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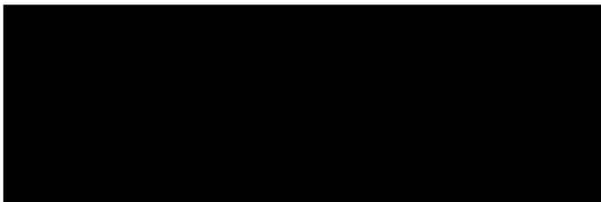
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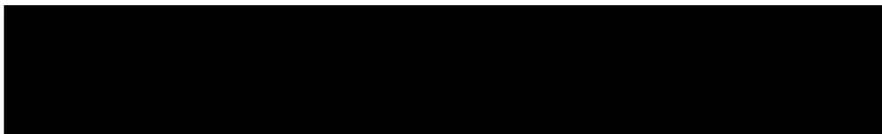
Office: CALIFORNIA SERVICE CENTER

Date: JUL 07 2008

WAC 06 213 51861

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:

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.

Robert P. Wiemann, Chief  
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 a pastor. 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. The director also determined that the beneficiary's employment was not authorized under U.S. immigration laws.

On appeal, the petitioner states that the beneficiary has been working continuously for the Ministerios Elim for more than 15 years. The petitioner also states that the beneficiary has been working full time as pastor of Iglesia de Cristo Elim in Santa Barbara, and that the church has supported him with a salary. The petitioner states that the beneficiary has been in the United States since 1985 without employment authorization, and has worked to support himself and his family through his religious work.

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 director denied the petition, in part, because the beneficiary's stated work in the United States had not been done with prior authorization under U.S. immigration laws. However, neither the statute nor the regulations require that the alien's qualifying work in the United States must be while the alien is in a legal status for purposes of this petition. While the director may justifiably question the petitioner's credibility regarding its statement on the Form I-360 petition that the beneficiary had not worked in the United States without prior permission, the beneficiary's unauthorized employment may not be serve as a basis for denial of the petition.

Unauthorized employment is generally considered where questions of admissibility arise, but the visa petition procedure is not the forum for determining substantive questions of admissibility under the immigration laws. When eligibility for the claimed status is established, the petition should be granted. *Matter of O*, 8 I&N Dec. 295 (BIA 1959). We therefore withdraw any inference in the director's decision to the contrary.

The issue presented on appeal is whether the petitioner has 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 July 3, 2006. Therefore, the petitioner must establish that the beneficiary was continuously working in qualifying religious work throughout the two-year period immediately preceding that date.

With the petition, the petitioner submitted various documents dating from 2001 addressed to or referring to the beneficiary as “pastor,” including references to him as pastor of the Iglesia de Cristo Ministerios Elim in Santa Barbara, California. A July 14, 2005 “Certificate of Ordenation [sic]” from Iglesia de Cristo Ministerios Mi-El authorized the beneficiary to “administer Holy Communion, to solemnize Matrimony, and to perform all the duties belonging to the Ministry of the Word.” The certificate was valid until July 25, 2006. Based on the one-year validity period, it is unclear from this document whether the petitioner's denomination requires a minister to obtain yearly authorization in order to perform duties as a minister. The petitioner submitted no documentation to verify that the beneficiary was authorized to perform such duties prior to July 14, 2005, and submitted no evidence that the beneficiary had been compensated for his services with the church. The petitioner outlined the schedule of work in the church as follows:

Monday	4 hours; bible studies.
Tuesday	4 hours; preparing sermon for Wednesday, making phone calls.
Wednesday	6 hours; bible studies, visitation and preaching at prayer Meeting.

Thursday 6 hours; bible studies and visitation.  
Friday 6 hours; preparing sermon and materials for Saturday.  
Saturday 8 hours; (morning and afternoon) preaching, teaching bible studies, visits to the brethren.  
Weekly: 7 hours is specifically for praying.

In others: funeral Services, Wedding ceremonies, child presentations.

In a request for evidence dated February 12, 2007, the director instructed the petitioner to submit evidence of the beneficiary's work history beginning two years prior to the filing date, including specific job duties and the amount of remuneration the beneficiary received. The director also advised the petitioner that:

You have indicated on the petition that the beneficiary has never worked in the United States without permission; therefore, provide evidence to establish how the beneficiary has been supporting himself or herself ( and family members, if any).

In response, the petitioner submitted a copy of a Form W-2, Wage and Tax Statement, issued to the beneficiary for the year 2006 by the petitioner. The Form W-2 shows wages of \$14,400. The petitioner also provided a "labor report" indicating "the schedule of regular work hours in the church and office."

Sunday	4 hours	Delivering the Gospel: Preach
Monday	4 hours	Prepare & Teach Bible study.
Tuesday	4 hours	Prepare sermon for Wed. Make Phone calls to member
Wednesday	6 hours	Bible Study, visitation & Preaching at Prayer meet
Thursday	6 hours	Bible Studies & Visitation.
Friday	8 hours	Prepare Sermon and prepare Teaching materials for Sat.
Saturday	8 hours	Morning & Afternoon, Preaching, Teaching, Bible Studies, visits to the brethren
Weekly	7 hours	Specifically designated for Prayer.

Alongside with this there are others: Funeral Services, Wedding Ceremonies and Child presentations.

The petitioner provided no evidence of any compensation or other income received by the beneficiary in 2004 or 2005. Additionally, the petitioner did not qualify or otherwise address its assertion on the Form I-360 that the beneficiary had not worked in the United States without permission. The director determined that the petitioner had not established that the beneficiary worked continuously as a minister throughout the required two-year period, and denied the petition.

On appeal, the petitioner stated in an August 12, 2007 letter that the beneficiary "has been engaged with Ministerios Elim since 1990," and "has been working for the Ministerios Elim from July 2004 to the present." The petitioner also stated that the beneficiary supported himself and his family by working at the church as a pastor. According to the petitioner:

For the past years [the beneficiary] has been reporting his Income Tax Returns as self employee [sic] as pastor of the church. The salary he has earned from the past years is from the

tithes and offerings collected from the congregation. Until the year 2006, the Ministerios Elim has established a payroll for the pastors and [the beneficiary] has reported Income Tax returns with W-2 from the church.

The petitioner submits copies of the beneficiary's Forms 1040, U.S. Individual Income Tax Returns, for the years 2004 through 2006. We note that, while the petitioner states again on appeal that the beneficiary has lived in the United States since 1985 "without establishing any legal status," it does not address the director's concern that it provided contradictory information on the Form I-360. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

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).

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.

The record before the director contained no evidence to reflect how the beneficiary financially supported himself and his family. The petitioner provided no evidence that the beneficiary was compensated for his work with the petitioning organization or was otherwise financially free to devote full time service to his job as minister with the petitioner.

On the Form I-360 petition, the petitioner denied that the beneficiary had worked in the United States without permission. However, on appeal, it states that the beneficiary has worked continuously for the petitioner for the past 15 years. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner did not address the director's questions about this inconsistency in the record, either in response to the RFE or on appeal. Furthermore, the ordination certificate in the record indicates that the beneficiary was authorized to perform duties as a minister since July 14, 2005, and that the authorization was valid for approximately one year. The record contains no documentation to reflect that the beneficiary was ordained and authorized to serve as a minister prior to July 2005. Additionally, the petitioner's outline of the beneficiary's scheduled duties did not initially indicate that he worked on Sunday. However, in response to the RFE, the petitioner added four hours to the beneficiary's schedule, indicating that he preached on Sunday.

The evidence before the director therefore did not establish that the beneficiary was continuously engaged in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition. The petitioner submitted no evidence that the beneficiary was compensated for his work with the petitioning organization and provided contradictory information about his working hours.

Beyond the decision of the director, the petitioner has not established that it has extended a qualifying job offer to the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

*Job offer.* The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

The petitioner presented no information about the proffered position other than that the beneficiary was expected to perform services as a minister. It provided no information about the number of hours that the beneficiary would be expected to work or the compensation that he could expect for his services. Therefore, the documentation submitted by the petitioner does not clearly state that the beneficiary would be working on a full-time basis as a minister with the petitioner or how he would be solely carrying on the vocation of minister.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); see also *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. See, e.g., *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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 appeal will be dismissed.

**ORDER:** The appeal is dismissed.