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

U.S. Citizenship
and Immigration
Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: FEB 28 2005
WAC 03 221 52867

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: 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.

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 (AAO) 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 its director of youth ministries. The director determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition or that the position qualified as that of a religious worker.

On appeal, the petitioner submits a letter.

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) echoes the above statutory language, and states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file a Form I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States." The regulation 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."

The regulation at 8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

> (ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:
>
> > (A) 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 July 25, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working in the religious occupation throughout the two-year period immediately preceding that date.

According to the petitioner, the beneficiary began working with the petitioning organization as its director of youth ministries on July 1, 2003. Prior to that, the petitioner states that the beneficiary was "in mission service with the General Board of Global Ministries" for two and a half years and worked for the Wesley Rankin Community Center during the same period.

In its July 21, 2003 letter accompanying the petition, the petitioner listed the responsibilities of the proffered position as:

Expectations

A. Maintain weekly Youth Activities for Junior and Senior High Youth.
B. Maintain & staff weekly Sunday School classes for Junior and Senior High Youth . . .
C. Attend Sunday morning worship service on a weekly basis . . .
D. Attend Staff Meetings on a weekly basis.
E. Create and maintain a budget . . .
F. Partner or Co-lead Worship Arts Camp
G. Oversee and Organize a Youth Sunday at least once a year.
H. Regular office hours which allow time to be available to staff, parents and youth

Planning

A. Recruit, and maintain a Youth Council made up of representatives of the church, parents and youth . . .
B. Involve the Youth Council in creating and developing programs and planning special events.
C. Regular Youth and Parent Letters or special newsletters which include an updated calendar of events.

The petitioner submitted a letter from [redacted], the deputy general secretary for mission personnel of the General Board of Global Ministries for the United Methodist Church (Global Ministries). [redacted] stated that Global Ministries employed the beneficiary from January 20, 2001 to January 10, 2003, and that he served there as a "participant in the Young Adult Missioners Project." [redacted]s stated that the beneficiary worked at the Wesley-Rankin Community Center in Dallas, Texas, where he worked with children and youth to "ensure access to necessary services and involve youth and their families in local congregations. His

specific assignments included working in the community center's food pantry, clothes pantry and homeless ministries." Reverend also stated that the beneficiary also worked 20 hours per week in community outreach and program development. Reverend provided no other details of the beneficiary's community outreach activities nor specified the duties involved in "program development."

According to Reverend the beneficiary was compensated for his services with, among other things, a stipend, living expenses and housing. The petitioner submitted a copy of a 2001 Form W-2, Wage and Tax Statement, issued by Ministries, indicating that it paid the beneficiary approximately $8,475.00. The petitioner also submitted a copy of a Form W-2 issued to the beneficiary by the Wesley-Rankin Community Center, indicating that that organization paid him $100.00 in 2001. The beneficiary's 2002 Forms W-2 reflect that he was paid $10,129.50 by Global Ministries and $200.00 by the Wesley-Rankin Community Center. The record also contains a copy of a 2002 Form W-2 issued to the beneficiary by the Cornerstone United Methodist Church in the amount of $1,625.00. The petitioner provided no evidence of the nature of the beneficiary's services to the Cornerstone United Methodist Church.

In a letter dated August 28, 2003, Executive Director of the Wesley-Rankin Community Center, stated that the beneficiary worked 40 hours per week and was compensated by Global Ministries from 2001 to 2002. stated that the center employed the beneficiary in a full-time position from January 2003 to June 2003 as its coordinator of youth ministries, and that his salary "would have been $19,536" by year's end. According to the coordinator's "day-to-day duties consist of working with the after-school and summer youth programs providing supervision and helping the Youth Program Director with the planning for the programs." Other duties include leading the United Methodist Youth Fellowship, which "consists of planning a calendar of events, preparing Bible Study lessons, leading lessons and coordinating adult volunteers to help lead the group." identified a list of part-time responsibilities of the coordinator, which includes attending a monthly mentoring program, tutoring once a week, helping to recruit volunteers for various programs and speaking about the community center. stated that the coordinator is a "spiritual presence in the youth program offering opportunities to reflect on matters of faith, life and how the two intersect in the life of the youth." The petitioner submitted no documentary evidence, such as canceled paychecks or pay vouchers, to corroborate the beneficiary's employment during 2003. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Pursuant to section 101(a)(27)(C)(iii) of the Act, the alien must be carrying on the same religious work for which he or she seeks entry into the United States continuously for the two years immediately preceding the filing of the visa petition. The evidence submitted by the petitioner does not establish that the beneficiary was employed in the same or similar occupation for two full years prior to the filing of the visa petition. While the duties described by may arguably encompass similar duties as those the petitioner states that the beneficiary is currently performing in the position of its director of youth ministries, the evidence does not establish that the beneficiary was performing similar duties prior to January 2003. Further, the petitioner submitted no evidence to corroborate the beneficiary's 2003 employment. *Id.*

The evidence is insufficient to establish that the beneficiary was continuously employed in a qualifying religious occupation for two full years prior to the filing of the visa petition.

The director also determined that the petitioner had not established that the position qualified as that of a religious worker. Pursuant 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work in a religious occupation.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation 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. Persons in such positions would reasonably be expected to perform services directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. The lists of qualifying and nonqualifying occupations derive from the legislative history. H.R. Rpt. 101-723, at 75 (Sept. 19, 1990).

Citizenship and Immigration Services (CIS) 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.

The duties of the proffered position are described above. The petitioner submitted no evidence, however, to establish that the duties are religious in nature. For example, the petitioner stated that the director of youth ministries must maintain weekly youth activities for the church's youth, but provides no evidence of what these weekly activities are to entail. Additionally, although the duties require the beneficiary to maintain regular office hours, the record is unclear as to what duties are to be performed during this time. Further, although the proffered position has some duties related to Sunday services, they do not appear to be other than administrative in nature (staffing Sunday school classes, attending Sunday services to encourage others to attend and to make appropriate announcements to the congregation).

On appeal, the petitioner states that the beneficiary's work encompasses "as its main focus, 'religious instruction' and 'religious counseling.'" However, the duties as outlined by the petitioner do not reflect that the proffered position requires the beneficiary to provide religious counseling or instruction.

The evidence does not establish that the proffered position is a religious occupation within the meaning of the statute and regulation.

Beyond the decision of the director, the petitioner has not established that it has the ability to pay the beneficiary the proffered wage. The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner indicates that it will pay the beneficiary $30,000 annually. As evidence of its ability to pay this wage, the petitioner submits copies of its balance sheet as of December 31, 2003, its operating budget for 2003, and a copy of its 2003 Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return

The above-cited regulation states that evidence of ability to pay "shall be" in the form of tax returns, audited financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only in addition to, rather than in place of, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of evidence.

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.