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

U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: MAR 16 2005
EAC 02 109 51844

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant 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.

Marie Johnson

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 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 assistant pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as an assistant pastor immediately preceding the filing date of the petition.

On appeal, counsel asserts that the petitioner has sufficiently explained the circumstances of the beneficiary's earlier employment.

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 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) 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." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate 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 February 6, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an assistant pastor throughout the two years immediately prior to that date.

We note that the beneficiary arrived in the United States on February 3, 2000, and would therefore had to have begun working almost immediately in order to have worked continuously for two years as of February 6, 2002. We further note that the beneficiary arrived under a B-1/B-2 visitor's visa, rather than an R-1 religious

worker visa, indicating that the position with the petitioning church had not been arranged prior to her arrival in the United States.

[redacted] pastor of the petitioning church, states that the beneficiary "has . . . served as a full-time pastoral assistant [for] more than 2 years continuously in Korea and this US local church." [redacted] states that the beneficiary will "perform solely religious duties with [a] current salary of $24,000./yr."

The petitioner's initial submission includes a copy of the beneficiary's Form W-2 Wage and Tax Statement, indicating that the petitioner paid the beneficiary $15,400 in 2001. The petitioner submitted no documentation of wages paid in 2000.

The director instructed the petitioner to submit further evidence to show that the beneficiary worked continuously during the two-year period ending February 6, 2002. In response, [redacted] repeats the claim that the beneficiary worked continuously for the petitioner, but the petitioner offers no new evidence to support that claim. [redacted] states that, in 2001, the beneficiary's "official salary was $20,000./yr" and she "donated her housing assistance portion of her salary" back to the church. [redacted] says nothing about the beneficiary's compensation during 2000.

The petitioner submits copies of the beneficiary's monthly paychecks, the earliest of which was issued March 25, 2001. (A check dated January 20, 2001 was misdated, having actually been issued in January 2002). Each check from 2001 is for $1,112.00. This figure, multiplied by 11, matches the net amount on the beneficiary's Form W-2, after subtracting taxes withheld. The beneficiary's pre-tax income would have been $1,400 per month, which annualizes to $16,800 per year. This amount is considerably less than $20,000 per year; the difference could possibly be explained by Rev. Chung's assertion that the beneficiary "donated her housing assistance portion of her salary."

The director, in denying the petition, found that the petitioner has not satisfactorily established that the beneficiary worked continuously throughout the entire 2000-2002 qualifying period. The director stated that the beneficiary's 2001 salary payments are much lower than the proffered wage of $24,000 per year, and that there is no evidence at all of such payments in 2000.

On appeal, counsel observes that the petitioner has already stated that the beneficiary's wages in 2001 were lower than in 2002 when the petition was filed. Furthermore, there is no requirement that the beneficiary had been earning the full proffered wage throughout the qualifying period. The fact that the petitioner paid the beneficiary less than $24,000 in 2001 is not, by itself, necessarily a disqualifying factor.

More serious is the absence of evidence that the beneficiary worked in 2000. Counsel states that the beneficiary was a B-1/B-2 nonimmigrant visitor when she began working for the petitioner, and therefore could not lawfully work for pay until she changed to R-1 nonimmigrant religious worker status. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel offers no corroboration for the assertion that the beneficiary worked without pay during 2000.

The director had requested evidence to cover the entire 2000-2002 qualifying period. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Counsel's assertion that the petitioner did not pay the beneficiary in 2000 does not satisfy or eliminate the petitioner's burden to show, by some alternative means, that the beneficiary worked as claimed during that time. Furthermore, case law does not establish that unpaid work normally constitutes qualifying experience.

See Matter of Varughese, 17 I&N Dec. 399 (BIA 1980), in which the observation that the alien was "not compensated" for work performed contributed to a finding that an alien "has not carried on the vocation of a minister."

For the above reasons, the petitioner has not submitted sufficient evidence to show that the beneficiary worked continuously as an assistant pastor throughout the two-year qualifying period ending February 6, 2002.

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.