U.S. Department of Homeland Security
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[redacted]

U.S. Citizenship and Immigration Services

CL

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: DEC 22 2005

EAC 04 022 51467

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.

Mari Johnson

E Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont 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 letter 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 issue presented on appeal is whether the petitioner established that the beneficiary had been continuously employed in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(1) 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 October 30, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister throughout the two-year period immediately preceding that date.

In its October 28, 2003 letter accompanying the petition, the petitioner stated that the beneficiary had worked for the petitioning organization as its senior pastor since the November 2002 approval of his R-1 nonimmigrant religious worker visa, and had been paid $2,400 per month for his services. The letter also indicated that prior to that, the beneficiary had served in the same capacity on a voluntary basis. The petitioner submitted copies of two church bulletins (one in 2002 and one in 2003) that list the beneficiary as pastor, copies of two 2003 church flyers also showing the beneficiary as pastor, and a 2003 wedding bulletin listing the beneficiary as the officiating minister.

The petitioner also submitted an October 26, 2003 "certificate of employment," certifying that the beneficiary had worked for the petitioning organization from December 2002 to the "present time" and copies of canceled checks reflecting that it paid the beneficiary $2,400 per month during the period from January 2003 through September 2003.

The petitioner submitted no other documentary evidence to corroborate the beneficiary's work during the qualifying two-year period. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In response to the director's request for evidence (RFE) dated November 2, 2004, the petitioner stated that the beneficiary began work with the petitioning organization on a volunteer basis on September 1, 2002, and that he became a salaried employee on December 1, 2002, working at least 40 hours per week. The petitioner also submitted a copy of the beneficiary's year 2003 Form 1040, U.S. Individual Income Tax Return, which reflects wages of $31,442.This amount exceeds the $28,800 that the petitioner stated it paid the beneficiary in 2003. The petitioner submitted no evidence to explain this difference in the beneficiary's reported income for the year. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner submitted no evidence that it had paid the beneficiary for his services in December 2002, after approval of his R-1 nonimmigrant visa, and failed to submit evidence such as verified work schedules or other documentary evidence to establish that the beneficiary was engaged in full-time employment as a minister from October 2001 through December 2002.

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.

In the rare case where volunteer work might constitute prior qualifying experience, the petitioner must establish that the beneficiary, while continuously and primarily engaged in the traditional religious occupation, was self-sufficient or that his or her financial well being was clearly maintained by means other than secular employment.

On appeal, the petitioner states that the beneficiary "could not be legally monetarily compensated for his work prior to his R1 approval," and that he had worked on full-time, voluntary basis until his R-1 visa was approved. The petitioner also states for the first time on appeal that the beneficiary "had been compensated modest amount of money for the room and board" and that he has filed these "earnings" with the Internal Revenue Service (IRS). The petitioner submits copies of Forms 1040 for the years 2001 and 2002, reflecting wages of $13,000 and $13,500, respectively. These forms were both signed on March 1, 2005, and therefore provide no contemporaneous evidence of the beneficiary's work or compensation during those time frames. Further, there is no evidence in the record that any of the beneficiary's tax returns were filed with the IRS.

The petitioner submits a March 11, 2005 letter from Reverend [redacted]. Oh, the senior pastor of the Han Ma Um Korean Presbyterian Church of New Jersey,[1] who "verifies" that the beneficiary "serv[ed] at our church voluntarily as a full-time Associate pastor from March 2002 to August 2002." The petitioner also submits a March 13, 2005 letter from [redacted] the senior pastor of the Choong Hyun Presbyterian Church of Hawaii, who states that the beneficiary "worked as an Associate Pastor" with the church "voluntarily from June 2000 to February 28, 2002 on a full time basis." Neither Reverend [redacted] Reverend Han state that the beneficiary was compensated in any manner for his services. The petitioner submits what purports to be a work schedule for the beneficiary at the Choong Hyun Presbyterian Church of Hawaii, but submits no evidence to document that the beneficiary actually performed the work. *Matter of Soffici*, 22 I&N Dec. at 165. Two bulletins from the church (April 9, 2000 and January 6, 2002) list the beneficiary as performing services as a pastor. An April 7, 2002 document from the Han Ma Um Presbyterian Church lists the beneficiary as the "guide" with responsibility for delivering the sermon at the Wednesday evening worship service and the Friday praise and prayer service. This document appears to be applicable only for the month of April 2002 and provides no other information about the beneficiary's voluntary service with the organization.

Furthermore, the petitioner submitted no evidence to establish that the beneficiary was self-sufficient and did not depend upon secular employment for his support during the period in which he volunteered his services as a pastor.

The record does not establish that the beneficiary was continuously engaged as a minister for two full years preceding the filing of the visa petition.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

[1] Also identified as the Hanmaum Korean Presbyterian Church of NJ.