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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

NOV 23 2000

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:
EAC 02 265 53005

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.

Mari Johnson

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.

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 senior pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a senior pastor 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 . . . ; 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 14, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a senior pastor throughout the two years immediately prior to that date.

Rev. [redacted] director of the petitioner's board of elders, indicates on the I-360 petition form that the beneficiary worked as a machine operator for USF International from 1985 to February 2001. In a separate letter, Rev. [redacted] tates that the petitioner "has been working for the [petitioning church] since 1998 as Senior Pastor." Rev [redacted] asserts "[t]he amount of work at this avocation is at least 40 hours per week for at least the past two years, but he spends more than forty hours per week in fact. . . . He will continue to receive an income [in] excess of $24000.00" per year. The petitioner submits copies of payroll records to establish payments to the beneficiary. The earliest record shown is dated March 17, 2002.

The director instructed the petitioner to submit additional information to establish the beneficiary's activities and source of financial support during the 2000-2002 qualifying period. In response, the petitioner submits copies of various financial documents. A report indicates that the petitioner spent $23,309 in 2000, $34,321 in 2001 and $28,417 in 2002 on "Compensation." The report does not identify or specify the number of compensated individuals.

The petitioner submits copies of Form W-2 Wage and Tax Statements, indicating that USF International paid the beneficiary $24,623.40 in 2000 and $4,789.01 in 2001. There is also a Form W-2 from the petitioning church, but only for 2002. On his 2000 and 2001 tax returns, the beneficiary reported his USF salary as income, along with "business income" from "ministry." The beneficiary's 2002 tax return shows the petitioner as his only source of income.

The tax returns are not contemporaneous evidence of income. All three returns were prepared on May 12, 2003, four weeks after the 2002 income tax filing deadline, and two months after the director issued the request for evidence on March 10, 2003. The record contains no evidence originating from 2000 or 2001 to demonstrate that the beneficiary received income from any source other than USF International in those years. The beneficiary's late tax returns, prepared specifically in response to the director's request for those documents, do not carry the same weight as contemporaneous documents that were not prepared especially for immigration purposes.

The director noted the beneficiary's secular work at USF International, and that "[i]t appears that the tax returns were filed in reaction to our request for copies of them. The church income claimed by the beneficiary for 2000 and 2001 is not documented by Forms W-2 or similar documentation." The director determined that the petitioner has "not established that the beneficiary was a full-time religious worker for the entire two-year period from August 2000 to August 2002."

On appeal, the petitioner submits copies of what purport to be earlier versions of the beneficiary's tax returns. The beneficiary asserts that the original returns contained errors, and so he prepared amended returns in May 2003 in order more accurately to reflect his income. One of the tax returns reproduced on appeal is a 2001 tax return, with the numeral "1" replaced by a handwritten "0." The bottom of the form reads "Form 1040 (2001)." This is clearly not a copy of an authentic, timely filed 2000 tax return. The claim, on appeal, that all of the beneficiary's tax returns were inaccurate, and had to be revised, does not diminish the director's finding that the petitioner has submitted no reliable, contemporaneous documentation to show that the petitioner paid the beneficiary the sums later claimed.

Throughout this proceeding, the petitioner has readily acknowledged the beneficiary's secular employment at USF International in 2000 and early 2001; this employment is the only reliably documented employment from the early part of the qualifying period. The petitioner must show that the beneficiary performed qualifying religious work *continuously* during the qualifying period. The term "continuously" has been interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948). This is consistent with the statutory requirement that the alien must seek to work *solely* as a minister. In this instance, the only past employment that has been reliably documented is secular employment. We therefore cannot find that the beneficiary was continuously employed in the vocation of a senior pastor throughout the 2000-2002 qualifying period.

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.