

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

C1

PUBLIC COPY



FILE: LIN 04 248 50241 Office: NEBRASKA SERVICE CENTER Date: FEB 02 2007

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:



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 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 Roman Catholic 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 pastoral assistant. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a pastoral assistant immediately preceding the filing date of the petition.

On appeal, counsel indicates that a brief and/or evidence will be forthcoming within 30 days. To date, over 16 months after the filing of the appeal, the record contains no further substantive submission from the petitioner. Counsel has confirmed that no further brief or evidence was submitted. We therefore consider the record to be complete as it now stands.

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 7, 2004. Therefore, the petitioner must establish that the beneficiary was

continuously performing the duties of a pastoral assistant throughout the two years immediately prior to that date.

The initial submission includes a letter, dated August 30, 2004, from Father H [REDACTED], Pastor of the petitioning church. Fr. [REDACTED] stated that the beneficiary "has been a member of our parish since July 2002" and "has been filling a vital role as pastoral assistant" throughout that period. Fr. [REDACTED] stated that, in exchange for this work, "our parish provides room and board for her at the Parish's convent residence. [The beneficiary] is also given a monetary stipend." Fr. [REDACTED] stated that the petitioner seeks to employ the beneficiary "on a full time basis, for which she will receive a salary of \$14.25 per hour," but he did not indicate that the beneficiary's past work has been on a full time basis. Rather, he stated that the beneficiary "spends an average of 30 hours per week on her duties."

On April 18, 2005, the director issued the following instructions to the petitioner: "Submit evidence establishing that, immediately prior to the filing of the petition, the alien has the required two years of experience. . . . In addition, please submit evidence indicating the specific dates that the alien has been employed as a *pastoral assistant* and the dates when, if applicable, she was fulfilling that position as a volunteer and when she was a compensated employee."

In response, counsel stated:

Father [REDACTED] confirms that [the beneficiary] has been servicing as Pastoral Assistant at [the petitioning church] since July 2002. During the first two months of this period, July 2002 through August 2002, [the beneficiary] served in the subject position in a voluntary capacity. Since September 2002 she has served continuously, through the current date, in a compensated capacity.

As corroboration of the foregoing we are attaching copies of [the beneficiary's] time records for this period.

Fr. Weldon, in a new letter dated June 15, 2005, stated that the beneficiary "spends an average of 35 hours a week on her duties." As for the "time records" mentioned by counsel, the petitioner's submission includes several pages headed with the beneficiary's name and the phrase "Working Hours." Each page covers a two-week period. For instance, the first page contains the following printed information:

August 26 – 6 hours
August 27 – 6 hours
August 29 – 6 hours

September 3 – 6 hours
September 5 – 3 hours
September 6 – 6 hours

In addition to the printed information, the page includes the handwritten calculation multiplying the total number of hours (33) by eight, yielding 264, followed by the handwritten notation "\$264 pd." The subsequent pages generally follow the same pattern: a printed list of five to eight dates within a two-week period; a number of hours for each listed date; and then a handwritten sum equal to eight dollars times the number of listed hours. There are occasional deviations from the format (for instance, all of July 2003 is on one page, and the record for late August 2003 is handwritten rather than printed), but the information contained on these pages does not differ from that shown on the more uniform pages.

The "Working Hours" records show that the beneficiary rarely worked more than 18 hours per three- or four-day week prior to September 2003. From September 2003 onward, the records generally show a four-day, 24-hour work week. In May 2004, the hourly rate increased from eight to nine dollars.

The director denied the petition, stating: "A review of the time records indicates that the beneficiary has worked, at best, four days per week, 6 hours per day or an average of 24 hours per week. It is noted that during 2002 and 2003 the beneficiary worked fewer hours per week." The director concluded: "the beneficiary has not been continuously carrying on the religious work on a *full-time basis* for the immediately preceding two years."

On appeal, counsel protests that the director concluded that the beneficiary worked part-time, "without allowing Appellant a reasonable opportunity to respond to that supposition" via a request for evidence. Counsel is correct that 8 C.F.R. § 103.2(b)(8) requires the director to request initial evidence omitted from the original filing of the petition. At this point, however, the petitioner has been advised of the deficiency, and the appeal itself constitutes the petitioner's first opportunity to address the issue. We will, therefore, consider the petitioner's response on appeal, but this is not grounds for overturning the decision.

Counsel claims that the "pay record exhibit" submitted previously "was never intended to reflect the total number of hours for service provided by the Beneficiary but was submitted only to verify that services were provided, by the Beneficiary, on a continuing basis, over the required two year period." Counsel's *ad hoc* explanation is neither corroborated nor consistent with the records themselves.

The petitioner submitted the records without explanatory comment, save for counsel's reference to them as the beneficiary's "time records." At the time, neither counsel nor the petitioner offered any indication that these documents were anything other than comprehensive records of the beneficiary's work hours. The inference that they are comprehensive can be drawn from the petitioner's submission of records covering the entire qualifying period, rather than a few representative samples. Also, as we have already noted, each page of these records indicates the payment of eight or nine dollars per listed hour. The petitioner, on whom the burden of proof rests, has not explained what possible purpose it would serve to maintain deliberately fragmentary records of the beneficiary's work or payments, reflecting only certain days during each week.

We acknowledge Fr. Weldon's earlier assertions that the beneficiary "spends an average of 30 hours per week on her duties" and that she "spends an average of 35 hours a week on her duties" but these general claims do not carry the same evidentiary weight as (what were presented as) contemporaneous records of the beneficiary's work. We note that the records do not show any increase in the beneficiary's work hours

between August 2004 (the date of the first letter) and June 2005 (the date of the second letter). The pay records corresponding to both letters show a 24-hour work week. We do not consider these letters to be *prima facie* evidence that the "Working Hours" records, which show payment only for the hours listed, are anything other than complete and comprehensive records of the beneficiary's work hours. In contesting this conclusion, counsel fails to provide a credible explanation as to what else they could possibly be.

Counsel states that the statute and regulations do not specifically require full-time experience. While the phrase "full-time" does not appear in that language, there exists nevertheless a body of case law to indicate that part-time work is not consistent with continuous experience. See, for example, *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980) and *Matter of Faith Assembly Church*, 19 I&N Dec. 391, 393 (BIA 1986). While this case law precedes the current statutory construction of the special immigrant religious worker classification, Congress approvingly cited this existing body of case law in enacting the newer statute, the implication being that this case law would continue to hold. See H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

Even as counsel contends that the beneficiary need not have worked full time, counsel states: "Appellant has additional evidence that Beneficiary did provide services on a 'full time' basis." This evidence did not accompany the initial filing of the appeal, and counsel does not even identify this unsubmitted "additional evidence." As we have already noted, counsel originally claimed that the petitioner would supplement the record at a later date, but the petitioner has not actually done so. Thus, the appeal amounts to the unfulfilled assurance that unspecified "additional evidence" will show the beneficiary's eligibility. Absent the evidence itself, counsel's uncorroborated claim that such evidence exists carries no weight in this proceeding. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 2, 4 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner has not overcome the director's finding that the beneficiary did not work continuously in the position offered. The assertions that the beneficiary did work full time contradict what have been put forth as the petitioner's own records, and therefore such assertions only raise questions of credibility. Doubt cast on any aspect of the petitioner's proof may 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, 586 (BIA 1988). We affirm the director's decision to deny the petition.

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.