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U.S. Citizenship
and Immigration
Services

01

[Redacted]

FILE:

WAC 04 061 51771

Office: CALIFORNIA SERVICE CENTER

Date: **SEP 19 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.

Maui 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 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 pastoral assistant. 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, 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 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 December 31, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a pastoral assistant throughout the two-year period immediately preceding that date.

In his November 21, 2003 letter accompanying the petition, Reverend [REDACTED] the petitioner's senior pastor, stated:

[The beneficiary] has been employed as a Pastoral Assistant under the R-1 employment authorization at the [REDACTED] from August 1999 to January 2003. From January 2003 until she joined [the petitioning organization, the beneficiary] has been working as a Pastoral Assistant at the Olympic Presbyterian Church in Los Angeles . . .

Her duties will include assisting the pastor with worship services, pastoral care, congregational visitations, coordinating music praise worship services, leading youth Bible studies, leading youth retreats and coordinating Youth Christian Education programs. She will receive a monthly salary of \$1,500.00.

As evidence of the beneficiary's past employment with the petitioner, the petitioner submitted a copy of the beneficiary's year 2002 Form 1040, U.S. Individual Income Tax Return, on which she reported \$14,400 as income from "missionary fund." The beneficiary listed her occupation as "religious worker." The Form 1040 was not signed or dated by the beneficiary; however, the paid preparer dated the form May 23, 2003. With the petition, the petitioner submitted no evidence that the Form 1040 was filed with the Internal Revenue Service (IRS), and submitted no other documentary evidence of the beneficiary's work during the qualifying two-year period. 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)).

In a request for evidence (RFE) dated November 26, 2004, the director instructed the petitioner to:

Provide evidence of the beneficiary's work history beginning December 31, 2001 and ending December 31, 2003 only. Provide a breakdown of duties performed in the religious occupation for an average week. Include the employer's name, specific job duties, the number of hours worked, remuneration, level of responsibility and who supervised the work. Ideally, this evidence should come in a way that shows monetary payment, such as W-2 forms, pay stubs, or other items showing the beneficiary received payment. Documentation showing the withholding of taxes is good evidence. However, you may also show payment through other forms of remuneration. If any work was on a volunteer basis, provide evidence to show how

the beneficiary supported him or herself (and family members, if any) during the two-year period or what other activity the beneficiary was involved in that would show support.

In response, the petitioner submitted a February 4, 2005 letter from Reverend Shin, who stated that the beneficiary "was employed" as a pastoral assistant for three churches during the qualifying two-year period: the New Heaven Presbyterian Church from December 2001 to January 2003, the Olympic Presbyterian Church from January to July 2003, and the petitioning organization beginning in August 2003. The petitioner stated that the beneficiary received \$1,200 monthly compensation in 2002 and 2003, and currently earned \$1,500. The petitioner submitted copies of weekly work schedules and job descriptions for the three churches; however, the evidence does not indicate who prepared these work schedules or when they were prepared. The record does not include any evidence from the New Heaven Presbyterian Church or the Olympic Presbyterian Church verifying the beneficiary's duties or terms of employment. *See id.*

The petitioner submitted a copy of a 2003 Form 1099-MISC, Miscellaneous Income, that it issued to the beneficiary reflecting "other income" of \$14,400 from the petitioner. However, this document conflicts with the petitioner's assertion that the New Heaven Presbyterian Church and the Olympic Presbyterian Church also employed the beneficiary during the first seven months of the year. 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. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The petitioner also submitted a copy of the beneficiary's Form 1099-MISC for 2004, reflecting that the petitioner paid her \$18,000 in "other income" for the year. Neither of the Forms 1099-MISC or the beneficiary's year 2002 Form 1040 indicates that the beneficiary's income was compensation for work performed.

The petitioner submitted a copy of a January 25, 2005 Letter 1722 from the IRS showing that the beneficiary filed income tax returns for 2002 and 2003 reporting adjusted gross income of \$14,400 in each year. This letter, however, does not show the source of the beneficiary's reported income. The record contains no other documentary evidence of any work performed by the beneficiary for the petitioner or for any other church during the qualifying two-year period. *Matter of Soffici*, 22 I&N Dec. at 165.

The director denied the petition, stating that the petitioner failed to produce evidence that the beneficiary was engaged in full-time, salaried employment prior to her employment with the petitioner. We concur. The petitioner submitted no evidence of any work performed by the beneficiary with her alleged two previous employers.

On appeal, counsel states that the petitioner provided evidence of salaried employment in the form of the IRS letter.

The petitioner submitted questionable evidence of compensation received by the beneficiary for work performed. While stating that the beneficiary began working for the petitioning organization in August 2003, the petitioner submitted a copy of a Form 1099-MISC indicating that it paid her for a full year's work. The evidence does not establish the source of the beneficiary's reported income for 2002. The petitioner submitted no evidence that the beneficiary received compensation for her alleged services with the New Heaven or Olympic Presbyterian Churches in 2002 or 2003, and no evidence that the income reported by her from the petitioning organization was for services rendered. Further, the petitioner submitted no evidence that the beneficiary ever worked for the New Heaven or Olympic Presbyterian Churches.

Counsel also states that there is no legal requirement that “prior salaried employment be presented for an I-360 petition.”

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.

As discussed in depth above, the petitioner submitted no evidence of the beneficiary’s work with the New Heaven Presbyterian Church or the Olympic Presbyterian Church. Although the beneficiary reported income in 2002, the record does not establish the source and nature of that income.

The record does not establish that the beneficiary was continuously employed as a pastoral assistant for two full years preceding the filing of the visa petition.

Beyond the decision of the director, the petitioner has not established that the position qualifies as that of 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 submitted no evidence that the proffered position is defined and recognized by its governing body, or that the position is traditionally a permanent, full-time, salaried position within the organization. Although the petitioner alleged that the beneficiary had worked in a similar position in two other churches during the relevant time frame, it submitted no evidence to corroborate this employment. The record does not establish that the position exists outside the petitioning organization or that it existed within the petitioning organization prior to the beneficiary assuming the position.

The record does not establish that the position qualifies as that of a religious occupation within the meaning of the statute and regulation. For this additional reason, the petition may not be approved.

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.