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: NEBRASKA SERVICE CENTER Date: OCT 07 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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

The petitioner is a diocese of the Episcopal 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 missioner/coordinator. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a missioner/coordinator immediately preceding the filing date of the petition.

On appeal, counsel indicates that a brief will be forthcoming within 30 days. To date, nine months after the filing of the appeal, the record contains no further substantive submission from the petitioner. We therefore consider the record to be complete as it now stands. The appeal, when filed, included arguments and exhibits that will receive due consideration.

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 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 June 30, 2003. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a missioner/ coordinator throughout the two years immediately prior to that date.

The record appears to indicate that the beneficiary's duties have varied during the two-year qualifying period, and it is not certain how closely the beneficiary's past duties conform to his proposed future duties. We shall

not discuss this particular issue in detail, however, because (as will be explained below) there are more fundamental issues that prevent a finding that the beneficiary continuously engaged in religious work during the qualifying period.

In a letter dated June 17, 2003, the bishop of the petitioning diocese, states that the diocese "has retained the services of [the beneficiary] as Missioner/ Coordinator." He does not state that the beneficiary has actually begun working for the dioces repeatedly refers to the duties that the beneficiary "will" perform, and he states that the beneficiary "will begin this work July 1, 2003.' states that the beneficiary "has been serving the Church" since 1996, but he offers no specific details about the beneficiary's past work experience. adds that the beneficiary received master's degrees in 2001 and 2002 from seminaries in Evanston, Illinois.

The initial submission includes letters from officials of various Episcopal churches in Chicago, attesting to the beneficiary's part-time volunteer work. None of these letters pertain to the qualifying period; the most recent service attested in these letters ended in February 2001. Therefore, the director instructed the petitioner to submit documentation to establish the beneficiary's continuous engagement in qualifying religious work from June 30, 2001 to June 30, 2003.

In response to the director's request, the petitioner has submitted a letter from Rev. Sheila S. Ferguson of the Episcopal Diocese of Chicago, who asserts that the diocese employed the beneficiary "as the Assistant Missioner for the Church of the Pentecost. . . . His employment began May 1, 2001 and ended February 9, 2003."

of Western Memorial Health System (WMHS) states that the beneficiary is a "Resident Chaplain in the Clinical Pastoral Education Program. This is a full-time, contractual position involving pastoral responsibilities at two hospitals. He began this position on June 2, 2003.' states that the beneficiary enrolled in this program at the suggestion of the diocese. earlier letter, dated June 17, 2003, did not mention this training program; rather, the bishop had indicated that the beneficiary would begin his work as a missioner on July 1, 2003.

The petitioner also submits copies of pay stubs and Forms W-2, corroborating the above assertions. This documentation does not establish what the beneficiary did between leaving the Diocese of Chicago and beginning his studies at WMHS nearly four months later.

The director denied the petition, stating that "a gap exists in the employment from February 9, 2003 until June 2, 2003." On appeal, counsel states that the director "wrongly denied the I-360 petition . . . on the ground that a gap exists in his employment from February 9, 2003 until June 2, 2003 despite holding that 'The record is clear that the beneficiary was employed from June 30, 2002 until June 2, 2003.'" Counsel misquotes the director's decision. The director's actual words are "The record is clear that the beneficiary was employed with the petitioner from June 30, 2002 until February 9, 2003. . . . The beneficiary was subsequently employed as a hospital chaplain on June 2, 2003. However, a gap exists in the employment from February 9, 2003 until June 2, 2003." The decision simply does not say what counsel claims it says, and therefore the claimed contradiction does not actually exist.

Counsel states that the director's decision disregarded "clear evidence submitted by the petitioner and the beneficiary to support the claim that the beneficiary was working for and being remunerated by the petitioner within the period in question." Counsel does not identify the "clear evidence" that the director supposedly disregarded. Furthermore, the director did not dispute that the beneficiary worked "within the period in

question." Rather, the issue is that the petitioner had submitted no evidence to show that the beneficiary worked *continuously* during that period. Counsel's own cover letter that had accompanied the earlier submission acknowledged that one job ended in February 2003, and the next began in June 2003. The petitioner did not identify any employer for the beneficiary during the intervening months.

The beneficiary, in a new statement, attempts to fill in the gaps in his employment:

> The letter that was sent by . . only indicate[d] that I worked as a missioner for the Church of the Pentecost on the North side of Chicago from May 1, 2001 until February 9, 2003; this does not mean that I was no longer functioning as a priest. . . .
>
> I was only assigned by the bishop to perform some responsibilities at Church of the Pentecost for that particular period and was at the Anglican Chapel of the Resurrection (Anglican Communion) Indianapolis from February till the end of May 2003 to assist the chaplain of the church.

Two officials of the Anglican Chapel of the Resurrection, Indianapolis, state that the beneficiary "served as a priest in our Church from February 9th 2003 to May 30th while he was awaiting to take the responsibility as a resident chaplain at Western Maryland Health System." The petitioner offers absolutely no explanation as to why this newly-claimed employment was never mentioned prior to the denial, even after the director had requested specific details regarding the beneficiary's work during the 2001-2003 qualifying period.

We note that letters addressed to the beneficiary, dated 2000 and 2001, state the beneficiary's address as being in Evanston, Illinois. The Form I-360 petition, prepared on June 27, 2003, shows the same address for the beneficiary. The beneficiary's last paycheck from the Diocese of Chicago, dated March 14, 2003, is addressed to the beneficiary at an apartment in Glenview, a Chicago suburb located near Evanston. Indianapolis, where the beneficiary now claims to have worked during the second quarter of 2003, is roughly 170 miles south-southeast of Evanston and Glenview. The petitioner submits no documentary evidence that the beneficiary ever resided in or near Indianapolis, and it is not plausible that the beneficiary would commute at least six hours a day back and forth between the two areas.

Submitted on appeal are church programs, bulletins, and other documentation, showing the beneficiary's work in Maryland and in the Chicago area. There is no comparable evidence regarding his newly claimed work in Indianapolis. A bulletin from the Church of the Holy Cross, Cumberland, Maryland, states that the beneficiary "moved here from the Diocese of Chicago," which does not have jurisdiction over Indianapolis.[1] This information contradicts the new claim that the beneficiary went from Chicago to Indianapolis to Maryland. Given the complete absence of contemporaneous, documentary evidence that the beneficiary ever lived or worked in Indianapolis, this contradiction is significant.

We find that the beneficiary's new claim to have worked in Indianapolis from February to May of 2003 is not credible. This claim appears to be an attempt to fraudulently fill in the disqualifying gap in the beneficiary's employment during those months. We therefore give this new claim no credence whatsoever. 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

---

[1] A complete list of Anglican and Episcopal dioceses is available from the denomination's official web site, at http://www.anglican.org/domain/admin/bydiocese.html. Indianapolis is home to its own Anglican/Episcopal Diocese, with an official web site at http://www.indydio.org/.

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).

We note that the record contains no statement *from the petitioner* claiming that the beneficiary worked in Indianapolis in early 2003. That new claim arises entirely from statements by (1) the beneficiary, (2) purported officials of the church in Indianapolis, and (3) counsel. There is no direct evidence that the petitioner is even aware of this new claim, or indeed that the petitioner directly participated in the appeal at all. Therefore, the credibility implications regarding the petitioner are unclear; but it remains that the new claim of employment in Indianapolis has absolutely no evidentiary support, and is contradicted by materials in the record. Pursuant to section 212(a)(6)(C)(i) of the Act, any alien who seeks, or has sought, to procure immigration benefits by fraud or willfully misrepresenting a material fact is inadmissible into the United States. Because the beneficiary himself has referred, in a letter, to the purported position in Indianapolis, the beneficiary would appear to have triggered this clause. Because issues of inadmissibility are outside the scope of this decision, we will not discuss this issue in greater depth here.

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.