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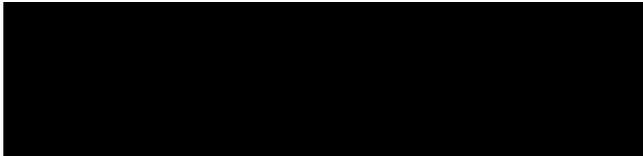
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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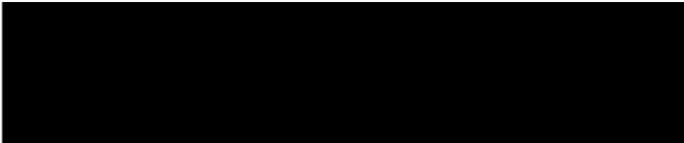
Office: CALIFORNIA SERVICE CENTER

Date: **JUL 17 2008**

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:



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 an assistant pastor and bible school teacher. 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 or that it has the ability to pay the proffered wage.

On appeal, counsel states that there is no authority for the Citizenship and Immigration Services (CIS) interpretation that the qualifying experience must be full time, and that the petitioner provides the beneficiary with assistance other than his salary.

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 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.” 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 January 22, 2007. Therefore, the petitioner must establish that the beneficiary was continuously working in qualifying religious work throughout the two-year period immediately preceding that date.

As supporting evidence accompanying the Form I-360 petition, the petitioner submitted copies of the documentation that it submitted with its Form I-129, Petition for Nonimmigrant Religious Worker, which was approved by CIS on June 21, 2004 and was valid to June 20, 2007. The June 2, 2004 letter accompanying the Form I-129 petition did not specifically identify the position offered to the beneficiary but stated that he would be “ministering to a rich multiracial, multicultural church,” and would “teach at our three year bible training school that prepares the student for ministry and life.” Another letter, also dated June 2, 2004, stated that the petitioner was “committed to support both [the beneficiary and his wife, also approved for R-1 status] with a combined income of \$1200 per month, housing allowance, and a vehicle for transportation.” The petitioner submitted copies of Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statements, that it issued to the beneficiary in 2004 and 2005, showing wages paid of \$2,950 and \$9,620, respectively.

In a request for evidence (RFE) dated March 22, 2007, the director instructed the petitioner to submit evidence of the beneficiary’s work history for the two years immediately preceding the filing of the visa petition, including compensation paid to the beneficiary. In response, the petitioner stated that the proffered position was that of assistant pastor and bible school teacher, and that the beneficiary had been employed from January 22, 2005. The petitioner also stated that the beneficiary worked 30 to 35 hours per week, and that in his duties he:

Provided professional and religious experience on a daily basis with counseling, visitation, and teaching. Provided concept and lessons on various biblical subjects for students seeking religious education.

The petitioner also stated in a June 11, 2007 letter that it provided the beneficiary “with clothing and privileged access to the church pantry for food, cleaning supplies, first-aid necessities, and toiletries, in addition to his paid wage.” The petitioner provided a schedule of pay for the beneficiary for 2005 and 2006. The schedules indicate that the beneficiary was paid \$9,620 for the year 2005, the amount of the wages reported on his IRS Form W-2; and \$9,990 in 2006, the amount reported on his 2006 IRS Form W-2. The schedules also show that the beneficiary’s wife was paid \$7,020 in 2005 and \$7,290 in 2006. The IRS Forms W-2 issued to the beneficiary’s wife, submitted on appeal, also reflect these amounts.

Therefore, the payments reportedly paid to the beneficiary and his wife exceeded the salary in the job offer of June 2, 2004.

Additionally, on appeal, the petitioner submits a statement from [REDACTED], who stated that he was responsible for the food and clothing ministry for the petitioner, and that he has personally seen that the beneficiary and his family were provided with clothing, food, toiletries and household products from the ministry. The petitioner provided a copy of an insurance card indicating that the beneficiary was provided with the use of a vehicle.

Nonetheless, the petitioner stated that the beneficiary worked from 30 to 35 hours per week. Consistent with the requirements of the U.S. Department of Labor's Bureau of Labor Statistics and other regulations pertaining to employment based visa petitions, CIS holds that employment of less than 35 hours per week is not full-time employment. Accordingly, the director determined that the beneficiary had not been continuously engaged in full time work prior to the filing of the visa petition. Additionally, the beneficiary's résumé indicates that he worked as an insurance agent for most of his professional life as a minister, including as an insurance agent for Liberty National Life Insurance Company from 2005 to 2006, which falls within the two-year qualifying 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).

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 statute states at section 101(a)(27)(C)(ii) that the alien must be coming to the United States “solely” for the purpose of carrying on the vocation of a minister of the religious denomination. It also states at 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 two years immediately preceding the time of application. As discussed previously, 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.

The evidence therefore does not establish that the beneficiary worked solely as a minister for the two years immediately preceding the filing of the visa petition. The record reflects that the beneficiary worked as an insurance agent during the qualifying period. Additionally, documentation submitted by the petitioner does not establish that the beneficiary worked on a full-time basis for the petitioner. The petitioner initially alleged that the beneficiary worked 30 to 35 hours per week. On appeal, the petitioner stated that that statement was in error and that the beneficiary actually worked 35 to 40 hours per week. However, the petitioner submitted no documentation to corroborate the extent of the beneficiary’s work with the petitioning organization. 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).

Accordingly, the petitioner has failed to 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 second issue on appeal is whether the petitioner has established that it has the ability to pay 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.

The director determined that the petitioner had failed to pay the beneficiary a monthly salary of \$1,200. However, in its June 2, 2004 letter, the petitioner stated that it would compensate the beneficiary and his wife at the rate of \$1,200 per month “combined,” in addition to a housing allowance and transportation. In other words, the petitioner would pay the beneficiary and his wife a total of \$1,200, not \$1,200 each.

The petitioner submitted evidence consisting of IRS Forms 941, Employer’s Quarterly Federal Tax Return, for 2005, 2006, and 2007, and IRS Forms W-2 for the beneficiary and his wife for 2005 and 2006, indicating that they were paid in excess of the salary stated in the job offer. Additionally, the petitioner submitted evidence that it provided the beneficiary with the use of a vehicle. The petitioner also submitted documentation that it provided the beneficiary and his family with food, staples and other items

from its mission pantry. Therefore, we find that the petitioner has sufficiently established its ability to pay the proffered wage, and we withdraw the director's finding to the contrary.

Nonetheless, as the petitioner has not established that the beneficiary worked solely as a minister throughout the qualifying period, it has not established that the beneficiary worked continuously in a qualifying religious occupation or vocation for two full years prior to the filing of the visa 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.