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

U.S. Citizenship and Immigration Services

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FEB 03 2005

FILE: [redacted] Office: TEXAS SERVICE CENTER Date:

SRC 01 150 53247

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:

[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

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. The director further determined that the petitioner had not established that the position qualified as that of a religious worker or that it has the ability to pay the beneficiary the proffered wage.

On appeal, counsel 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 April 10, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister throughout the two-year period immediately preceding that date.

In his letters accompanying the petition, the petitioner's president [redacted] stated that the beneficiary has been a member of the petitioning organization since 1999 and has "ministered" since that time. [redacted] further stated that the beneficiary "receives an annual salary of $22,000 for him to minister at our sister congregation located in Fall River, MA, which started on [sic] January of 2001." In a statement dated July 9, 2003, [redacted] stated that the beneficiary "contributed to this Ministry as a pastor-Evangelist from January 1999 until December 2000 preaching in many churches of this Ministry . . . receiving volunteer offerings from those Christian Communities." In a separate statement dated July 9, 2003, Reverend de Jesus states that the beneficiary "receives financial support from [the petitioner] in all his housing needs including rent and utility bills as well as his monthly car payments and its insurance."

The petitioner submitted a copy of the beneficiary's 2002 Form 1099-MISC that it issued to the beneficiary reflecting "rents" of $600.00 and nonemployee compensation of $26,662.50, and copies of pay stubs reflecting payments to the beneficiary beginning in January 2002 and continuing through July 9, 2003. The petitioner submitted no evidence to corroborate the beneficiary's employment during the qualifying two-year period from April 10, 1999 to April 10, 2001. 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 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 submitted an "affidavit" from [redacted] in which he states that the petitioner has supported the beneficiary "since he began work in January 1999, primarily through donations and monthly assistance for his living expenses, such as rent, insurance, car payments, etc." However, the petitioner failed to submit documentary evidence, such as a Form 1099-MISC, Form W-2, Wage and Tax Statements, canceled checks, paid receipts, payment vouchers, or other evidence that the beneficiary worked full-time as a minister for the period from April 1999 to April 2001. The petitioner on appeal also submits statements from three of the petitioner's employees, who state that they are close friends of the beneficiary and can "confirm" that he has served full time as a minister since 1999. Without supporting documentation, however, these statements are not sufficient to meet the petitioner's burden of proof. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190.

The evidence is insufficient to establish that the beneficiary was continuously employed as a minister for two full years preceding 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 proffered position is that of a minister. The petitioner lists the primary duties of the position as to "perform" the "Lord's Supper" ceremony, teach and disciple new believers, provide spiritual follow-up and visit church members, personal evangelism activities, provide spiritual assistance to prisoners and the sick and shut-in, teach Sunday school, and perform funerals, weddings, and baby "dedication." The petitioner stated that the beneficiary, while occupying the position, also provided assistance in family and marriage counseling and conducted prayer and worship services. The petitioner submitted evidence that it has compensated the beneficiary in the position since January 2002.

The evidence is sufficient to establish that the proffered position is a religious occupation or vocation within the meaning of the statute and regulation.

The petitioner must also establish 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 stated that it would compensate the beneficiary at the rate of $22,000 annually, to be raised to $28,000 per year in June 2001. To meet this regulatory requirement, the petitioner submitted a copy of an unaudited combined financial statement for the period ending December 31, 2000 and December 2001.[1] The petitioner also submitted a copy of its May 2003 checking account statement. As noted above, the petitioner also submitted a copy of a Form 1099-MISC indicating that it paid the beneficiary over $27,000 in "rents" and other compensation in 2002, and copies of pay stubs reflecting that it paid the beneficiary in amounts

[1] The petitioner also submitted financial statements for 1998 and 1999. However, these documents are not relevant to this petition.

varying from $287.50 to $2,572.76. The petitioner explains the larger amounts as including living and other expenses for which it reimburses the beneficiary.

On appeal, the petitioner submits copies of its bank statements for 2001, 2002 and 2003.

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 other required types of evidence, and fails to submit competent evidence of its ability to pay the proffered wage in 2001.

The evidence does not establish that the petitioner has the ability to pay the beneficiary the proffered wage as of April 10, 2001.

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.