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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]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: OCT 01 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:

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.

Mari Johnson

for Robert P. Wiemann, Director
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 on appeal. The appeal will be rejected.

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 a youth program coordinator for Latter Rain Anointing Ministries. The director determined that the petitioner had not established that she had the requisite two years of continuous work experience in the position immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established the prospective employer's ability to pay the petitioner's salary.

We note that the Form I-360 petition identifies as the petitioner. However, part 9 of the Form I-360 was signed not by any church official, but rather by the alien beneficiary. By signing on this line, the alien affirmed, under penalty of perjury, the truth of the claims set forth in the petition. Thus, the alien beneficiary is the one who is legally responsible for the accuracy of the petition. The church's pastor signed part 10 of the Form I-360, thus acknowledging having prepared the form, but a signature on this line includes no such affirmation. Rev. Eme may have intended for the church to be the petitioner, but by not signing part 9 of the Form I-36 has failed to take responsibility for the contents of the petition.

8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part:

> (B) *Meaning of affected party.* For purposes of this section and sections 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding.

8 C.F.R. § 103.3(a)(2)(v) states:

> *Improperly filed appeal -- (A) Appeal filed by person or entity not entitled to file it -- (1) Rejection without refund of filing fee.* An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

The appeal has not been filed by the petitioner, nor by any entity with legal standing in the proceeding, but rather by the petitioner's intending employer. Therefore, the appeal has not been properly filed, and must be rejected.

We acknowledge that the director mistakenly treated the church as the petitioner. At the same time, we note that, given the facts and evidence in the record, the appeal would have been dismissed even if it had been properly filed. 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 April 30, 2003. Therefore, the petitioner must establish that she was continuously performing the duties of a youth program coordinator throughout the two years immediately prior to that date.

Rev. Eme states that the petitioner "is a weekly volunteered worker in our ministry" who "works 3 days a week as the Youth Program Coordinator."

The director denied the petition, in part because part-time volunteer work does not satisfy the two-year continuous experience requirement. The statute and regulations require that the alien was continuously engaged in religious work during the two-year 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). 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).

Matter of Varughese is particularly relevant when we consider that the petitioner entered the United States, during the qualifying period, as an F-1 student, purportedly intending to study at Los Angeles Trade Technical College. The record contains nothing from the college to indicate whether the petitioner studied there, or whether she carried a full course load. Pursuant to *Matter of Varughese*, student work that reduces an alien's ability to perform religious work interrupts the continuity of that religious work. Rev. Eme's stipulation that the petitioner worked only three days a week reinforces the director's finding that the petitioner worked only part time.

On appeal, [redacted] states that the church is willing to employ the petitioner full-time, but has been unable to do so in the past because the alien lacked employment authorization. [redacted] does not explain what, if anything, prevented the church from seeking an R-1 nonimmigrant religious worker visa on the petitioner's behalf. Whatever the church's motivation for utilizing the alien's services only part-time, the statute and regulations require continuous religious work during the qualifying period, and, as explained above, case law holds that part-time work is not continuous.

Furthermore, the regulations at 8 C.F.R. § 204.5(m)(1) and (3)(ii)(A) require that the alien must have carried on *the* vocation or occupation, rather than *a* vocation or occupation, indicating that the work performed during the qualifying period should be substantially similar to the intended future religious work. The underlying statute, at section 101(a)(27)(C)(iii), requires that the alien "has been carrying on such . . . work" throughout the qualifying period. An alien who seeks to work in occupation A has not been carrying on "such work" if employed in occupation B for the past two years. In this instance, the petitioner indicates that the petitioner began as a musician, but was promoted to youth program coordinator; there is no indication as to when this transition (which presumably involved a significant change in duties) took place. Thus, the petitioner has not demonstrated that she has been a youth program coordinator for at least two years.

The other issue raised by the director concerns the prospective employer's ability to pay the alien's proffered salary. The regulation at 8 C.F.R. § 204.5(g)(2) requires the petitioner to submit documentation of the intending employer's ability to pay the alien's proffered wage. The petitioner's initial submission contained no financial documentation. The director, in denying the petition, noted the absence of this documentation. On appeal, [redacted] states "we will be glad to provide additional information" but does not explain why this material did not accompany the appeal itself.

We note that 8 C.F.R. § 204.5(m)(4) requires the intending employer to set forth "any terms of payment for services or other remuneration." Here, the petitioner has not even provided such basic information as what the alien's salary would be.

Beyond the director's decision, we find that there is some question as to what, exactly, the petitioner intends to do as an employee of the church. The petitioner originally referred to the petitioner only as a "volunteer worker," later using the title "youth program coordinator." The first description of the petitioner's duties indicated that the petitioner performed "administrative work, which includes organizing financial and membership data." Office clerks are specifically excluded from the regulatory definition of "religious occupation" at 8 C.F.R. § 204.5(m)(2).

ORDER: The appeal is rejected.