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

U.S. Citizenship and Immigration Services

[redacted]

C1

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JAN 0 4 2005
SRC 01 270 53955

IN RE: Petitioner: [redacted]
Beneficiary

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

PUBLIC COPY

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

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas 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 a minister. 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.

On appeal, the petitioner submits a brief and additional documentation.

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 August 27, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister throughout the two-year period immediately preceding that date.

The petitioner states that it is a missionary church of the Assembléia de Deus em São Paulo, and that the beneficiary has been a pastor with the Assembléia de Deus since 1995. The petitioner states that the beneficiary began his association with the petitioner some time in 2001. As evidence of this employment, the petitioner submitted a "Declaration of Income" from president Assembléia de states that the beneficiary "has been serving in our Ministry for several years in theological education, family counseling and deliverance, and leadership area."

In a request for evidence (RFE) dated March 14, 2003, the director instructed the petitioner to submit "a detailed description of the beneficiary's prior work experience including duties, hours, compensation, (especially compensations) accompanied by appropriate evidence (such as copy of pay stubs or checks, W-2's or other evidence as appropriate." In response, the petitioner summarized the beneficiary's work experience and submitted a copy of a card identifying the beneficiary as a minister with Assembléia The petitioner submitted no other evidence to corroborate the beneficiary's work with or with the petitioner.

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/she 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 not 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. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

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).

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 generally salaried. To hold otherwise would be contrary to the intent of Congress.

On appeal, the petitioner submits a "Declaration of Employment" from [redacted] in which he states:

> [The beneficiary] was ordained a pastor on September 30th of 1987 . . . He pursued his vocation on behalf of [redacted] sembléia [redacted] in Brazil from 1987 to 2001. Since 1987, he has performed the duties of Deliverance and Counseling Ministry.
>
> We further declare and certify that [the beneficiary] has been fully supported and remunerated by Igreje Evangélica Assembléia de Deus during the years that he worked for the Church.

The petitioner submitted no evidence such as pay vouchers, canceled checks or other evidence to corroborate the beneficiary's employment with the church. The petitioner states on appeal that "Each religious order has its own way to compensate its religious workers . . . Assembly of God Bethlehem Ministry supports their Ministers paying their basic necessities and very often they receive offers from Church members during Sunday services." Nonetheless, 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). The petitioner submitted no evidence to establish that the beneficiary was employed full-time as a minister and was not dependent upon secular employment for his financial support.

The evidence is insufficient to establish that the beneficiary was continuously employed as a minister for two full years prior to the filing of the visa petition.

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.

In his "Declaration of Income, tated, "We clarify that the Evangelical Church Assembly of God in São Paulo, Brazil is the provider of the financial support for the referred Minister for living expenses for him and his family sustenance as long as they are residing in this country and will monthly send to them the amount of US$ 2,000." The petitioner also submitted its balance sheets for June, July and August 2001, and copies of its checking account statements for May through July of 2001.

In response to the RFE, the petitioner submitted a copy of its profit and loss statements and balance sheet for 2002.[1] The petitioner also submitted a copy of its 2001 Form 990, Return of Organization Exempt from Income Tax, which reflects net assets of negative $967,828.

The regulation states that the petitioner must establish that the prospective U.S. employer has the ability to pay the beneficiary the proffered wage. The evidence submitted by the petitioner does not establish that it meets this regulatory requirement. This deficiency constitutes an additional ground for dismissal of the appeal.

According to the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, the beneficiary last entered the United States in March 2001 pursuant to a B-2, temporary visitor for pleasure, visa. The director stated that it could not be determined that the beneficiary's sole purpose in entering the United States was to work for the petitioner. The regulation does not require that the alien's initial entry into the United States be solely for the purpose of performing work as a religious worker. "Entry," for purposes of this classification, would include any entry under the immigrant visa granted under this category or would include the alien's adjustment of status. We withdraw this statement by the director.

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.

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[1] The petitioner also submitted a copy of its profit and loss statement and balance sheet for 2000; however, those documents are not relevant to this petition.