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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JUN 0 2 2005

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Acting Director, Nebraska 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 an associate pastor. 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 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 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 September 19, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as an associate pastor throughout the two-year period immediately preceding that date.

In its September 7, 2003 letter accompanying the petition, [redacted] the petitioner's senior pastor, stated:

> Since his arrival in the United States, [the beneficiary] has served as Associate Pastor of the [petitioning church] in charge of Youth and Children ministry[.]
>
> His other duties include the following:
>
> 1. Preaching sermons as assigned by the Senior Pastor
> 2. Planning programs for youth and children
> 3. Leading out [sic] youth programs and activities
> 4. Training youth and children leaders to effect youth and children ministry
> 5. Mentoring and counseling youth.
> 6. Working with the Pastor on youth related issues such as drugs, alcohol
> 7. Visiting the youth and praying for them
> 8. Organizing Youth evangelistic and outreach programs
> 9. Working with the Pastor on youth issues
> 10. Visiting the sick and shut-ins

The petitioner did not indicate the terms of the beneficiary's work with the petitioning organization, such as hours of work or remuneration received in exchange for services. The petitioner submitted no documentary evidence to corroborate the beneficiary's work with the petitioning organization. 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)).

The record reflects that the beneficiary entered the United States on May 6, 2002 pursuant to an F-1 nonimmigrant student visa to attend school at Andrews University in Berrien Springs, Michigan. The petitioner submitted a copy of the beneficiary's transcript from Andrews University, which reflects that he began matriculating at the school in the 2002 summer semester. The petitioner submitted a copy of a July 23, 1994 certificate of ordination to the gospel ministry granted to the beneficiary by the Central Ghana Conference of Seventh-day Adventists.

The petitioner also stated that prior to the beneficiary entering the United States, he served in various churches, including serving as associate pastor in charge of youth and Sabbath school at Mount Frere S.D.A. Church in South Africa from 1997 to 2001. The petitioner also failed to submit any evidence of the beneficiary's work with the Mount Frere S.D.A. Church. *Id.*

In a request for evidence (RFE) dated May 3, 2004, the petitioner instructed the petitioner to:

> Submit evidence that for at least the two-year period immediately preceding the filing of this petition . . . the alien has been performing the vocation, professional work or other work continuously. The evidence must outline the specific duties, the date(s) these duties were performed, and the time spent performing these duties. Furthermore, you must indicate whether the duties were performed as a volunteer, on a part-time basis, or a full-time basis and whether the beneficiary was paid for his services. If the beneficiary was paid for his services, submit documentary evidence of the remuneration.

In response, the petitioner submitted the list of duties mentioned above with the number of hours the beneficiary was engaged in performing them. The petitioner did not indicate when this work was performed by the beneficiary, but stated that the beneficiary worked a minimum of 36 hours performing the services and was compensated in cash. The petitioner did not state the amount or frequency of the beneficiary's compensation and did not submit documentary evidence of any remuneration received by the beneficiary. *See Matter of Soffici*, 22 I&N Dec. at 165.

The petitioner submitted no documentary evidence of the beneficiary's work in South Africa.

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 an August 22, 2004 statement from [redacted] senior church pastor of the [redacted]. Church. Pasto[redacted] confirms that the beneficiary served as associate pastor of the church from 1997 to May 4, 2002, primarily in charge of the youth and Sabbath school departments, and that he received a salary of 1,500 rands a month plus medical expenses. The petitioner did not submit any evidence such as pay vouchers, canceled checks, verified work schedules or other documentary evidence to corroborate the beneficiary's employment with the Mount Frere S.D.A Church. *Matter of Soffici*, 22 I&N Dec. at 165.

As the director noted, an ordained minister who was engaged in the practice of his vocation can meet the two years experience requirement, if he or she engages in advanced religious studies and continues to function as a minister during the course of those studies. However, the petitioner has submitted no credible evidence to establish that the beneficiary was engaged as a minister prior to entering Andrews University.

The evidence does not establish that the beneficiary was continuously employed in a qualifying religious occupation or vocation 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.

The petitioner states that it will pay the beneficiary $1,300 per month plus medical benefits and mileage. The petitioner submitted no evidence with the petition to establish that it meets this regulatory requirement. In response to the RFE, the petitioner submitted a copy of its bank statement for February 29, 2004.

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 primary evidence.

The evidence does not establish that the beneficiary had the continuing ability to pay the proffered wage as of the date the petition was filed. For this additional reason, the petition may not be approved.

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.