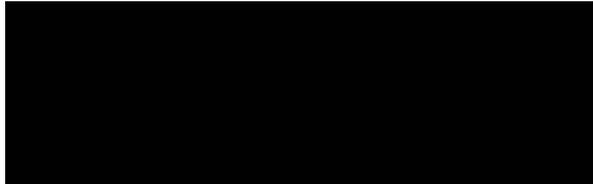




U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: JUN 08 2006
LIN 02 236 51576

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:
[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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. The Acting Director, Nebraska Service Center, granted the petitioner's motion to reopen and reconsider the AAO's decision and, on January 20, 2005, issued a decision in which he found that the petitioner had not overcome all of the stated grounds for denial of the petition. The acting director affirmed the decision denying the petition; however, the director lacked jurisdiction over the motion. Therefore, his decision dismissing the motion is withdrawn. Nevertheless, as the director erroneously granted the motion and issued a new decision, the AAO will consider all of the evidence of record. Upon review, the petition will be denied.

According to 8 C.F.R. § 103.5(a)(1)(ii), jurisdiction over a motion resides in the official who made the latest decision in the proceeding. The acting director of the Nebraska Service Center did not have jurisdiction over the motion and therefore could not render a proper decision. We note additionally that on April 19, 2005, the acting director informed the petitioner that the petition was reopened on service motion. A decision on that motion is still pending. As the matter is not under the director's jurisdiction, he also lacks authority to reopen this matter pursuant to 8 C.F.R. § 103.5(a)(5).

On appeal from the director's initial decision, counsel failed to specifically identify an erroneous conclusion of law or statement of fact in support of the appeal. Therefore, the appeal was summarily dismissed. 8 C.F.R. § 103.3(a)(1)(v). On motion, counsel asserted that his failure to timely file a brief in support of the appeal was because he was awaiting a briefing schedule pursuant to the practice before the Board of Immigration Appeals (BIA). Counsel's statement is clearly self-serving and without merit. On the Form I-290B, Notice of Appeal to the Administrative Appeals Unit, counsel clearly indicated that he would be submitting a brief to the AAO within 60 days of filing the appeal. Further, the instructions on the Form I-290B provide instructions on filing a brief in support of an appeal.

The regulations provide that a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Citizenship and Immigration Services (CIS) policy. 8 C.F.R. § 103.5(a)(3). A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Counsel's motion clearly did not meet the requirements of the regulations, and even if the service center had jurisdiction over the motion, the decision to grant the motion was in error. However, as noted above, because the service center erroneously granted the motion and issued a new decision, the AAO will consider all of the evidence of record.

The petitioner is a ministry service and religious society. 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. The director determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization or that it was a religious denomination or affiliated with a religious denomination. The director further 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.

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 to be discussed is whether the petitioner established that it was a bona fide nonprofit religious organization.

The regulation at 8 C.F.R. § 204.5(m)(3)(i) states, in pertinent part:

(3) *Initial evidence.* Unless otherwise specified, each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under § 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organization.

To meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(A), a copy of a letter of recognition of tax exemption issued by the Internal Revenue Service (IRS) is required. In the alternative, to meet the requirements of 8 C.F.R. § 204.5(m)(3)(i)(B), a petitioner may submit such documentation as is required by the IRS to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code (IRC) of 1986 as it relates to religious organizations. This documentation includes, at a minimum, a completed IRS Form 1023, the Schedule A supplement, if applicable, and a copy of the organizing instrument of the organization, which contains a proper dissolution clause and which specifies the purposes of the organization.

The petitioner submitted none of the required evidence with the petition. In response to the director's request for evidence (RFE) dated January 27, 2003, the petitioner submitted a December 11, 1998 letter from the IRS

granting it tax-exempt status under section 501(c)(3) of the IRC. According to documentation from the IRS, the petitioner's tax-exempt status derives from classification not under section 170(b)(1)(A)(i) of the IRC, which pertains to churches, but rather under section 170(b)(1)(A)(vi) of the IRC, which pertains to publicly-supported organizations as described in section 170(c)(2) of the IRC, "organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes," or for other specified purposes. This section refers not only to religious organization, but to many types of secular organizations as well.

An organization that qualifies for tax exemption as a publicly supported organization under section 170(b)(1)(A)(vi) of the IRC can be either religious or non-religious. The burden of proof is on the petitioner to establish that its classification under section 170(b)(1)(A)(vi) derives primarily from its religious character, rather than from its status as a publicly supported charitable and/or educational institution.

Because the IRS determination letter that classifies an entity under section 170(b)(1)(A)(vi) of the IRC cannot, by itself, establish that the entity is a religious organization, that determination letter cannot satisfy 8 C.F.R. § 204.5(m)(3)(i)(A). The other option, at that point, is to comply with 8 C.F.R. § 204.5(m)(3)(i)(B) by submitting the documentation that the IRS would require to determine that the entity is a religious organization.

The organization can establish this by submitting documentation that establishes the religious nature and purpose of the organization, such as brochures or other literature describing the religious purpose and nature of the activities of the organization. The necessary documentation is described in a memorandum from William R. Yates, Associate Director of Operation for CIS, *Extension of the Special Immigrant Religious Worker Program and Clarification of Tax Exempt Status Requirements for Religious Organizations* (December 17, 2003):

- (1) A properly completed IRS Form 1023,
- (2) A properly completed Schedule A supplement, if applicable,
- (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization, and
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The above list is consistent with the regulatory requirement at 8 C.F.R. § 204.5(m)(3)(i)(B), cited above. The memorandum specifically states that the above materials are, collectively, the "minimum" documentation that can establish "the religious nature and purpose of the organization." Thus, for example, a petitioner cannot meet this burden by submitting only its articles of incorporation. Also, obviously, it is not enough merely for the petitioner to *submit* the documents listed above. The *content* of those documents must establish the religious purpose of the organization.

In response to the RFE, the petitioner also submitted a copy of its by-laws, which outline the purpose of the organization but does not include a dissolution clause. The petitioner has submitted no other evidence in support of this criterion.

The director, however, prior to denying the petition, made no effort to ascertain whether the petitioner's federal tax exemption derives from its religious character. The director denied the petition, in part, because the IRS classified the petitioner under section 170(b)(1)(A)(vi) rather than section 170(b)(1)(A)(i) of the IRC. This finding is not permissible, for the reasons stated in Mr. Yates' memorandum. The director did not provide the petitioner with an opportunity to submit the materials outlined in that memorandum, and thereby demonstrate that its tax-exempt status derives primarily from its religious character. This deficiency is not

fatal to the director's decision, however, because (as discussed below) we have affirmed the other stated grounds for denial, which clearer evidence of qualifying tax-exempt status would not overcome.

The evidence submitted does not establish that the petitioner is a bona fide nonprofit religious organization.

The second issue is whether the petitioner established that it is a religious denomination or affiliated with a religious denomination.

With the petition, the petitioner submitted a June 12, 2000 letter from the pastor of Reachout Village Ministries in Kampala, Uganda, which "introduces" the beneficiary as a praise and worship leader with the organization. The petitioner also submitted a 1997 certificate ordaining the beneficiary to preach and "practice all other Biblical and religious activities of the Reachout Village Ministries."

In his RFE, the director instructed the petitioner to submit evidence of the religious affiliation between the petitioning organization and Reachout Village Ministries. In response, the petitioner submitted a March 20, 2003 letter from [REDACTED], the pastor of Reachout Village Ministries, who stated that his organization was an affiliate of the petitioner's. According to pastor [REDACTED]

Although our background is Pentecostal and Evangelical, we are Para-church, non-governmental Outreaches who work with a host of other churches and organizations with many Christian backgrounds. We are therefore interdenominational, interfaith Ministries with a huge emphasis on evangelism.

The petitioner, however, did not indicate whether the petitioning organization was affiliated with a specific religious denomination. Article II of the petitioner's by laws provide:

The primary purpose [of the organization] is to operate a nonprofit ministry service and religious society exclusively for Christian purposes, with the right to receive and make contributions, circulate newsletters in a religious context, and all other services pertaining to ministry services including but not necessarily limited to founding and maintaining a church or churches, bible schools [and] evangelistic ministries.

The by laws also contain provisions for ordaining and licensing ministers.

The regulation at 8 C.F.R. § 204.5(m)(2) defines religious denomination as:

[A] religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship and religious congregations, or comparable indicia of a bona fide religious denomination.

The record contains no evidence of the petitioner's form of worship, its code of doctrine or discipline, its religious services and ceremonies, that it has established places of worship or religious congregations. The petitioner's website at www.christ-aid.org¹ provides no further information regarding any established places of worship or religious services and ceremonies, and does not reveal that it has any other comparable indicia to establish that it is a bona fide religious denomination.

¹ This web address is listed on the petitioner's letterhead.

The record does not establish that the petitioner is bona fide religious denomination or that it is affiliated with a religious denomination that has a bona fide nonprofit religious organization within the United States.

The third issue is whether the petitioner 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.

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 August 5, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister throughout the two-year period immediately preceding that date.

As discussed above, the petitioner submitted a copy of an ordination certificate reflecting that the Reachout Village Ministries ordained the beneficiary in 1997. In his June 12, 2000 letter, Pastor [REDACTED] stated that the beneficiary was a “very committed Christian Worker and a Praise and Worshiping Leader in our Fellowships,” but did not indicate the exact nature of the beneficiary’s duties, whether she was employed by the organization or the terms and conditions of that employment.

In response to the director’s RFE, the petitioner submitted a March 3, 2003 letter from its president, [REDACTED] who stated:

I am writing to further affirm that [the beneficiary’s] relationship goes back to 1997 when she came on board and started traveling on ChristAid related events sharing, singing and speaking across East Africa. In addition to the above she conducted some research work on vulnerable orphans.

The petitioner submitted no evidence to corroborate any work by the beneficiary 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)).

According to the petitioner, the duties of the proffered position will include (1) cross cultural worship minister: the beneficiary will “officiate in our unique Praise and Worship presentations, which highly promote Cross Cultural Exchange as a tool for racial reconciliation and unity.” (2) speaker: “she will assist as a representative speaker in Churches and any other organizations, which have embraced our objectives for Ministry and share the same concerns for the World.” (3) prayer network minister: the beneficiary will pray for “our supporters needing prayer for some areas of struggles or disasters in their lives” and “recycle their needs through the rest of our prayer network community.” Additionally, the beneficiary will “help and minister to [the missionary teams sent to Uganda] and equip them with a challenge to pray while here and on the field. She will also be setting up Missions back up Prayer Community for the teams in Africa.” (4) miscellaneous ministry areas: “We conduct weddings, funerals, communions, child dedication, baptismal Services and evangelism. [The beneficiary] fits perfectly with any of the above areas when needed to help.”

The petitioner does not allege, and the record does not support, that the beneficiary served as a minister during the two-year period immediately preceding the filing of the petition, and it is unclear that the proposed duties are those of a minister authorized to perform the traditional sacerdotal duties with the petitioning organization.

The regulation at 8 C.F.R. § 204.5(m)(2) defines minister as:

[A]n individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

Although the petitioner states that it conducts weddings, funerals, communions, and baptismal services, it does not specifically state that performing those duties are within the scope of the duties of the proffered position, only that the beneficiary “fits perfectly . . . when needed to help.” While the record contains an ordination certificate for the beneficiary, the duties of the proffered position and those she is alleged to have performed during the qualifying two-year period are more consistent with the duties of a lay minister.

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.

The petitioner has submitted no corroborative documentary evidence of work performed by the beneficiary during the qualifying two-year period. *Matter of Soffici*, 22 I&N Dec. at 165.

In his brief accompanying the petitioner’s appeal dated February 20, 2005, counsel argues that CIS erred in interpreting the statute and regulation to require that the petitioner must establish that the beneficiary was continuously engaged in the religious work for the two years immediately preceding the filing of the visa petition. Counsel states:

A plain reading of [section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)] clearly indicates that the beneficiary should have at least 2 years membership in a religious denomination having a bona fide nonprofit religious organization in the United States at the time of the application for admission.

However, in its decision denying the petition, the Service seems to suggest that this 2-year requirement should immediately precede the filing of the I-360. Furthermore, the Service takes the position that volunteer work does not count towards the 2-year requirement described in clause (i) [of the statute].²

This interpretation is clearly against the plain language of clause (iii), which clearly states that the intending immigrant must have *been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i)*.

The importance of this language becomes apparent in light of the fact that this beneficiary was carrying on such vocation with Reachout Village Ministries, and several other

² Clause (i) refers to an individual who “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.”

churches and religious organization, and has been carrying on such vocation or other work with [the petitioner] since arriving in the United States in April 2000.

If the statute is read as requiring a minimum of 2-years of working or carrying on such vocation before applying for admission, then the beneficiary's experience in Uganda should suffice.

Assuming, *arguendo*, that the statute only refers to the application for an immigrant visa, the beneficiary, likewise, has the 2 years immediately preceding the filing of the application, by carrying on such vocation, . . . or other work with [the petitioner] The statute does not describe what is acceptable work . . .

In this case, beneficiary's work for [the petitioner] satisfies the requirement of clause (i) [], because even if it does not mean paid work, it is *other work* for the purpose of clause (i). [Emphasis in original].

Counsel's argument is manifestly without merit as the statute specifically and unequivocally requires that membership in the denomination, and therefore qualifying experience, must be "for at least 2 years *immediately* preceding the time of application for admission." [Emphasis added.] Further, counsel's assertion that the term "other work" applies to unpaid or volunteer service is also without merit. The regulation at 8 C.F.R. § 204.5(m) distinguishes between those aliens seeking entry as ministers, professional workers who require the minimum of a baccalaureate degree or its equivalent, and "other workers" who do not fall within either of these categories.

Additionally, although counsel asserts that the beneficiary performed in a volunteer capacity with the petitioner, no evidence in the record supports counsel's assertion. 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 record contains no evidence that the beneficiary worked for the petitioner or any other organization, either in a paid or volunteer capacity, during the qualifying two-year period. *Matter of Soffici*, 22 I&N Dec. at 165.

The record does not establish that the beneficiary was continuously employed in a qualifying religious occupation or vocation for two full years immediately preceding 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.

As evidence of its ability to pay the beneficiary a wage, the petitioner submitted a March 25, 2003 letter from its bank, indicating that the petitioner has banked with the organization since February 1995, "and has established several accounts and a line of credit." The petitioner submitted no other evidence of its ability to pay the proffered wage.

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 primary evidence.

Accordingly, the evidence submitted by the petitioner does not establish that it has the ability to pay the beneficiary the proffered wage.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 initial decision of the director will be affirmed, and the petition will be denied.

ORDER: The petition is denied.