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U.S. Citizenship and Immigration Services

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[redacted]

FILE: EAC 02 148 54283 Office: VERMONT SERVICE CENTER Date: MAR 04 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, 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 or that the position qualified as that of a religious worker. The director further determined that the petitioner had failed to establish that it had extended a qualifying job offer to the beneficiary.

On appeal, counsel submits a brief.

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 March 30, 2002. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister throughout the two-year period immediately preceding that date.

In a letter dated March 22, 2002 submitted with the petition, Reverend [redacted] administrative bishop of the Iglesia de Dios in the Dominican Republic, stated:

> In the year 1996 the United Methodist Church sent to [the beneficiary] a work contract where they requested that his family and him to work in the Hispanic area where they preached at 689 Cranston Street Providence, Rhode Island (USA), where they were during the last five years working with the Hispanic community imparting biblical studies, ingles courses, music, social work with the community, bank of foods, giving out clothes, they worked in the buildings for elderly (housing) and he offered day care during the day to the parents of the town (sector).
>
> In the spiritual area, he organized groups in different homes where they imparted biblical studies and Theology classes, etc.
>
> He is currently working with the [petitioner's] Spanish Region as a Minister and Pastor for said movement.
>
> His duties are worship bible studies and visitations as a full time position.

Reverend Nouel did not state the source of the information he provided regarding the beneficiary's employment in the United States, and the petitioner submitted no evidence to corroborate the statements. 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).

In response to the director's request for evidence (RFE) dated October 28, 2002, the petitioner submitted a letter from the Iglesia Pentecostal Shekinah, Inc. in the Dominican Republic, in which the general secretary and the general pastor state that the beneficiary "was working in our ecclesiastic organization since 1990 until the middle of 1995, obtaining Orderly Minister's range in 1992 . . . Enclosed we remit a page of service or ministerial curriculum . . . which confirms his work . . . in our country." The "page of service" covers a span of years from 1986 to 2002. It reflects that the beneficiary entered the United States in September 1995. It also contains the following information:

> 1996 The [beneficiary] was hired by the United Methodist Church . . . where he was working during [sic] four years with Hispanic community, imparting biblical studies, English Classes, Music, Directing Banks of Food, carrying out visits to the buildings of elderly, and offering children's care during the day to the parents of the sector and other social help to the community. In the spiritual area, he organized Biblical cells of Study in the homes, visits to sick, etc.
>
> 2002 At the moment the [beneficiary] was hired by the Church of God Hispanic, to work in the territory of New England, with the Hispanic churches, as a Ministry and pastor of said organization. His job will be as a full time and he will be receiving a weekly salary of $400.00 dollars [sic], (this includes housing payments).

Reverend [redacted] and Reverend [redacted] did not state the source of their information regarding the beneficiary's work outside of their church and the petitioner again failed to provide documentary evidence to substantiate the statements made by the reverends. *See Matter of Treasure Craft of California, id.*

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 salaried. To hold otherwise would be contrary to the intent of Congress.

On appeal, counsel states that the beneficiary "began his service" with the petitioning organization in April 2001 as a "religious worker," and now "currently hold[s] the position of Assistant Pastor." Counsel submitted no evidence to corroborate his statements. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Further, the petitioner submits no evidence of the nature of the religious work performed by the beneficiary prior to his elevation to assistant pastor and submits no evidence of the date that the beneficiary became an assistant pastor.

The record contains copies of the beneficiary's 2000 and 2001 Form 1040, U.S. Individual Income Tax Return, that he filed jointly with his wife. The returns indicate that the beneficiary ran a business as a childcare provider, and that he and his wife listed their occupations as custodian and general worker. The record contains no evidence that the beneficiary was compensated as a religious worker during the two-year period of March 30, 2000 to March 30, 2002.

The evidence does not establish that the beneficiary was not dependent upon secular employment for his support during the qualifying two-year period and is insufficient to establish that he was continuously employed as a minister for two full years prior to the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m)(1) states that the alien must be coming to the United States at the request of the religious organization to work in a religious occupation.

According to the petitioner:

> This position requires five (5) daily hours from Monday through Friday and fifteen (15) hours a week for the direction of religious services including but [not] limited to Sunday School, visitations, evangelistic work, Doctrines and Sacraments. The [beneficiary] will also assist in the social and spiritual areas in the Christian Community of the Church of God in Providence, Rhode Island providing Theological Seminars.

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.

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.

On appeal, counsel states that a review of the documentation submitted describe duties "that are consistent with those normally associated with a full-time Pastor and/or Religious Worker." Nonetheless, the evidence does not establish that the duties of the proffered position are those of a minister as defined by the regulation. Merely calling the position that of a minister does not establish that it is minister within the meaning of the regulation or that it is that of a religious worker.

Further, while the determination of an individual's status or duties within a religious organization is not under CIS's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with CIS. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N, Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

The petitioner does not sufficiently identify the duties of the beneficiary as it relates to "evangelistic work, Doctrines and Sacraments." The petitioner also fails to identify the nature of the office work to be performed by the beneficiary, and the record does not reflect that these duties are primarily religious in nature. The list of duties as enumerated by the petitioner reflects arguably religious work that will encompass no more than fifteen hours per week. The evidence does not establish that the proffered job is primarily religious in nature.

The petitioner submitted no evidence to establish that the proffered position is defined and recognized by the governing body of the denomination or that it is traditionally a permanent, full-time, salaried position within the denomination.

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

The director further determined that, as the petitioner has not established that the proffered position is a religious occupation, the petitioner had not 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.

As noted above, in its December 12, 2002 letter, the petitioner states that the duties of the proffered position will entail working five hours daily in the office and fifteen hours a week "for the direction of religious services including but [not] limited to Sunday School, visitations, evangelistic work, Doctrines and Sacraments." The beneficiary is also to assist in the "social and spiritual areas" of the community. As discussed previously, the evidence is insufficient to establish that the proffered position is that of a religious worker within the meaning of the regulation.

The petitioner has not established that it has extended an offer to work in a religious occupation. Therefore, it has not extended a qualifying job offer to the beneficiary.

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 compensate the beneficiary at the rate of $350.00 to $400.00 per week, plus lodging. With the petition, the petitioner submitted an accountant's compilation report of the petitioner's financial statements as of August 31, 2001. As the compilation is based primarily on representations of management, the accountant can express no opinion as to whether they present fairly the financial position of the petitioner for that year. In light of this, limited reliance can be placed on the validity of the facts presented in the financial statements that have been submitted. No further supporting documentation is included in the record to reflect the assertions made by the accountant in the financial documentation, or contained within the unaudited financial statements.

The petitioner also submitted copies of four checks made payable to the beneficiary in the amount of $400.00 and drawn on the account of the Spanish Church of God in New Bedford, Massachusetts. The checks are dated in September, October and November 2002. The petitioner provides no evidence of its relationship to the Spanish Church of God.

The 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 evidence. This deficiency is an additional ground for dismissal of the appeal.

Further, the petitioner has failed to establish that the beneficiary possessed the required two years membership in the denomination prior to the filing of the visa petition.

The record reflects that the beneficiary has been associated with several denominations. According to the [redacted], the beneficiary was a member of that denomination from 1990 to 1995. In 1996, according to the timeline prepared by the [redacted], the beneficiary was hired

by the United Methodist Church, and in 2002 by the petitioner. The record contains no evidence of an affiliation between the [redacted], the United Methodist Church or the petitioner, who belongs to the Church of God denomination.

The record does not establish that the beneficiary was a member of the petitioner's denomination for two full years prior to the filing of the visa petition. This deficiency constitutes an additional ground for 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.