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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

B6

[redacted]

FILE: EAC 02 259 50151 Office: VERMONT SERVICE CENTER Date: DEC 03 2004

IN RE: Petitioner: [redacted]
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:

[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.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

We note that the Form I-360 petition identifies Lowell Renewed Baptist Church as the petitioner. The petition, however, was signed not by any church representative, but by the alien beneficiary himself. Therefore, the alien and not the church shall be considered to be the petitioner. This determination does not alter the adjudication or outcome of the appeal, because the attorney of record who filed the appeal represents the alien beneficiary as well as the church.

The petitioner seeks classification 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 the youth minister of Lowell Renewed Baptist Church in Lowell, Massachusetts. The director determined that the petitioner had not established that he had the requisite two years of continuous work experience in the position immediately preceding the filing date 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 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 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 7, 2002. Therefore, the petitioner must establish that he was continuously performing the duties of a youth minister throughout the two years immediately prior to that date. The petitioner first entered the United States on February 26, 2002, and thus he spent most of the qualifying period outside the United States.

[redacted] pastor of Lowell Renewed Baptist Church, states that the petitioner "has been a member of our congregation for the last several weeks" and "has been a member of the Baptist Ministries for more than eleven (11) years." Pastor Romeiro does not state that the petitioner has already begun working for that church.

Pastor [redacted] of Baptist Memorial Church of Embu, Brazil, states that the petitioner "was an Assistant Pastor in this church from January of 1998 until December of 2001." Even if we assume that the petitioner began working for Lowell Renewed Baptist Church the day he joined that congregation, there remains a significant gap between December 2001 and the time he joined the Lowell church, "several weeks" before August 7, 2002.

The director instructed the petitioner to submit additional evidence to establish the petitioner's activities during the entire qualifying period. In response, Pastor [redacted] describes the petitioner's work "from February 2002 through August 2002" at the church in Lowell. Given that the petitioner did not arrive in the United States until February 26, 2002, the wording of Pastor Romeiro's letter implies that the petitioner began working for the church full-time, within 48 hours of his arrival in the United States on a B-2 tourist visa. Another letter from the same source, however, suggests that the petitioner did not begin working for the church in February. In that separate letter, Pastor Romeiro states:

> <u>August, 2000 through November, 2001</u>
> [The petitioner] worked full-time (40 hours per week) for the Church in Brazil. Because that church had no funds to support his ministry . . . he had to work an additional full-time job to provide finances for himself and his family. . . . [The petitioner] worked full-time during the period of August, 2000 through December, 2001 at a bank. . . .
>
> <u>December, 2001 through February, 2002</u>
> [The petitioner] worked voluntarily as an itinerant Pastor at several churches in Brazil. He supported himself and his family with savings, which were augmented by his wife's full-time employment.
>
> <u>March, 2002 through May, 2002</u>
> [The petitioner] was unemployed and supported his family with his savings while trying to evaluate the potential of a position at the <u>Renewed Baptist Church of Lowell</u>.
>
> <u>June, 2002 through Present</u>
> The <u>Renewed Baptist Church of Lowell</u> has been supporting him since August 2002 to the present.

The director denied the petition, noting that the petitioner "has apparently never had a paid job as a minister" and that the petitioner has not shown that he "was a full-time religious worker for the entire two-year period from August 2000 to August 2002."

On appeal, counsel asserts that the petitioner "worked a <u>part-time</u> secular job for a short period of time as a source of funds, but considered his ministry (over 50 hours/week) as his primary vocation" (emphasis in original). The petitioner, in a newly executed affidavit, states that he "worked part-time" "at Santander Bank in Sao Paulo, Brazil," from August 2000 to July 2001, and that he received disability payments from August 2001 through December 2001. The petitioner submits nothing from the bank to support these claims.

Pastor [redacted] had earlier indicated that the petitioner "worked full-time during the period of August, 2000 through December, 2001 at a bank." Counsel does not explain the discrepancy between the pastor's claims and the petitioner's new affidavit. When the petitioner first submitted Pastor [redacted] letter, containing the original timeline, the petitioner offered no disclaimer or any other indication that Pastor [redacted] account of events was incomplete or inaccurate.

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. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988). Here, the petitioner has offered two mutually exclusive, and equally unsubstantiated, claims regarding his employment at a Sao Paulo bank.

Counsel argues that there is no regulatory requirement that a religious worker must have received compensation for past work. The regulation does, however, require "continuous" experience during the two-year qualifying period. Case law indicates that, when determining whether an alien's religious work was "continuous," one factor to consider is whether or not the alien took up any other occupation. *See Matter of B*, 3 I&N Dec. 162 (CO 1948). Here, the petitioner does not dispute that a secular occupation was his sole means of support during part of the qualifying period.

Apart from the issue of compensation, the narrative of the petitioner's employment during the qualifying period prevents a finding of eligibility. As noted above, Pastor [redacted] provides the following timeline for the petitioner's work:

August 2000 - November, 2001	Full-time unpaid church work, full-time work at a bank
December 2001 – February 2002	Unpaid work as an itinerant pastor at unidentified churches in Brazil
March 2002 – June 2002	Unemployed, living off savings
July 2002	Unspecified
August 2002 – onward	Employed and supported by Lowell Renewed Baptist Church

Pastor Romeiro does not explain how he has standing or personal knowledge to attest to the petitioner's activities in Brazil. Even taken at face value, Pastor [redacted] version of events does not establish the petitioner's eligibility. The timeline provided by Pastor [redacted] and endorsed by the petitioner by virtue of its submission, shows several months during which the petitioner did not work. Other periods, such as late 2001 into early 2002, are undocumented and so vaguely described as to be unverifiable. In short, the unsubstantiated timeline of the petitioner's claimed religious work is, on its face, incompatible with a finding that the petitioner has *continuously* engaged in qualifying religious work throughout the two-year qualifying period. The petitioner has attempted to contradict some aspects of Pastor Romeiro's account of events, but a significant gap remains.

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.