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

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date:
LIN 03 202 50617

IN RE: Petitioner:
Beneficiary: [redacted]

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.

Marii Johnson

Sr Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter 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 minister healer. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience in the position sought immediately preceding the filing date of the petition. The director further determined the petitioner failed to establish its tax-exempt status.

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 first issue to be determined relates to the beneficiary's work experience during the two-year period preceding the filing of the petition. 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 experience in the religious vocation, professional religious work, or other religious work. The petition was filed on June 16, 2003.[1] Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of her intended position throughout the two years immediately prior to that date, the period covering June 2001 through June 2003.

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[1] On appeal, the petitioner notes that the director's decision mistakenly references the filing date of the petition as August 5, 2003. Despite this error, however, the director's discussion related to the required two-year period, correctly states that the requisite period began on June 17, 2001 and ended on June 16, 2003. Therefore, while we acknowledge the director's initial error, we do not find that the error had any adverse effect on his ultimate decision.

In a letter accompanying the initial filing, Rev. Stephen Howard, president of the petitioning church, states:

> [The beneficiary] received her Ministerial Certification from Endeavor Academy on 12/16/00 and was shortly thereafter ordained as a Minister of the New Christian Church of Full Endeavor [NCCFE] bestowing on her the right to perform all of the Holy Sacraments of the Church . . . .
>
> After she was ordained [the beneficiary] felt the need for more structured training and enrolled in our Graduate Studies Program and Endeavor Academy to help prepare her for her return to Australia to minister at our Miracles Center in Byron Bay, New South Wales...While continuing her studies [the beneficiary] carried out her ministerial duties as a volunteer intern by conducting worship services and performing the Holy Sacraments at the Miracles Healing Center [MHC] in Wisconsin . . . .

The petitioner also submits a letter from [redacted] Administrator of the Miracles Healing Center, who states that the beneficiary:

> [H]as been participating in the healing ministry of the [NCCFE] at the [MHC] in Wisconsin Dells, WI since February 2001.
>
> [The beneficiary] started her Ministerial internship as a Miracle Healer receiving calls on our Phone Ministry. Soon she was performing healings on individuals who come into MHC and has become one or our full-time Ministers of Healing.

Neither letter indicates the hours worked by the beneficiary during the requisite period or that the beneficiary received any remuneration for her services. Instead, in the only reference to the beneficiary's pay, Rev. Howard's letter uses terms that imply future employment, rather than terms already in effect. He states:

> The New Christian Church of Full Endeavor *will provide* [the beneficiary] with room and board and a $200 per month stipend for her sundries. Should [the beneficiary] ever have need of additional monies for medical or personal emergencies, etc., the NCCFE *will see* that her needs are met. Ministers and students in our order live a devotional, meditative life with a minimum emphasis on material things and worldly goods. [The beneficiary] has been practicing a near monastic life-style for the eight years she has been a member of our order and seems very suited to it.

[Emphasis added.]

On December 24, 2003, the director instructed the petitioner to submit additional documentary evidence to establish the nature and extent of the beneficiary's religious work during the two-year qualifying period. The petitioner's response to the director's request, which included second letters from both [redacted] did not provide any detailed description of the beneficiary's work during the requisite period and failed to address the issue of the beneficiary's pay. The petitioner also submitted a document signed by the beneficiary in which she lists her specific duties but does not, however, provide any indication that her work was full-time or paid.

The petitioner further submits a copy of a document entitled "Responsibilites and Guidelines for Ministers." This document does not mention the MHC in any of the listed duties, and instead appears to be a generic description of the responsibilities of a minister. Although the document indicates a minister may "have administrative roles in . . . the [MHC]," the record reflects that the administrator of the MHC is not the beneficiary. Given the petitioner's specific indication that the beneficiary's past and future experience as a minister was as a healing minister at the MHC, in addition to the beneficiary's own description of her responsibilities, the job description provided by Rev. Howard does not appear applicable to the beneficiary.

The director denied the petition, in part, based on the determination that the beneficiary had not satisfied the two-year continuous experience requirement. Specifically, the director noted that the beneficiary was a student for much of the qualifying period, as well as an unpaid, part-time volunteer.

On appeal, submits a letter but provides no additional evidence. In the letter submitted on appeal, attempts to addresses the director's finding regarding the beneficiary's "voluntary service." Rev. Howard lists the beneficiary's "post-graduate training" and states:

> [The beneficiary's] internship consisted of supervised practical experience at our Miracles Healing Center. After this initial year, she worked virtually autonomously where she was discovered to have been graced by the gift of healing. Regular supervisory sessions with her tutors supported the gaining of this experience.

Rev. Howard then states:

> [The beneficiary] has been sponsored by members of our congregation and did not seek any monetary gain for her services, giving freely what she was freely given. The nature of dedication to the healing ministry of Jesus Christ does not involve personal gain, but rather a deep commitment to His message and a desire to offer it to others through individual acts of healing . . . .
>
> Our understanding is that the relevant legislation does not stipulate explicit requirements concerning the nature of religious work experience, given the unusual circumstances of religious commitment. It appears to us that [the beneficiary] is clearly the type of beneficiary to whom this flexibility would apply.

We are not persuaded by statements. Although correctly indicates that the "relevant legislation does not stipulate explicit requirements" related to full-time employment, the legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of "a number of safeguards . . . to prevent abuse." See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he had been "continuously" carrying on the vocation of minister for the two years

immediately preceding the time of application. The term "continuously" was interpreted to mean that one did take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca,* 10 I&N Dec. 712 (Reg. Com. 1963) and *Matter of Sinha,* 10 I&N Dec. 758 (Reg. Com 1963).

In line with these past decisions and the intent of Congress, it is clear, therefore that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who, in accordance with their vocation, live in a clearly unsalaried environment; the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and salaried. To hold otherwise would be contrary to the intent of Congress.

Rev. Howard indicates "flexibility" should be applied in this case because of the "unusual circumstances of religious commitment." He does not elaborate on this statement or provide any further explanation as to the exact nature of what is "unusual" about this case. Clearly, the beneficiary is not a nun. The fact that she "did not seek any monetary gain for her service," and that she lives a "near monastic life-style," does not make her a nun. Further, despite the petitioner's intent to provide the beneficiary with a stipend, as well as room and board in the future, the record contains no evidence that the petitioner provided for the beneficiary in any way during the requisite period. Although there may be other limited circumstances in which unpaid volunteer work may constitute qualifying experience, the burden of proof remains on the petitioner to establish that the claimed work took place continuously. Such continuous work has not been shown here.

A more detrimental fact to the petitioner's claim of the beneficiary's continuous employment is the fact that the beneficiary was a student during much of the requisite period. The petitioner does not dispute this fact on appeal. Although we find the record amply reflects that the beneficiary seeks to enter the United States in order to carry on the vocation of a minister, section 101(a)(27)(C)(iii) of the Act requires that the beneficiary "has been carrying on such vocation" throughout the two-year qualifying period. Here, the beneficiary has not been carrying on "such vocation." Rather, she has been undergoing training and continuing her studies. Part-time ministerial work by a student is not continuous experience as a minister. *See Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

The underlying statute, at section 101(a)(27)(C)(iii), as well as the regulations at 8 C.F.R. § 204.5(m)(1) and (3)(ii)(A) require that the beneficiary 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. An alien who seeks to work as a minister has not been carrying on "such work" if the alien has been a student and not carrying on the duties of a pastor for much of the preceding two years.

The remaining issue is whether the petitioner is considered a qualifying tax-exempt religious organization. The regulation at 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as

a non-profit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

In his decision, the director determined that the petitioner had submitted sufficient evidence of its tax exemption. However, the director noted that because "[c]orrespondence indicated that both New Christian Church of Full Endeavor and Miracles Healing Center will pay the beneficiary's salary," there was insufficient evidence to establish that the MHC, "the place of intended employment," was affiliated with the religious denomination.

Upon review of the record, we are unable to find the "correspondence" referred to by the director in which MHC indicates it will be paying the beneficiary. The petitioner's initial letter, the letter submitted in response to the director's request for evidence, as well as the petitioner's letter submitted on appeal, all indicate that the beneficiary will be employed and paid by NCCFE. Although Rev. Davis' letter indicated the beneficiary's actual duties take place at the MHC, Rev. Davis makes no reference to the beneficiary's pay.

Contrary to the director's decision, we find that the record conclusively establishes that NCCFE will be responsible for the beneficiary's pay and employment. We further find that the MHC is a part of NCCFE. Based upon these determinations, as well as the director's previous determination that the petitioner has the appropriate tax-exempt status, we find that we must overturn the director's decision on this issue.

While we have reversed one of the director's stated grounds for denial, petitioner's failure to establish the beneficiary's continuous employment during the qualifying period 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.