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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

*CI*

[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: JUN 24 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:

[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.

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 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 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 June 20, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister throughout the two-year period immediately preceding that date.

According to the petitioner's letter of June 4, 2003, the beneficiary was ordained in August 2001, but has worked as a full-time pastor with the petitioning organization since April 2001. The petitioner submitted copies of Forms W-2, Wage and Tax Statements, that it issued to the beneficiary in 2001 and 2002, reflecting wages paid of \$27,000 and \$36,000 respectively. The petitioner also submitted a copy of a certificate of ordination issued to the beneficiary by the Evangelical Church Alliance, indicating that an ordination council was convened on October 28, 2001 for the purpose of ordaining the beneficiary as a minister. The certificate is dated November 6, 2001.

In its letter of August 2, 2004, the petitioner stated that the beneficiary was ordained on November 6, 2001, and that he would continue to lead the congregation in worship services, administer religious rites, and continue to officiate at wedding ceremonies, baptisms, communions and funeral services. The petitioner did not indicate which, if any, of these duties the beneficiary was unable to perform prior to his ordination.

The statute and regulation require that the alien seeking admission into the United States as a religious worker must have been working in *the* religious occupation or vocation for which he or she seeks entry for at least two full years preceding the filing of the visa petition. The director determined that as the beneficiary had not been ordained until October 2001, he could not have been performing the duties of an ordained minister prior to that time.

The regulation at 8 C.F.R. § 204.5(m)(2) defines minister as:

[A]n individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

On appeal, the petitioner submits a letter from [REDACTED] president and chief executive officer of the Evangelical Church Alliance, who "certifies" that the beneficiary was interviewed on June 5, 2001 and approved for ordination at that time. According to [REDACTED] the beneficiary chose to delay his ordination until he could do so before his congregation on October 28, 2001. The petitioner submitted a copy of the "report of ordination" indicating that the beneficiary was ordained on October 28, 2001.

In the petitioner's letter accompanying the appeal, the beneficiary states that he had "done all the duties of this position including all kinds of rituals and ceremonies even before my ordination, although I got a legal license as an ordained pastor . . . after my ordination service."

The petitioner did not submit any evidence that the beneficiary had performed all of the duties of an ordained minister prior to his ordination and was in receipt of his "legal license." 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)). Further, the petitioner submitted no evidence to establish the secular or ecclesiastical legal authority that would permit the beneficiary to perform such duties prior to becoming ordained.

The regulations at 8 C.F.R. §§ 204.5(m)(1) and (3)(ii)(A) require that the beneficiary must have carried on *the* vocation or occupation, rather than *a* vocation or occupation, indicating that the work performed during the qualifying period should be substantially similar to the intended future religious work. The underlying statute, at section 101(a)(2)(C)(iii), requires that the alien "has been carrying on such . . . work" throughout the qualifying period. Given that the petitioner indicated that the alien, as an ordained minister, would continue to administer religious rites, officiate at weddings, baptisms, communion, and funeral services, all of which generally fall under the ambit of the duties of an ordained minister, it is unclear whether and how the beneficiary was authorized to perform such duties prior to ordination. Accordingly, given the fact that the beneficiary was not ordained until October 2001 and therefore does not appear to have been qualified to perform the duties of the position from June to October of that year, the petitioner has not established that the beneficiary worked continuously in the vocation or occupation for two full years prior to the filing of the visa petition. For this 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.