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**U.S. Citizenship
and Immigration
Services**

CI



FILE:



WAC 04 060 50090

Office: CALIFORNIA SERVICE CENTER

Date: **SEP 19 2005**

IN RE:

Petitioner:

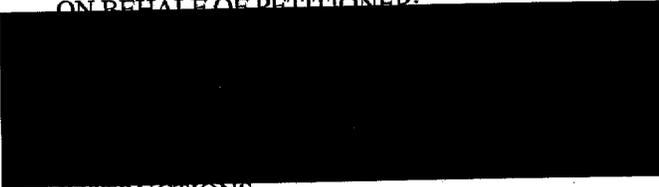
Beneficiary:



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, California 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 an evangelist. 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, counsel submits a letter 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 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 December 24, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as an evangelist throughout the two-year period immediately preceding that date.

With the petition, the petitioner submitted a May 10, 2002 "certificate of experience" signed by [REDACTED] the senior pastor of Sooyoodong Church of Korean Christian Presbyterian Congregation in Seoul, Korea. The certificate indicated that the beneficiary had been employed as an evangelist with the church from June 11, 1995 to "Present." The petitioner submitted no documentary evidence to corroborate the beneficiary's employment with the church. 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 a request for evidence (RFE) dated November 26, 2004, the director instructed the petitioner to:

Provide evidence of the beneficiary's work history beginning December 24, 2001 and ending December 23, 2004 only. Provide a breakdown of duties performed in the religious occupation for an average week. Include the employer's name, specific job duties, the number of hours worked, [and] remuneration . . . Ideally, this evidence should come in a way that shows monetary payment, such as W-2 forms, pay stubs, or other items showing the beneficiary received payment. Documentation showing the withholding of taxes is good evidence. However, you may also show payment through other forms of remuneration. If any work was on a volunteer basis, provide evidence to show how the beneficiary supported him or herself (and family members, if any) during the two-year period or what other activity the beneficiary was involved in that would show support.

In response, counsel stated in his cover letter that, between December 24, 2001 and December 23, 2004, the beneficiary had "continued to work" as an evangelist, "teaching, guiding and counseling church members and new converts." Counsel also provided a purported weekly breakdown of the beneficiary's duties. Counsel, however, submitted no evidence to support the statements contained in his letter. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner submitted no independent corroborative evidence of the beneficiary's duties during the qualifying two-year period.

Counsel also asserted:

After arriving in the United States in Jan. 2002, the beneficiary worked but could not receive any salaries due to the lack of proper immigration status. It was only after receiving the approval for R-1 status in Dec. 2003, the beneficiary began to receive the salary of \$1,500.00 a month.

Prior to receiving the salaries, the beneficiary was able to meet the [sic] living expenses with the money she personally brought in and also the funds wired from Korea through bank channel . . . The account used for the wire-transfer is one held in the name of [a] close relative [REDACTED]

The petitioner submitted copies of monthly bank statements for [REDACTED] which reflect several deposits of wire transfers. However, the petitioner submitted no evidence of the source of those funds, the purpose of those funds, or that the intended recipient was other than [REDACTED]. The evidence does not indicate that the funds were wired for the use of the beneficiary or that they were used to meet the beneficiary's needs. The petitioner submitted no other evidence of the beneficiary's employment during the qualifying two-year period.

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 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. 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 submits a copy of a March 17, 2005 "certificate of experience" from the [REDACTED] [REDACTED] indicating that the beneficiary had worked for the organization from January 2002 to December 2003 as an evangelist at a salary of 800,000 won (the equivalent of \$667 US, according to counsel) per month. The certificate did not indicate the beneficiary's hours, and the petitioner submitted no independent evidence to corroborate the beneficiary's receipt of payment by the church or of any funds that she allegedly brought with her. Further, the sums deposited by wire transfer to the bank account of [REDACTED] exceed the amount of salary that the organization claims to have paid the beneficiary.

The evidence does not establish that the beneficiary was continuously employed as an evangelist for two full years prior to the filing of the visa petition.

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.