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U.S. Citizenship and Immigration Services

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MAR 2 1 2007

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:
EAC 04 139 53258

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.

Mari Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is "the only Reform Jewish Temple in Puerto Rico," according to its President, Arnold J. Gendelman. The petitioner 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 its temple school and religious activities coordinator. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a temple school and religious activities coordinator immediately preceding the filing date of the petition.

On appeal, the petitioner submits new letters and documents from various sources. Counsel argues that the beneficiary's prior experience in Argentina establishes her eligibility.

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 April 14, 2005. Therefore, the petitioner must establish that the beneficiary was

continuously performing the duties of a temple school and religious activities coordinator throughout the two years immediately prior to that date.

In an introductory letter, [redacted] describes the beneficiary's work in the future tense, with no clear assertion that the beneficiary had already begun her duties at the petitioning temple. [redacted] of Baltimore, Maryland, states: "During my time as rabbi of [the petitioning temple], it would have been impossible for me to function effectively without the assistance and guidance of" the beneficiary. [redacted] does not specify when his and the beneficiary's work at the petitioning temple overlapped. Later submissions indicate that [redacted] works at the petitioning temple for six weeks a year.

A copy of the beneficiary's résumé only goes up to 2000, when the beneficiary worked in a secular position as an 11th grade art teacher in Argentina. The beneficiary lists numerous positions as an art teacher between 1985 and 2000.

[redacted], Administrator of the Jewish Community Center of Puerto Rico at Shaare Zedeck Synagogue (Shaare Zedeck-JCC), states in a letter dated May 17, 2004 that the beneficiary "has been helping as a volunteer during this year 2003-2004 in our Hebrew School. She has been teaching Hebrew to children at 3rd and 4th grade levels. We have a school of 35 students divided in 5 levels from the age of 7 to 13." The beneficiary's volunteer work teaching Hebrew to approximately 14 children is not an occupation, and the small number of students suggests a part-time responsibility.

In a letter dated March 27, 2004, several officials of [redacted], Argentina, state:

> The Jewish Community of Bariloche started as a non-profit organization more than 20 years ago. . . .
>
> [The beneficiary] has been a founder and one of the first members to take an interest in the Jewish education of the children. She became a teacher in Hebrew and Jewish tradition and soon after was involved in the organization taking the rol[e] of a Principal.

Other materials in the record indicate that the beneficiary left Bariloche in 2001, roughly four years before the filing date of the petition.

On July 22, 2005, the director requested "evidence that establishes that the beneficiary has the continuous full-time experience" throughout the two-year qualifying period. In the notice, the director observed: "Service records indicate the individual was initially admitted as a nonimmigrant H-4, spouse of an H-1 on August 8, 2003. . . . Individuals in H-4 status may not work." The director also noted that the beneficiary changed to R-1 nonimmigrant religious worker status on May 25, 2004.

In response, the petitioner has submitted additional witness letters. [redacted] states: "As permanent Rabbi at Shaare Zedeck-JCC, San Juan, Puerto Rico I got the chance to meet [the beneficiary] three years ago during services in my Congregation. Then she was volunteer Hebrew teacher in our school for one year, and we were very sorry to loose [*sic*] her." The October 12, 2005 date of [redacted]'s letter

places the beneficiary at Shaare Zedeck-JCC from 2002 to 2003, whereas [redacted] had previously placed the beneficiary at Shaare Zedeck-JCC from 2003 to 2004; [redacted]'s letter was dated during the 2003-2004 school year, and referred to "this year," making it extremely unlikely that [redacted] was confused or mistaken about the dates of the beneficiary's involvement. The two witnesses agree, however, that the beneficiary was a "volunteer." Neither witness has indicated that the beneficiary worked full time at Shaare Zedeck-JCC.

[redacted] identifies herself by the title "Hebrew School Director." The letterhead of her letter reads "Isidore Topp Religious School," but she does not name that school in her letter. She states:

> The Hebrew School of the Jewish Community Center of Puerto Rico is a non formal education organization that provides Jewish education to children in grades Kinder[garten] through 7th. . . .
>
> [The beneficiary] worked as a volunteer teacher with our Hebrew School during the Second Semester of the 2003-2004 academic years. During this period of time, [the beneficiary] taught grades fo[u]rth and fifth.

[redacted] in his second letter, repeats the assertion that the beneficiary's "assistance and guidance" allowed [redacted] "to function effectively" at the petitioning temple. With no indication as to when this work took place, [redacted]'s letters have negligible value as evidence of the beneficiary's work during the 2003-2005 qualifying period.

[redacted] attests to his own work with the beneficiary, but he also indicates that his work at the petitioning temple began on September 28, 2005, several months after the petition's filing date. His work with the beneficiary, therefore, falls well outside the qualifying period.

The director denied the petition on January 12, 2006, stating that the evidence of record does not show that the beneficiary performed qualifying religious work continuously throughout the two-year qualifying period. On appeal, counsel states:

> The beneficiary has in excess of 15 years of experience in the religious occupation and over two years of that period is full-time work for the occupation. In particular, as one of the founders of Comunidad Israelita de Bariloche . . . the beneficiary provided services in excess of the standard "full-time" concept . . . to organize and start-up the Jewish community and the school in Bariloche. Moreover, since May 25, 2004, the alien is the beneficiary of an R-1 visa requested by the petitioner for the same occupation and is employed full-time.

The beneficiary's work at Comunidad Israelita de Bariloche ended in 2001, more than two years before the petition's filing date, and therefore such work cannot help to meet the statutory requirement. The statute and regulations do not simply require at least two years of experience; they specify that these two years must immediately precede the application for benefits (*i.e.*, the filing of the petition). Here, the relevant period spans from April 2003 to April 2005.

The petitioner submits letters from rabbis based on the United States mainland, attesting to the beneficiary's skills and qualifications. Because these rabbis worked with the beneficiary only for a few weeks a year, they were not, and do not claim to have been, in a position to attest to the beneficiary's continuous work throughout the qualifying period. Furthermore, the rabbis do not assert that the beneficiary was a paid, full-time temple employee during the time they worked with her.

No witness states precisely when the beneficiary began working for the petitioner. We note that the beneficiary's R-1 nonimmigrant religious worker visa did not permit her to work for the petitioner until May 25, 2004, at which time more than half of the two-year qualifying period had already elapsed. We are left, therefore, with vague letters and scant documentation to establish the extent of the beneficiary's religious work during the qualifying period. The available materials are consistent with a finding that the beneficiary was a part-time volunteer Hebrew teacher at some point in 2003 and 2004. Part-time volunteer work is not continuous experience. *See Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

The record fails to establish that the beneficiary was in the United States throughout the entire qualifying period. [redacted], in late 2005, stated that he met the beneficiary "three years ago during services in my Congregation," placing the beneficiary at [redacted] in late 2002. Other letters from [redacted] however, are not consistent with that timeline. In the denial notice, the director stated that the beneficiary "was initially admitted . . . on August 8, 2003." The petitioner, on appeal, does not dispute this finding or submit documentary evidence placing the beneficiary in the United States before that date. Thus, there is not even any certainty as to where the beneficiary was in April 2003, let alone what kind of work she was doing at the time. Despite several opportunities to do so (in the initial filing, in response to the request for evidence, and on appeal), the petitioner has never presented a complete or consistent timeline for the beneficiary's activities during the two years immediately before April 14, 2005.

Beyond the above factors, we note that the statute and regulations cited above require the beneficiary to have been a member of the prospective employer's religious denomination throughout the two-year qualifying period. Experience gained outside the denomination, therefore, is problematic.

As noted previously, the petitioner is identified as "the only Reform Jewish Temple in Puerto Rico," which, by definition, necessarily means that other Jewish congregations in Puerto Rico do not belong to the Reform tradition. Before the beneficiary became involved with the petitioning temple, she worked at S[redacted] J[redacted] Materials in the record identify S[redacted] as "a Conservative Jewish congregation." Thus, even if the beneficiary's volunteer work at Shaare Zedeck-JCC counted as qualifying experience, which it does not, it would not show continuous experience within the prospective employer's religious denomination.

If the beneficiary was a Reform Jew throughout the two-year qualifying period, then she spent much of the qualifying period at synagogues outside of her denomination. If, on the other hand, the beneficiary was a Conservative Jew during her time at the Conservative Jewish Shaare Zedeck-JCC, then she was not a member of the petitioner's Reform Jewish denomination throughout the two-year qualifying period. Either way, these circumstances raise statutory and regulatory obstacles to a finding of eligibility and reinforce the director's

finding that the petitioner has not shown that the beneficiary meets the statutory and regulatory requirement of two years of continuous experience immediately preceding the filing date. We therefore affirm that finding.

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.