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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

C1

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 19 2005
WAC 03 267 54917

IN RE: Petitioner: [redacted]
Beneficiary:

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.

Mari Johnson

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 self-petitioner seeks classification 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 professor of Christian education and dean of women at the International Theological Seminary. The director determined that the petitioner had not established that she had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

On appeal, counsel submits a brief and a copy of previously submitted 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 she 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 25, 2003. Therefore, the petitioner must establish that she was continuously working as an assistant professor of Christian education and dean of women throughout the two-year period immediately preceding that date.

In a letter dated September 18, 2003, [redacted] president of International Theological Seminary, stated that the petitioner had been engaged in theological education for more than 20 years, and that from 2000 to 2002, "her time has primarily been given to the work of ATA [Asia Theological Association] . . . At present, she is gainfully employed by this seminary as assistant professor of Christian education teaching courses in the area of education besides serving as Dean of women." [redacted] did not specifically state when the petitioner began working with the International Theological Seminary; however, he also stated that the petitioner was "coming to [the United] States under R-1 Status . . . [valid from] May 11, 2003, expiration date November 24, 2005." Dr. [redacted] did not indicate the petitioner's terms of employment.

In response to the director's request for evidence (RFE) dated August 4, 2004, the petitioner submitted a September 2, 2004 letter from Reverend [redacted] General Secretary of the Asia Theological Association (ATA), in which he stated that the petitioner had served as associate secretary for accreditation with the organization until June 2004, when her contract was not renewed. Reverend Tan further stated:

> [The petitioner] has been working for ATA since 1992 on a part-time basis . . . In August 2001, she started on a half-time basis with ATA, working the equivalent of 20 hours a week . . . She works and reports directly to the Secretary for Accreditation . . . From August 2001 to June 2003, she was receiving the equivalent of $250 a month, plus $100 a month more from churches that supported her ministry with ATA.
>
> She was assisting the Secretary for Accreditation in these ways:
>
> 1. Establishing the accreditation policies, procedures, and standards for all member schools.
> 2. Serving on accreditation teams for seminaries and schools to be visited.
> 3. Corresponding with all schools and receiving their annual reports.
> 4. Preparing manuals for visiting team members
> 5. Serving as educational consultant for schools.
> 6. Organizing and leading educational seminars.

The petitioner submitted copies of payment vouchers from the ATA, reflecting payments that she received in October 2001; April, July and October 2002; and March and September 2003. The petitioner also submitted a letter from [redacted] president of the Asian Seminary of Christian Ministries, Makati City, Philippines, who stated that the petitioner served as an educational consultant for its Master of Christian

Leadership (MACL) program, from June 6, 2002 to September 5, 2002, working 20 hours for week. The petitioner's responsibilities were to "oversee all aspects of the development of the MACL program, including preparing the "defining" document outlining the program's mission, goals, and course description; preparing a requisition list for books; writing the protocols and guidelines for each subject and the thesis requirements; preparing a student guide and materials kit for each course; and evaluating the developing leadership skills methodology and making recommendations for its future use in the MACL instruction. A "certification" from the organization's business manager, with accompanying check vouchers or other supporting documentation, indicates that the petitioner was paid 49,500 pesos for her consulting work, in addition to reimbursement of her expenses.

According to [redacted] in a letter dated October 15, 2004, the duties of the proffered position are as follows:

1. Teaching at least two courses each quarter, and one course in summer
2. Serving in various faculty committees . . .
3. Serving as academic advisor to a group of students . . .
4. Making herself available for student consultation.
5. Planning and organizing student activities for women.
6. Providing support and counseling referral to women students.
7. Assisting in the development of self-study for the accreditation application process with several entities
8. Preaching in chapel at least once a month.
9. Preparation of courses, evaluation of student achievement and submission of grades.
10. Writing publishable articles
11. Continuous professional development

[redacted] stated that the petitioner is expected to work 40 hours per week in the proffered position and that her current salary for the job is $28,200 plus benefits. The petitioner submitted a copy of her Form 1099-MISC, Miscellaneous Income, from the International Theological Seminary, reflecting that she received nonemployee compensation of $22,000 in 2003, and a copy of an August 2004 earnings statement reflecting gross pay year to date of $17,900.

The director determined that the petitioner had not established that she had been working in the same type of work as the proffered position for two full years immediately preceding the filing of the visa petition.

On appeal, counsel asserts that the director's determination "does not reflect the purpose and intent of the two year prior employment requirement of the law." According to counsel:

> The plain reading of the regulations does not lend to the interpretation of the USCIS that the beneficiary must have been performing the same religious work for the preceding two-year period. It is apparent that the requirement imposed by this regulation is that the beneficiary must have been performing religious work in the context of either the "vocation, professional work, or other work for the preceding two year period . . .
>
> The purpose and intent of such requirement is to accord special immigrant religious worker status to those beneficiaries who have demonstrated a prior and present commitment to and involvement in religious work. The specific details of such religious work are irrelevant. The objective of such requirement is to preclude eligibility for special immigrant religious worker status for those who have had no prior commitment to religious work. The requirement is a

> yard stick by which genuine and sincere religious work commitment is measured for the purpose of the I-360 petition. It is inconceivable that the law and regulations would deny religious worker status to a beneficiary who was a Christian missionary for the requisite two year period merely because that person's proffered position is not that of, say, pastor. [Emphasis in original.]

Counsel cites no authority for his expansive reading of the meaning and intent of the statute and regulation. Indeed, contrary to counsel's assertion, a plain reading of the governing law is that the alien seeking entry into the United States as a religious worker must have two years continuous experience in the religious vocation, profession or occupation for which he or she seeks entry. The statute at section 101(a)(27)(C), 8 U.S.C. § 1101(a)(27)(C), provides that the alien must be seeking entry in order to work for the organization in a professional capacity in a religious vocation or occupation and that the alien has been carrying on ***such*** vocation, professional work, or other work continuously for at least the 2-year period immediately preceding the filing of the visa petition. The regulation at 8 C.F.R. § 204.5(m)(3) requires that the petitioner must establish that, immediately prior to the filing of the petition, the alien has the required two years of experience in ***the*** religious vocation, professional religious work, or other religious work.

All religious work is not the same. While a Christian pastor may succeed as a missionary, there is no guarantee that a Christian missionary will succeed as a pastor. Congress made no provision for an alien to acquire a priority immigrant visa based on speculation of his or her success in a religious field for which he or she has no experience. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971); 8 C.F.R. § 103.2(b)(12).

The evidence does not establish that the petitioner taught any classes during the two years immediately preceding the filing of the visa petition, or that she has been involved in any way in the mentoring of young women seeking an academic religious education. The petitioner submitted no evidence that the duties of the proffered position are similar to the work that she has performed in the immediate two years prior to the filing of the visa petition.

The director further determined that, even if the work was similar to that of the proffered position, the petitioner has not established that she was continuously engaged in that work for two full years prior to the filing of the petition. The letter from the ATA clearly indicates that the petitioner worked part-time with the organization. The petitioner's consulting work with the Asian Seminary of Christian Ministries was also on a part-time (20 hours per week) basis. The director determined that as the petitioner did not establish that she worked in full-time employment during the two years preceding the filing of the visa petition, she did not establish that she was continuously employed during the qualifying two-year period.

On appeal, counsel argues that the Citizenship And Immigration Services (CIS) interpretation of the statute to require full-time employment is erroneous and gains no credibility simply because it is "long held."

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 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. 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.

Counsel argues alternatively that, although the petitioner worked only part time for the ATA, with her consultancy work, she has "clearly" worked full time. As evidence, the petitioner submits a copy of her curriculum vitae and travel history. As previously discussed, the petitioner worked 20 hours per week for the Asian Seminary of Christian Ministries from June to September 2002. According to her curriculum vitae, the petitioner worked as an educational consultant with Light of the World Community Church from August 2001 to May 2002, working eight hours per week. The petitioner, however, submitted no corroborating evidence of her work for the Light of the World Community 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, even with such evidence, the addition of the work for the Light of the World Community Church would establish that the petitioner worked only 28 hours per week from September 2001 to May 2002. Consistent with the requirements of the U.S. Department of Labor's Bureau of Labor Statistics and other regulations pertaining to employment based visa petitions, CIS holds that employment of less than 35 hours per week is not full time employment.

The evidence does not establish that the beneficiary was continuously employed as an associate professor of Christian education and dean of women for two full years prior to the filing of the visa petition.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.