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U.S. Citizenship
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Services

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FILE: LIN 03 256 51532 Office: NEBRASKA SERVICE CENTER Date: **JUN 30 2005**

IN RE: Petitioner: [Redacted]
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:



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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 a religious worker. 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, that the beneficiary possessed the required two years membership in the denomination, that the position qualifies as that of a religious worker, or that the petitioner had extended a qualifying job offer to the beneficiary.

On appeal, counsel 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 first 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 August 28, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working in the religious vocation or occupation throughout the two-year period immediately preceding that date.

With the petition, the petitioner submitted a letter from [REDACTED] who identified himself as the senior pastor of “Holly Trinity” Pentecostal Church in [REDACTED] stated that he had known the beneficiary from childhood until he left the church in 2002. The pastor also stated that during the time that he attended school at the Theological Institute:

[The beneficiary] was active in our church as a Sunday school teacher, leader of a young group, member of praise and worship group, and a choir member. He served our church as a preacher . . . and a missionary . . . traveling with a missionary group to the south of the country several years, preaching, singing and handling [sic] out booklets and aid gifts.

The petitioner submitted a July 31, 2003 statement signed by [REDACTED] and [REDACTED] the church secretary, stating that the beneficiary was a member of the church from April 1995 until May 2002. The petitioner also submitted a copy of a school transcript; however, the document was not accompanied by an English translation as required by the regulation.¹

The petitioner submitted no evidence to substantiate any work performed by the beneficiary at the “Holly Trinity” church. 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 did not allege and provided no evidence of any work performed by the beneficiary from May 2002 until August 28, 2003, when the petition was filed.

In response to the director’s request for evidence (RFE) dated April 21, 2004, the petitioner resubmitted the letters and statements from the pastor and secretary of the “Holly Trinity” Pentecostal Church in Romania.

¹ 8 C.F.R. § 103.2(b)(3) requires that documents submitted in a foreign language “shall be accompanied by a full English translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.”

The evidence submitted did not include evidence such as canceled checks, pay vouchers, verified work schedules, or other documentary evidence of the beneficiary's work for the church. *Id.*

The petitioner submitted a translated copy of the beneficiary's transcript, which reflects that he attended the University of Oradea as a full-time student studying Baptist pastoral theology. The transcript indicates that the beneficiary attended the school from 1998 to 2001 but did not graduate. The petitioner also submitted a copy of a certificate of completion indicating the beneficiary completed the University of the Nations discipleship training school on March 1, 2002; however, there is nothing in the record to reflect the duration or course of instruction for this school.

The petitioner again failed to allege or submit evidence of work performed by the beneficiary from May 2002 to August 2003.

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 submits another letter from [REDACTED] who states that, pursuant to their church, the beneficiary volunteered his services with the church. [REDACTED] provided no other details of the beneficiary's work with the church and submitted no documentary evidence of the work performed by the beneficiary. See *Matter of Soffici*, 22 I&N Dec. at 165.

The petitioner again failed on appeal to allege or provide evidence of any work performed by the beneficiary from May 2002 to August 2003.

The evidence does not establish that the beneficiary was continuously engaged in a qualifying religious vocation or occupation for two full years prior to the filing of the visa petition.

The second issue is whether the petitioner has established that the beneficiary possessed the required two years membership in the denomination.

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.

According to the statement of July 31, 2003 signed by the pastor and secretary of "Holly Trinity" Pentecostal Church in Romania, the beneficiary was a member of the church until May 2002. On appeal, the petitioner submits a letter from the church secretary dated October 9, 2004, stating that the beneficiary was a member of the church until November 2002. According to the secretary:

[A] member who lives [sic] our church, outside Romania, remains a member three months after his departure. [The beneficiary] left Romania in August 2002, so he was a member until November 2002.

The petitioner submits no evidence to explain the different dates of membership provided by the Romanian church. 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).

In response to the RFE, the petitioner submitted a copy of a February 29, 2004 certificate of ordination, indicating that the beneficiary had been ordained a member of the petitioning organization. However, the record does not reflect when the beneficiary became associated with the petitioner church. The record contains no evidence of membership in any church or denomination after the beneficiary's membership in the church in Romania expired until, at best, the date of the ordination certificate.

On appeal, the petitioner states that the “Holy Trinity Pentecostal Church is of the same denomination as our Church.” Nonetheless, the petitioner submitted no documentary evidence to establish this fact. *Matter of Ho*, 19 I&N Dec. at 591-92.

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

[A] religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship and religious congregations, or comparable indicia of a bona fide religious denomination.

We note that the Church of God, with which the petitioner is affiliated, is of the Pentecostal faith; however, no evidence establishes that the “Holly Trinity” Pentecostal Church in Romania is a member of the Church of God, sharing, among other things, the same form of ecclesiastical government, creed, form of worship or codes of doctrine. Pentecostal faiths may entail various denominations such as the Pentecostal Church of God, the Church of God, or the Pentecostal Church.² The petitioner submitted no evidence that the “Holly Trinity” Pentecostal Church and the petitioning organization, although of the same religious faith, are of the same religious denomination.

The record does not reflect that the beneficiary was a member of the petitioner’s denomination for two full years preceding the filing of the visa petition.

The third issue to be discussed is whether the petitioner established that the position qualifies as that of a religious worker.

According to the regulation at 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 as a religious worker. 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 petitioner does not identify a specific position that the beneficiary is expected to fill. It describes the duties of the position as leading prayer meetings, leading church study groups, teaching the congregation “the

² See, e.g., the churches’ websites at www.churchofgod.cc; www.pcg.org/about_pcog.htm; and <http://www.upci.org/>.

weekly bible chapters,” teaching teen groups, preparing weekly sermons which “will include a review of the Romanian teaching for the week’s bible chapter, as well as the Romanian traditions for the week or the holiday,” and being responsible for all the church’s youth groups, and “preparation of specials [sic] sermons to be directed to the young audience with respect to the Romanian traditions of the Church.”

The petitioner does not indicate whether these duties are currently being performed or whether they have been performed in the past. The petitioner also submits no evidence that the duties are directly related to its religious creed, or that the position is defined and recognized by the Church of God. The petitioner submits no evidence that the position is traditionally a permanent, full-time salaried position within the Church of God.

The record does not reflect that the proffered position is a religious occupation or vocation within the meaning of the statute and regulation.

The fourth issue on appeal is whether the petitioner established that it had extended a qualifying job offer to the beneficiary.

The regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

The petitioner does not state the terms of employment for the position, including hours of work and remuneration. The petitioner has not shown that the alien would not be dependent on supplemental employment or the solicitation of funds for his support.

The evidence does not establish that the petitioner has extended a qualifying job offer to the beneficiary.

Beyond the decision of the director, the petitioner has not established that it had the ability to pay the beneficiary a 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.

As evidence of its ability to meet this regulatory requirement, the petitioner submitted copies of “account summaries” for the period of January 1, 2003 through December 31, 2003 and January 1, 2004 and June 29, 2004. The petitioner also submitted a copy of a chart comparison for its accounts for the same period.

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 petitioner had the continuing ability to pay the proffered wage as of the date the petition was filed. This deficiency constitutes an additional ground for denial of the petition and dismissal of the appeal.

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.