

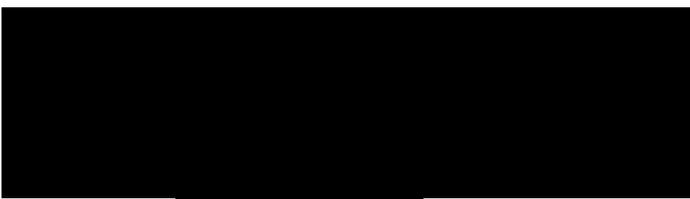


U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

C1



FILE:



Office: TEXAS SERVICE CENTER Date: OCT 11 2007

SRC 06 128 52806

IN RE:

Petitioner:



Beneficiary:

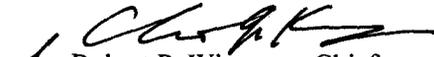
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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.

  
for Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas 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 ministry of the United Methodist 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 youth pastor at the First United Methodist Church of Shiprock, New Mexico. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a youth pastor immediately preceding the filing date of the petition, or that the petitioner had made a qualifying job offer to the beneficiary.

On appeal, the petitioner submits letters from its director and the minutes from a December 2006 meeting.

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 under discussion relates to the beneficiary's past work. 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 April 3, 2006. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a youth pastor throughout the two years immediately prior to that date.

In a letter dated March 7, 2006, accompanying the initial filing of the petition, [REDACTED] Director of the petitioning ministry, stated:

We, the First United Methodist Church of Shiprock, NM, have hired [the beneficiary] as our Youth Pastor to be effective as of May 1, 2006. His duties as Youth Pastor will be overseeing all the youth activities of the church on a day to day basis. He will be expected to organize youth Sunday School, Sunday evening youth programs and Wednesday evening youth activities and Bible Study. [The beneficiary] will also plan youth trips, camps and recreational activities.

On September 8, 2006, the director issued a request for evidence (RFE), instructing the petitioner to submit, among other things, "evidence of the beneficiary's work history beginning April 3, 2004 and ending April 3, 2006," along with "evidence . . . that shows monetary payment." In response, the petitioner submitted an unsigned, handwritten "Work History: May 1, 04 – April 30, 06," indicating that the beneficiary previously worked at Arizona Reservation Ministries (ARM), performing such tasks as teaching Sunday school and Bible lessons, organizing retreats and trips, and conducting "a Weekly Program for the youth with a focus on group building, discipleship and worship." From the format of the document, it is not clear whether the beneficiary worked for ARM for the entire two-year period described in the heading (May 1, 2004 through April 30, 2006). The dates have been added in a different hand and a different color ink. At the end of the "Work History" document appears the annotation: "He is volunteering as he waits for approval of this Petition."

Other documentation shows that the beneficiary held an R-1 nonimmigrant religious worker visa that permitted him to work for ARM from June 28, 2004 through May 1, 2006. There is no documentation to show the exact dates of employment (the dates of the beneficiary's R-1 status do not necessarily coincide exactly with the actual employment dates). Internal Revenue Service (IRS) Form W-2 Wage and Tax Statements show that ARM employed the beneficiary in 2004 and 2005. The only documentation of compensation during 2006 consists of checks from various sources, some payable to the beneficiary and some to the petitioner in care of the beneficiary, all dated after the petition's filing date.

The director denied the petition on May 19, 2007. Parts of this decision are difficult to comprehend. The director listed the beneficiary's stated duties and then stated "[t]he aforementioned duties do not support the beneficiary has been performing weekly and/or related to traditional religious function such as . . .," at which point the director repeated elements from the same list. The meaning of this syntactically disorganized passage is unclear.

The director continued: "the petitioner indicates that the beneficiary is volunteering as he waits for approval of this petition and the beneficiary has been supporting that [*sic*] he receives donations from churches and individuals. However . . . volunteer activities do not constitute qualifying work experience."

On appeal, [REDACTED] provides further details about the beneficiary's weekly work schedule at ARM, and states "W-2's for 2004 and 2005 are the only evidence available to [prove] that he worked for 2 years prior to the petition" (emphasis in original).

The denial rests, in part, on the description of the beneficiary as a "volunteer." Experience as an uncompensated volunteer is not qualifying experience for special immigrant religious workers. *Matter of Varughese*, 17 I&N Dec. 399, 402 (BIA 1980). Nevertheless, the Board of Immigration Appeals has ruled that an alien who "receives compensation in return for his efforts on behalf of [a] Church" is "employed" for immigration purposes, even if that compensation takes the form of material support rather than a cash wage. *Matter of Hall*, 18 I&N Dec. 203, 205-06 (BIA 1982).

If this work is to be considered "employment" in order to justify adverse action against the alien, however, reason and fairness demand that it also be considered "employment" when such a finding would be favorable to the alien.

If we apply the logic of *Hall* not only to adverse consequences but to benefits, then if the beneficiary was a "volunteer" for the petitioning church in early 2006 but nevertheless received support from the church and its members, then we would have to find that this work would constitute qualifying employment. The director's dismissal of the beneficiary's work at the petitioning church as being non-qualifying volunteer work fails to take this into account. Nevertheless, as we have already observed, the checks from 2006 submitted in response to the RFE all date from after the April 3, 2006 filing date, and therefore they do not establish that the beneficiary worked for the petitioning church during the 2004-2006 qualifying period.

Furthermore, in the initial submission, [REDACTED] had specified that the beneficiary's employment with the petitioner would be "effective as of May 1, 2006," nearly a month after the April 3, 2006 filing date and nearly two months after the March 7, 2006 date of [REDACTED]'s letter. The wording of [REDACTED]'s letter suggests that the beneficiary had not yet begun to work at the petitioning church at the time of writing. This hiring date is also consistent with the dates on the checks, the earliest of which is May 31, 2006.

We return to the issue of the IRS Forms W-2, which the petitioner acknowledges as "the only evidence available" of the beneficiary's employment during the qualifying period. These documents indicate that ARM paid the beneficiary \$7,920.51 in 2004 and \$13,257.00 in 2005. Assuming that the beneficiary earned a consistent hourly wage or weekly or monthly salary during those years, and that the beneficiary worked all through 2005, the figures on the Forms W-2 indicate that the beneficiary worked approximately 31 weeks (roughly seven months) in 2004. Because nine months of 2004 fall within the qualifying period, the beneficiary's remuneration does not indicate continuous employment during the relevant part of 2004.

The R-1 documentation discussed earlier indicates that the beneficiary was not authorized to work for Arizona Reservation Ministries until June 28, 2004. This would indicate that the beneficiary worked six months, not seven, for that entity in 2004. If \$7,920.51 represents half a year's pay, then his pay the following year should have been nearly \$16,000, rather than a little over \$13,000 as shown on the 2005 IRS Form W-2.

Without further explanatory documentation from Arizona Reservation Ministries, we cannot conclude that the IRS Forms W-2 document *continuous* employment during 2004 and 2005. Also, the petitioner did not submit any evidence at all relating to the beneficiary's employment in early 2006 – at ARM, the petitioning church, or anywhere else. ARM would have issued its 2006 Forms W-2 some months before the time of the appeal in June 2007. Because the record contains no Form W-2 from ARM for 2006, we conclude that ARM did not issue the beneficiary a Form W-2 for that year – meaning that ARM did not employ the beneficiary in 2006. If ARM ceased to employ the beneficiary in late 2005, then this would explain not only the absence of a Form W-2 for 2006, but also the finding, discussed above, that the beneficiary's 2005 Form W-2 does not appear to show a full year's earnings.

For the reasons described above, the record demonstrates the beneficiary's employment during some, but not all, of the 2004-2006 qualifying period. The petitioner has not established that the beneficiary performed the duties of the position sought continuously throughout the two-year period immediately preceding the filing date of the petition.

The remaining issue concerns the job offer. 8 C.F.R. § 204.5(m)(4) requires that the prospective employer's job offer specify how the alien will be paid or remunerated. The regulation further prescribes, "[t]he documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support." In his initial letter, ██████████ stated that the beneficiary "will be expected to work 40 hours a week with a salary of \$14.00 per hour plus other benefits such as housing, utilities, Social Security, and medical insurance."

In the RFE, the director instructed the petitioner to specify "the terms of payment for services or other remuneration." The petitioner's response to the RFE did not address this issue.

The director, in denying the petition, stated that the beneficiary "failed to submit the requested evidence to establish that the beneficiary has [a] valid job offer." On appeal, ██████████ repeats the earlier assertion that the petitioner has offered the beneficiary "a salary of \$14.00 per hour based on a full time employment of 40 hours per week."

The director failed to specify what was deficient about the petitioner's initial description of the terms of employment. With a salary of \$560 per week plus housing, utilities, and other benefits, the beneficiary would clearly not be solely dependent on supplemental employment for support, and there is no evidence that the beneficiary would be at all involved in solicitation of funds. The director did not even acknowledge the petitioner's description of the terms of employment, much less explain how those terms were deficient or otherwise unacceptable. In the absence of a defensible argument in this regard, we must withdraw this particular finding by the director. The petition remains denied, however, based on the other ground discussed previously.

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.