U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

C1

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: AUG 1 0 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.

Elizabeth O'Brien
Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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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.

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, 8 U.S.C. § 1153(b)(4), to perform services as a "youth minister." The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a youth minister immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that it had made a qualifying job offer to the beneficiary.

On appeal, counsel states that a brief will follow within 90 days, and that the extension is necessary because "we need additional time to research the complex issues in this case." So vague a reason is not sufficient to establish good cause, under 8 C.F.R. § 103.3(a)(2)(vii), for a three-month extension. This request for a 90-day extension is dated May 14, 2003. To date, 15 months later, the record contains no further submission from the petitioner or counsel. We will consider the arguments listed on the appeal form itself, but we 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 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).

Pastor Marv Root of the petitioning church states that the church seeks to employ the beneficiary "so he may perform the duties of a religious Minister at our church." Elsewhere, Pastor Root refers to the position more specifically as that of a "Youth Minister." Pastor Root describes the position offered to the beneficiary:

> We are offering [the beneficiary] a permanent fulltime position as a Minister with our congregation. Our church has deemed it essential to hire a Minister for our youth services. . . .

[The beneficiary's] ecclesiastical duties will include:

- Administering the Lord's Supper and the sacrament of Baptism.
- Planning, developing, and implementing with other ministers of the Team Ministry the work of the Presbyterian churches of Yonkers.
- Providing pastoral care as well as counseling to members of the Presbyterian churches of Yonkers, especially to our youth to address the problems they encounter in their day to day lives.

In addition to his ecclesiastical duties we would like our Youth Minister to develop a Hispanic Outreach Ministry in the Yonkers area to address the individual needs of the Hispanic population at large.

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 May 30, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a youth minister throughout the two years immediately prior to that date.

The beneficiary's resume, submitted with the petition, indicates that the beneficiary was an assistant pastor at Fort Washington Heights Presbyterian Church from 1997 to 2001, and that the beneficiary studied from 1998 to 2001 at the Department of Continuing Education at Princeton Theological Seminary. That seminary presented the beneficiary with a "Certificate of Preparation & Accomplishment," dated February 11, 2002, "[i]n accordance with the three-year course of study prescribed in the Institute for the Preparation of Commissioned Lay Pastors." The certificate states that the beneficiary "currently serves as an Elder and a Member in Good Standing at The Ft. Washington Heights Presbyterian Church."

A May 21, 2002 letter from [redacted] of Fort Washington Heights Presbyterian Church states that the beneficiary "was an [redacted] at our parish from 1997-2001. In this capacity he assisted in conducting worship services, weddings, and funerals." It is not clear in what way he "assisted" in these functions; there is no indication that he personally officiated at these ceremonies. [redacted] continues, stating that the beneficiary "provided spiritual counseling to parish members and visited church members in hospital and convalescent homes." The beneficiary also "organized social and recreational programs for the adults and the children of the parish, and he developed and coordinated religious educational classes for the children," and "arranged for emergency financial aid or support services for church members."

The duties described by [redacted] ppear to differ significantly from duties that the petitioner currently ascribes to the beneficiary. Therefore, the above letters do not indicate that the beneficiary continuously performed the same functions throughout the two-year qualifying period. We note that [redacted] efers to the beneficiary as "an [redacted] whereas Princeton Theological Seminary refers to him as an "Elder" of Rev. Mendez's church.

The director requested further details about the beneficiary's work during the 2000-2002 qualifying period. In response, the petitioner has submitted a letter from Melba Torres, clerk of session for Fort Washington Heights Presbyterian Church. [redacted] es states:

> [I]n September 1997, our Church appointed [the beneficiary] as an Assistant Pastor to our [A] few months later was appointed Dean at Seminary and left. [The beneficiary] then became in our Parish from September 1997 to December 2001. . . .
>
> In this capacity as Pastor, he conducted and or took part in the following Religious Services.
>
> a) Worship Services
> b) Funeral Services
> c) The Sacrament of the Holy Baptism Services
> d) Marriage Services
> e) The Sacrament of the Lord['s] Supper/Holy Communion Services
> f) Taught Bible Studies
> g) Visited, counseled and shepherded the congregants homebound
> h) Visited, counseled and shepherded the congregants in hospitals, hospice and nursing homes
> i) Administered the holy Supper to the congregants homebound, hospice-bound, and hospital-bound.
> j) Shepherded the flock of Fort Washington Heights Presbyterian Church with effectiveness, imagination and vocation.
> k) Organized, shepherded, and counseled a Youth [group] of 25+ youngsters, within the adult congregation.
> l) Wrote and edited a catechism for new members
> m) As Cantor and Along with the Church's Choir, ministered to other churches, and individuals.
> n) Developed and organized and coordinated religious classes for the children.
> o) Arranged for and provided for emergencies and crisis in the life of the church.

director of vocations at Princeton Theological Seminary, describes himself as the beneficiary's "mentor" and states:

> [The beneficiary] was enrolled in our Institute for the Preparation of Commissioned Pastors. This is an intensive and comprehensive learning program for elders within the Presbyterian Church (USA) as they prepare for greater responsibilities within the life of the larger Church. . . . After three years the candidates . . . are examined, interviewed and finally approved by the local presbytery . . . to be certified ready to receive a commission and serve as pastor of any given congregation and/or ministry within the Presbyterian Church (U.S.A.).

Rev. Aloyo's letter indicates that the beneficiary is "prepar[ing] for greater responsibilities" in the church, thus suggesting that the nature of the beneficiary's position is evolving, and that he therefore seeks to work in a different capacity than that in which he worked during the qualifying period.

Accompanying letter is a document headed "LOCAL COMMISSION – COMMISSIONED LAY PASTOR," indicating that the beneficiary has been "granted a local commission as a Commissioned Lay Pastor to labor within" three named churches in Yonkers, New York. The certificate is dated September 24, 2002, indicating that the beneficiary was not a commissioned lay pastor (CLP) before that date. Necessarily, he was not a CLP on the filing date or during the two-year period preceding that date. This is

consistent with the "Certificate of Preparation & Accomplishment," indicating that, as of February 11, 2002, the beneficiary had completed preparations to become (but had not actually become) a CLP. The restrictions on where the beneficiary is recognized as a CLP appear to further distinguish him from ordained clergy.

The awarding of the commission implies that the beneficiary's future duties and responsibilities will differ from those he undertook in the past, during the qualifying period. Otherwise, if the commission has no effect on the beneficiary's work, then the commission would appear to have no practical value at all. Given that the commission follows a three-year course of seminary study, we are not prepared to presume that the commission is merely a ceremonial or symbolic title. Indeed, [redacted] states that the beneficiary "underwent extensive religious educational training (a three year program at Princeton Theological Seminary), and therefore . . . [qualifies] to perform the duties and responsibilities of a Pastor/Religious Worker within the Presbyterian Church USA." If the beneficiary's eligibility to perform this work is tied to his three years of seminary study, then we cannot ignore that those studies were still underway throughout most of the 2000-2002 qualifying period.

The director denied the petition, acknowledging that the petitioner paid the beneficiary for his work, but finding that the record does not show that the beneficiary, throughout the two-year qualifying period, worked full-time in the same position and duties in which the petitioner seeks to employ the beneficiary in the future.

On appeal, counsel states "the beneficiary has been carrying on such vocation for at least the 2 year period preceding the application and has been remunerated for his work." The director, as noted above, had acknowledged the beneficiary's remuneration, but such remuneration is not sufficient to establish continuous, qualifying employment. If the beneficiary's intended future work as a "youth minister" *requires* CLP credentials, then he cannot have been performing the same functions during the qualifying period (a time when the beneficiary was not yet a CLP).

It cannot suffice for the petitioner to show that the beneficiary has been, in some capacity, a religious worker during the two years immediately prior to the filing date. The beneficiary must have been engaged in the *same* occupation or vocation in which the petitioner seeks to employ the beneficiary in the future, hence the regulatory requirement for experience in "the" occupation or vocation rather than "an" occupation or vocation. We cannot conclude, from the available evidence, that the beneficiary's past work is essentially identical to his intended future work as a CLP.

The remaining issue is whether the petitioner seeks to employ the beneficiary in a qualifying occupation or vocation. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

> *Minister* means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.
>
> *Religious occupation* means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

> *Religious vocation* means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

The statute is silent on what constitutes a "religious occupation" and the regulation at 8 C.F.R. § 204.5(m)(2) states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

Citizenship and Immigration Services therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

Further, while the determination of an individual's status or duties within a religious organization is not under the purview of Citizenship and Immigration Services (CIS), the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

We have already quoted the relevant portions of the initial letter in which Pastor Root described the beneficiary's intended duties at the petitioning church. In a later submission, Pastor Root has listed the beneficiary's intended responsibilities in greater detail:

> As Pastor of Youth/Family Ministry:
> 1) To conduct Youth Bible Study
> 2) Involve the Youth and Younger Families into other ministries of the church
> 3) Be strong advocate for Youth and Younger Families Christian Education within the church
> 4) Help develop the church school staff into an effective team with clear defined duties
> 5) Provide teachers and youth adult workers with education and training
> 6) Recruit teachers and youth adult workers from the church community
> 7) Take opportunity to educate and train continually for support and renewal
> 8) Participate in discovering new prospects for Youth Education
> 9) To organize ministries, retreat, and other fellowships involving the youth and young families
> 10) Participate in overall planning in Youth Ministries/Younger Families developed and created for the YYC and each of the three individual churches.
>
> As Pastor in charge of Hispanic Ministries:
> 1) Demonstrate proficiency in Spanish language and culture
> 2) Develop a network of contacts and resources within the Hispanic Community
> 3) Design and implement a course for English Language Learners (aka ESL)

4) Design and support a Spanish-Speaking Service of Worship
5) Design and implement neighborhood Spanish Language Bible Study
6) Offer Spanish Language training to English-Speaking members of the three congregations
7) Serve as liaison for the Presbyterian Church to the Hispanic community with Yonkers and the Presbytery of Hudson River
8) Participate as a full partner in the Yonkers Pastoral Team

This list of duties includes several functions which are either secular in nature, such as language classes, or else described so vaguely as to be of little use in the proceeding, such as the assertion that the beneficiary will "Participate in discovering new prospects for Youth Education."

The petitioner repeatedly refers to the beneficiary as a "minister," but the record identifies him as a "Lay Pastor." By regulation, lay preachers are not considered "ministers" for immigration purposes. There is no evidence that the denomination has ordained the beneficiary as a minister or pastor. Rather, the beneficiary received a "commission" as a lay pastor, several months after the petition's filing date. Before receiving this commission, the beneficiary was an elder and assistant pastor.

Pastor Root asserts that the beneficiary "is a Pastor duly authorized by the Presbyterian Church USA to conduct religious worship service and to perform other duties" such as communion, baptism, and marriage.

In an effort to learn more about the nature of the duties of a CLP, the AAO consulted the Book of Order, which is the governing document of the Presbyterian Church (U.S.A.). A searchable version of the Book of Order is available at the denomination's official web site, http://www.pcusa.org. Relevant sections of the Book of Order follow:

> G-14.0801a. The commissioned lay pastor is an elder of the Presbyterian Church (U.S.A.), who is granted a local commission by the presbytery to lead worship and preach the gospel, watch over the people, and provide for their nurture and service. This commission is valid only in one or more congregations, new church development, or other validated ministries of the presbytery designated by the presbytery.
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> G-14.0801b. The commission shall be valid for a period up to three years as determined by the presbytery. It may be renewed at expiration or terminated at any time at the discretion of the presbytery.
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> G-14.0801c. When a presbytery, in consultation with the session or other responsible committee, determines that its strategy for mission in a local church requires it, and after additional instruction deemed necessary by the presbytery has been provided, a presbytery may authorize a commissioned lay pastor to perform any or all of the following functions described in (1)--(6) below.
>
> > G-14.0801c.(1) Administer the Lord's Supper.
> >
> > G-14.0801c.(2) Administer the Sacrament of Baptism.
> >
> > G-14.0801c.(3) Moderate the session of the congregation under the supervision of and when invited by the moderator of the session appointed by the presbytery.

G-14.0801c.(4) Have a voice in meetings of presbytery.

G-14.0801c.(5) Have a vote in meetings of the presbytery (such vote to be counted as an elder commissioner for purposes of parity).

G-14.0801c.(6) Perform a service of Christian marriage when invited by the session or other responsible committee, and when allowed by the state.

An annotation at 1999 20-108 states that "CLPs do not take the place of ordained pastors." From review of the Book of Order, it is clear that the Presbyterian Church (U.S.A.) draws a distinction between ordained clergy and lay workers, and that CLPs fall squarely into the latter category.

The director determined that the petitioner had not submitted sufficient evidence to establish that the beneficiary carries on the vocation of a minister, or that the position is a religious occupation involving a traditional religious function. On appeal, counsel maintains that the record contains sufficient evidence to establish that the beneficiary works in a religious vocation, but counsel does not identify this evidence or explain why it is more persuasive than the director found it to be.

Because the denomination has established the position of the CLP, and indicated that such individuals are church employees rather than parish volunteers, it appears that the CLP carries out a traditional religious function recognized by the denomination. We therefore concur with the director's finding that the beneficiary is not carrying on the vocation of a minister, but we withdraw the director's finding that the position is not a qualifying religious occupation.

If the petitioner intends to employ the beneficiary in a position that *requires* a CLP, then the petitioner cannot satisfy the two-year experience requirement because the beneficiary did not even become a CLP until after the petition's filing date. Further, as noted previously, the evidence does not reflect that the beneficiary's past work is identical to his intended future work as a CLP. The beneficiary has not established two years' experience in the occupation.

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.