitioner stated that the Hispanic ministries did not require its workers to submit time sheets, work logs or other reports. The petitioner submitted letters from the pastors of four churches who attest to the beneficiary’s work with their churches during 2002, 2003 and 2004.

The petitioner stated that prior to July 2004, it paid a stipend to the Institute of Lay Missionaries for the beneficiary’s employment and personal needs, and that in July 2004, it started direct payments to the beneficiary. The petitioner submitted a copy of a “vendor activity” report for the period August 2002 through January 27, 2005. This report reflects payments to the Institute of Lay Missionaries that appear to be on behalf of the beneficiary, and reflects a one-time payment of \$6,000 in November 2002, \$1,500 from December 2002 through March 2003, a one-time payment of \$1,664 in March 2003, and \$1,708 in subsequent months until June 2004. The petitioner submitted an April 20, 2005 letter from the Institute of Lay Missionaries, stating that the institute received \$1,708 per month from the petitioner as a stipend for the beneficiary in accordance with an agreement between the parties that the petitioner would “cover” the beneficiary’s employment and personal needs. The petitioner submitted copies of earnings statements indicating that it paid the beneficiary \$2,379.24 in July 2004 (two months’ salary) and \$1,081.47 in all subsequent months through April 2005. A copy of the beneficiary’s 2004 Form W-2, Wage and Tax Statement, reflects that the petitioner paid her approximately \$14,005.

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.

In a letter to the beneficiary dated August 12, 2002 and submitted in response to the RFE and again on appeal, the Very [REDACTED] “confirmed” the beneficiary’s assignment as coordinator of Hispanic ministries with the petitioning organization, and advised her the name of her supervisor [REDACTED] and stressed the importance of the position. In a letter dated August 24, 2004, Reverend [REDACTED] stated that the beneficiary entered the United States in July 2001 and served as coordinator of the Hispanic Ministry upon the invitation of the Diocese of Raleigh. However, in a letter dated September 1, 2002, [REDACTED] the petitioner’s director for Hispanic Ministry, advised the pastors and pastoral administrators of the diocese “beginning this fall, a group of Lay Missionaries from México will joint [sic] efforts with the Office of Hispanic Ministry to begin to minister and serve our Hispanic faithful.” Other documentation in the record reflects that this group of missionaries included the beneficiary.

These letters, together with the vendor report, indicate that the beneficiary did not begin her association with the petitioner in 2001, as it claims, but in 2002 at the earliest. Further, the vendor report begins in August 2002 and reflects a one-time payment of \$6,000 in November 2002, which is the equivalent of four months of the \$1,500 stipend that the report shows as paid to the Institute of Lay Missionaries on behalf of the beneficiary from December 2002 to March 2003. A one-time payment of \$1,664 in March 2003 for “8 months retro” is the difference in the proffered wage and that was reportedly paid to the beneficiary for the period of July 2002 to October 2002.

While the petitioner submitted documentation of monetary payments to the Institute of Lay Missionaries that it claims establish that the beneficiary worked for it throughout the qualifying period, the evidence reflects that the petitioner did not pay for the beneficiary’s services during the period that she was alleged to have

worked. The letters from Reverend [REDACTED] Reverend [REDACTED] and [REDACTED] raise questions as to when the beneficiary began working for the petitioner and whether she was working in her current position prior to September 2002. 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. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Although the Institute of Lay Missionaries advises that the petitioner paid \$1,708 on behalf of the beneficiary, it does not state when these payments began and provided no evidence that the monies were disbursed to the beneficiary or on her behalf. The petitioner did not provide copies of canceled checks, pay vouchers, or a written agreement between itself and the Institute of Lay Missionaries regarding the beneficiary's compensation. The vendor report submitted by the petitioner is insufficient to establish that payments were actually made to the institute, when they were made, or that the beneficiary received any compensation.

The petitioner admits to having no evidence such as work logs, time sheets or other documentary evidence to corroborate the beneficiary's employment during the qualifying two-year period. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings *Matter of Soffici*, 22 I&N Dec. at 165. As the petitioner has not provided corroborative evidence of the beneficiary's work experience during the qualifying two-year period, it has not established that the beneficiary worked continuously as a missionary for the two years immediately preceding the filing of the visa petition. Accordingly, the petition may not be approved.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.