



U.S. Citizenship
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FILE:

WAC 02 041 50833

Office: CALIFORNIA SERVICE CENTER

Date: MAY 25 2006

IN RE:

Petitioner:

Beneficiary:

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:

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO dismissed the petitioner's appeal. The petitioner has since filed a motion to reopen. Pursuant to a stipulation¹ in federal court proceedings (No. [REDACTED] N.D. Cal., March 16, 2006), the motion will be granted. The AAO will affirm its prior decision and the revocation will remain in effect.

The petitioner is a seminary. At the time of filing, it sought 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 dean of students and director of the Institute of Global Theology. The director determined that the petitioner had not established that it qualifies as a tax-exempt religious organization, or that the beneficiary had the requisite two years of continuous work experience in the position sought immediately preceding the filing date of the petition.

The AAO withdrew the director's first finding, and held that the petitioner qualifies as a tax-exempt religious organization. The AAO affirmed the director's second finding regarding the beneficiary's past experience in the position.

On motion, the petitioner submits copies of various documents, most of them previously submitted, and arguments from counsel.

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In Matter of Estime, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*. The approval of a visa petition

¹ We note here that the stipulation was limited to an agreement to reopen and reconsider the proceeding; there was no stipulation as to the outcome of the adjudication.

vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 582.

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) 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 experience in the religious vocation, professional religious work, or other religious work. The petition was filed on November 9, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of the proffered position throughout the two years immediately prior to that date.

8 C.F.R. § 204.5(m)(2) offers the following definitions:

Minister means an 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.

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

These definitions are relevant because of debate as to whether the beneficiary has been acting as a minister or in a religious occupation. The difference between the two is qualitative, rather than simply one of degree.

The AAO's previous decision of March 1, 2005, is already part of the record of proceeding, and therefore we need not repeat this decision in its entirety here. We shall, however, review salient points of that decision before proceeding to counsel's response.

In a letter accompanying the initial filing, Rev. [REDACTED] president of the petitioning seminary, stated:

As Director of the Institute of Global Theology, [the beneficiary] will architect the new program, organize support for the program among churches in the U.S. and in other countries and plan educational events for pastors and pastoral students in the U.S. and worldwide. In addition, the Director will administer funds raised for the Institute for Global Theology.

As Dean of Students, [the beneficiary] will provide on campus pastoral support and care to students and their families, will recruit pastoral students nationwide for [the petitioner], and will aid students in planning their specific theological program.

Finally, as with all members of our faculty, [the beneficiary] will also serve as a speaker and preacher on behalf of [the petitioner] and the Institute for Global Theology. . . .

[The beneficiary] was ordained a Baptist minister in 1988. . . .

In August 1999, [the beneficiary] entered the U.S. on an F-1 student visa and began his Masters in Theology. . . . While in the program, [the beneficiary] continued to perform his duties as a minister of religion. He graduated from [the petitioning seminary] this month and is currently in F-1 practical training working in our Seminary.

In July 2002, the beneficiary completed Form G-325A, *Biographic Information*. On this form, under "occupation," the beneficiary indicated "master's program" from August 1999 to May 2001, and "pastor" at the petitioning seminary from May 2001 onward. Also in July 2002, Rev. [REDACTED] stated that the beneficiary is director of the petitioner's Institute of Global Theology and "also serves as a pastor at our seminary and as a speaker and preacher." Rev. [REDACTED] did not indicate that the beneficiary was, or had been, the petitioner's dean of students. A Form W-2 wage and Tax Statement shows that the petitioner paid the beneficiary

roughly half of the proffered wage, consistent with the beneficiary's own assertion that his employment began halfway through the calendar year.

Other materials in the record indicate that, by late 2002, the beneficiary had assumed a new position as director of the petitioner's Global Prophetic Network. In a letter dated September 5, 2003, Rev. [REDACTED] described this new position, but did not state that the beneficiary was still the petitioner's dean of students or the director of the Institute of Global Theology. The duties of the newly claimed position do not appear to closely match those of the previously described positions. The AAO concluded: "Given the multiple modifications in the beneficiary's job description, it is not entirely clear in what occupation the petitioner actually seeks to employ the beneficiary."

In response to the director's notice of intent to revoke, counsel argued that the change in the beneficiary's duties was not disqualifying, because "[t]he regulations do not require a religious professional to have been performing for two years that exact professional vocation for which [he] now seeks immigrant benefits. In other words, the regulations require only that the religious professional have been engaged in professional religious work for the two years prior to the filing of the immigrant visa petition."

The AAO, considering counsel's response, stated:

We do not share counsel's interpretation of the regulations. The regulations at 8 C.F.R. § 204.5(m)(1) and (3)(ii)(A) require that the beneficiary must have carried on *the* vocation or occupation, rather than *a* vocation or occupation, indicating that the work performed during the qualifying period should be substantially similar to the intended future religious work. The underlying statute, at section 101(a)(27)(C)(iii), requires that the alien "has been carrying on such . . . work" throughout the qualifying period. An alien who seeks to work in occupation A has not been carrying on "such work" if employed in occupation B for the past two years. We believe that the two-year experience requirement becomes meaningless if interpreted to allow an alien into a specific occupation in which that alien has no experience whatsoever.

Counsel discussed various positions that the petitioner had held prior to 1999. The AAO observed: "the statute and regulations clearly limit consideration to the two years immediately preceding the November 2001 filing date. The qualifying period did not begin until November 1999, several months after the beneficiary left South Africa, and therefore his activities in that country lie outside the scope of our consideration here."

The AAO also acknowledged the beneficiary's 1988 ordination, but stated:

it does not follow that the beneficiary has continuously performed the duties of ordained clergy since that time. The standard is not whether the beneficiary was ordained more than two years before the filing date, but whether he was carrying on the vocation of a minister throughout the qualifying period. . . .

[Not] every religious activity undertaken by [an ordained minister is necessarily] inherent to, or consistent with, the vocation of a minister. The job offered to the beneficiary is not principally a pastoral position in which the beneficiary would undertake the usual duties of ordained clergy. Rather, the beneficiary's main duties would be as an official of a theological seminary. While one could make a very strong case that such duties constitute a religious occupation, they are not congruent with the duties of a minister. Rev. Russell's initial job offer letter stated "we extend an offer of employment to [the beneficiary] for the dual position of Dean of Students and Director of the Institute of Global Theology. In addition, the beneficiary will serve as a pastor at our seminary." This wording suggests that pastoral duties are ancillary, rather than central, to the position as originally described. The petitioner asserts that ordination is a necessary qualification for the position, but it does not follow that the position is essentially that of a pastor. Furthermore, 8 C.F.R. § 204.5(m)(1) indicates that, if an alien seeks to enter the United States in order to work as a minister, then that alien "must be coming to the United States *solely* for the purpose of carrying on the vocation of a minister" (emphasis added). Here, the beneficiary seeks to work as a minister and as an administrative official of a seminary.

The director revoked the approval of the petition, stating: "it appears that the beneficiary has not been performing the duties on a full-time basis as a Dean of Students and Director of the Institute of Global Theology for the two-year period immediately preceding the filing of the petition."

In dismissing the appeal, the AAO stated:

The record shows that the beneficiary was not a dean of students or director of the Institute of Global Theology during the qualifying period, nor was he performing comparable duties under some other title.

The petitioner has not overcome this ground for revocation, and therefore the revocation stands. We stress that this is not a permanent barrier to eligibility; it will not be an impediment at such time as the beneficiary has been performing essentially the same duties for two years, and the petitioner seeks to engage the beneficiary in those *same* duties in the future. (Considering that the petitioner apparently employed the beneficiary as dean of students and director of the Institute of Global Technology for less than a year and a half before giving him a new title with new responsibilities, it does not appear from the record that the beneficiary's work in the position described in 2001 would form a solid foundation for a future petition.)

On motion, Rev. [REDACTED] states: "The Institute of Global Theology, a center within our seminary, was renamed the Global Prophetic Network to better reflect its mission to develop a network of spiritual leaders committed to the prophetic ministry of justice." This indicates that what appeared to be a change in the beneficiary's duties was, in fact, simply a change in title owing to the renaming of an organizational component.

Nevertheless, the change from the Institute of Global Theology to the Global Prophetic Network was not a cited ground for revocation. The director's original notice of revocation did not mention the change at all. The AAO had noted the change in a parenthetical observation, already quoted above, and the AAO had also stated that, given the change, "it is not entirely clear in what occupation the petitioner actually seeks to employ the beneficiary." These were peripheral observations.

More central was the AAO's finding that "the beneficiary was not a dean of students or director of the Institute of Global Theology during the qualifying period, nor was he performing comparable duties under some other title." This is consistent with the director's finding that "it appears that the beneficiary has not been performing the duties on a full-time basis as a Dean of Students and Director of the Institute of Global Theology for the two-year period immediately preceding the filing of the petition."

On motion, the petitioner does not contest this core finding. Instead, counsel states that the positions offered to the beneficiary "are in furtherance of, and completely connected and related to, [the beneficiary's] vocation as a minister." Counsel had previously offered essentially the same argument, to which the AAO responded: "The job offered to the beneficiary is not principally a pastoral position in which the beneficiary would undertake the usual duties of ordained clergy. Rather, the beneficiary's main duties would be as an official of a theological seminary. While one could make a very strong case that such duties constitute a religious occupation, they are not congruent with the duties of a minister." Counsel seems to argue that, while the duties of a worker in a religious occupation must be fairly consistent throughout the two-year qualifying period, those of a minister need not be, and therefore if the petitioner can establish that the beneficiary is and has been a minister, then the director's core finding would cease to be relevant and the approval would be reinstated. In considering this argument, we observe that the regulatory definition of a "minister" is not simply a person who has been ordained and who subsequently performed religious work. The definition involves a particular set of duties in addition to the past act of ordination.

The petitioner submits a new letter from Rev. [REDACTED] who states that the petitioner continues to intend to employ the beneficiary as described in the initial petition. Rev. Russell also states:

The vocation of minister can include a variety of specific functions, all consistent with our religious calling. . . . The vocation of minister is not confined to pastoring in a local church. . . .

For two years, from September 1999 to May 2001, [the beneficiary] pursued his vocational studies while also preaching at the seminary and in the various Baptist churches served by our seminary.

The AAO, in its prior dismissal notice, has already addressed the claim that the beneficiary acted as a minister during his studies. The AAO cited to a Board of Immigration Appeals (BIA) precedent decision involving a minister who had been a student during the qualifying two-year period. Specifically, the AAO observed that, in the original description of the job offer, the petitioner had stated that the beneficiary "continued to perform his duties as a minister of religion" while he was pursuing his full-time studies, but the petitioner had offered no indication that the beneficiary did so on a full-time, compensated basis. The AAO noted the similarities between this fact pattern and that of *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980). The BIA found, in

Varughese, that an alien did not accumulate continuous experience as a minister while he was a full-time student and a part-time, unpaid church worker.

In the present proceeding, there are several indications (including tax records and the beneficiary's own statements) indicating that the beneficiary was not employed during the first eighteen months of the qualifying period. The petitioner, on motion, does not contest this finding, and counsel stipulates that the beneficiary was a "full-time" student from 1999 to 2001. The new letter submitted on motion does not resolve any of these issues. The AAO has cited binding case law that indicates that unpaid, part-time ministerial work does not constitute qualifying continuous experience as a minister. Repeating the assertion that the beneficiary was "preaching" during his studies does not nullify the precedential force of *Varughese*.

If an individual were working full-time as a minister, concurrent seminary study would not interrupt that work. If the individual were not working full-time as a minister, however, such study would not take the place of actual ministerial work. Counsel maintains that the beneficiary "served as a pastor and preached" during the course of his studies, but the petitioner has offered no claim, and certainly no evidence, that the beneficiary preached full-time during that period. There is, likewise, no evidence that the petitioner compensated the beneficiary prior to May 2001. **These facts appear to parallel those in *Varughese*.** Although the AAO had cited *Varughese* in its March 1, 2005 decision, counsel does not mention *Varughese* at all on motion, let alone attempt to distinguish the present matter from *Varughese*.

Counsel cites *Matter of Z-*, 5 I&N Dec. 700 (CO 1954), which contains the following passage: "The fact that a priest engages in a course of study in the furtherance of his vocation does not support a conclusion that he has abandoned his calling as a minister or that he has taken any action other than that required of him as a minister or that he has engaged in an activity inconsistent with the vocation of a minister." *Id.* at 703. The decision in *Z-* addresses the question of whether religious studies interrupt the work of a minister. The decision in *Varughese* addresses a different question, specifically whether unpaid, part-time religious work by a full-time student constitutes continuous work as a minister. To whatever extent that *Z-* and *Varughese* might overlap and conflict with one another, the more recent precedent decision (*Varughese*) supersedes the older decision.

Also, when viewed in context, the cited passage from *Matter of Z-* suggests a narrow application:

It is conceded that when a priest has been ordained as such in the Catholic Church, he is required under canon law to celebrate holy mass daily, dispense the sacraments and guide the spiritual lives of those whom he serves and that he is a minister of a religious denomination as contemplated by section 101(a)(27)(F)(i). The fact that a priest engages in a course of study in the furtherance of his vocation does not support a conclusion that he has abandoned his calling as a minister or that he has taken any action other than that required of him as a minister or that he has engaged in an activity inconsistent with the vocation of a minister. . . . It is represented that a priest teaching in a boarding school also says daily mass, hears confessions, does youth guidance work, and on Sundays helps with religious services in neighboring parishes.

The analysis in *Z-* rests on specific factors, such as a priest's daily obligations under canon law, which the petitioner has not shown to apply to Baptists. In *Z-*, the Central Office quoted the petitioner's argument that the

same logic regarding daily obligations applies to “all religious denominations,” but there is no indication that the Central Office accepted this broad reading. Instead, the final finding refers repeatedly to “a priest” rather than “a minister.” This deviation from the statutory term “minister,” along with the specific reference to “canon law,” indicates a narrow scope for the finding.

We have never disputed that the beneficiary is qualified to act as a minister. At the same time, the petitioner has not demonstrated that the primary activities of a dean of students and director of the Global Prophetic Network are inherently ministerial in nature. Also, whether the position offered to the beneficiary is ministerial or a religious occupation, the beneficiary was not performing those duties (“such . . . work”) continuously throughout the qualifying period. Whether the position offered is that of a minister or a religious occupation, the beneficiary was not performing the duties of that position continuously during the qualifying period. As the AAO has held previously, the evidence is entirely consistent with the holding that the beneficiary was a student and part-time unpaid pastor until May 2001, and that the beneficiary subsequently assumed paid duties in a religious occupation at the petitioning seminary. We are not persuaded by counsel’s argument that a broad reading of the term “minister” would permit a finding of eligibility.

ORDER: The AAO’s decision of March 1, 2005 is affirmed.