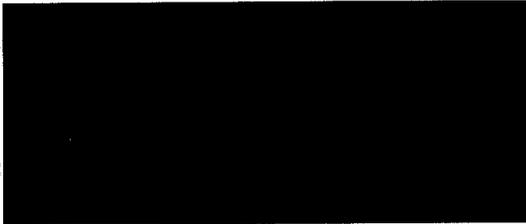


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FILE: [REDACTED]
LIN 03 201 50016

Office: NEBRASKA SERVICE CENTER

Date: APR 26 2005

IN RE: Petitioner: [REDACTED]
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:



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, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska 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 minister. The director determined that the petitioner had not established that it had extended a qualifying job offer to the beneficiary.

On appeal, counsel submits a brief and additional 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 regulation at 8 C.F.R. § 204.5(m)(4) states, in pertinent part, that:

Job offer. The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

In a letter dated June 9, 2003, Mr. [REDACTED], district supervisor of the Chicago District of Foursquare Churches, stated:

[The beneficiary] will receive a salary set by the church council of the Chicago Foursquare Church. The salary will be paid from the free-will offerings and tithes of the parishioners given during church services. There are no direct solicitations for donations to support the pastor, only the normal scriptural encouragement given to all Christians to honor the Lord through their faithful giving to meet the expenses of the church.

In response to the director's request for evidence (RFE) dated October 31, 2003, [REDACTED] further explained:

This is traditionally a full-time leadership position. This position can be salaried, and the local church can afford to do so . . . Foursquare polity [sic] does not allow for any minister to receive a "guarantee" of salary (Bylaw 14.5). Each [REDACTED] church determines the amount it is able to pay to its clergy based upon the financial strength of the congregation. Grace Pentecostal [REDACTED] Church is a financially strong congregation. We anticipate that the church will have no difficulty meeting the support needs of [the beneficiary] The Church Council has budgeted \$10,000 for his salary; this amount is within the budget capability of the church. The salary will be paid from the free-will offerings and tithes of the parishioners. [Emphasis in the original.]

The petitioner's bylaws at paragraph 14.5 states:

COMPENSATION. The amount of compensation due the pastor of a [REDACTED] church shall be established by the church council, and shall be paid only to the extent the church receives sufficient tithes and offerings to pay the church's other obligations, and, if so, only to the extent of the balance of the church's funds received during the pastor's employment. The pastor shall expect no additional compensation from the church except upon the prior approval of the church council and the concurrence of the district supervisor.

The director determined that, as the petitioner stated that the church had budgeted \$10,000 for the pastor's compensation from free-will offerings, the compensation was not a salary but rather a donation. As such, the director determined, the petitioner had not established that it was capable of providing a specific, permanent, full-time salary to the beneficiary without depending on the congregation's offerings.

The fact that the pastor's compensation is derived from tithes and offerings is not contrary to the requirements of the regulation. The main source of income for most churches is the offerings and tithes given by the congregation. The petitioner stated in its letter of June 9, 2003, that no special request for donations for the pastor's salary is made.

We do find, however, that the petitioner has not clearly established that the beneficiary will not be dependent upon supplemental employment for his financial support. The church's bylaws are unambiguous: the pastor is paid after all other church expenses are paid. The pastor is not guaranteed any compensation at all. If the church does not receive sufficient offerings from its members, the pastor will not be paid. The record does not

reflect how the beneficiary will be expected to support himself and his family in the absence of a specific level of financial support from the church.

On appeal, counsel states:

The custom and tradition is to pay the salary . . . There is no more reason to believe that a salary set by the church in this case will not be met any more than there is reason to believe that a salary set by any other business or organization will not be met.

There are particular religious and historical reasons for the church to state the manner in which it will pay its pastors in the way that the church has chosen to do so. Admittedly, this is not convenient for those of us who would like to see a clear statement simply to the effect the church promises to pay a salary of thus and so. But the practical reality of the statements that are made is that a salary is "guaranteed" to a minister in the church of the Foursquare Gospel as much as it can be "guaranteed" to anybody where the employer or the entity depends on income to pay obligations.

The regulation does not require that the petitioner "guarantee" a specific salary to the beneficiary. However, it does require that, as a minister, the beneficiary must be seeking entry into the United States to work solely as a minister, and that the petitioner clearly indicate that the beneficiary will not be dependent upon supplemental income or the solicitation of funds for his financial support. By making the pastor's salary the last priority in its financial obligations, the petitioner has failed to meet this regulatory requirement. That the church has, in the past, been able to give its pastor an "allowance" for his services provides no assurance that the beneficiary will both be dependent upon secular income for his support tomorrow. The church's bylaws, in effect, put the prospective pastor on notice that he or she may not depend upon a set compensation from the church to meet his or her needs.

The evidence does not establish that the petitioner has extended a qualifying job offer to the beneficiary.

Beyond the decision of the director, the petitioner has not established that the beneficiary has been continuously working as a minister 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 June 13, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister throughout the two-year period immediately preceding that date.

In his letter of June 9, 2003, Mr. [REDACTED] "verifies" the beneficiary's "continuing appointment as Senior Pastor of the Chicago [REDACTED] Church . . . [which he] has served . . . since January 15, 2002." The petitioner submitted a copy of a December 1, 1999 letter from [REDACTED] president of the International Church of the [REDACTED] Gospel in Los Angeles, confirming the beneficiary's proposed stay in the United States from January 1, 2000 to December 31, 2000. The petitioner submitted no documentary evidence to substantiate the beneficiary's employment at the Chicago [REDACTED] Church and submitted no evidence of any employment by the beneficiary in 2001. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In response to the RFE, the petitioner submitted a statement from the beneficiary dated December 30, 2004 [sic], in which he indicated that he has been "performing the job as Minister for the Grace Pentecostal [REDACTED] Church . . . from June 2001 to present."

Also in response to the RFE, the petitioner submitted a December 10, 2003 letter from Mr. [REDACTED] now "verifying" that the beneficiary "is serving as a voluntary worker in Grace Pentecostal [REDACTED] Church" in Chicago, and that he "conducted revival services at the Grace Pentecostal Foursquare Church before he volunteered to take care of the leadership responsibilities in the church."

A December 10, 2003 letter from [REDACTED] a member of the advisory council of Grace Pentecostal [REDACTED] Church, indicates that the beneficiary "has been our Pastor since June 8, 2001 up to the present time . . . The Church is giving [him] a donation of \$250.00 weekly in addition to his accommodation bill." Mr. [REDACTED] further stated that the beneficiary "keeps regular office hours of 10:00am-5:00pm for administrative duties. The Church services are held on Sunday mornings & afternoon, Monday Nights, Wednesday morning & evenings and Friday evenings in addition to some special meetings like Marriage and Burial Services." The petitioner submitted no evidence such as canceled paychecks, pay vouchers, verified work schedules, or other documentary evidence to corroborate the beneficiary's employment with the church. *See Id.*

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.

On appeal, the petitioner submitted a May 12, 2004 letter from Mr. [REDACTED] who states that the beneficiary is the only paid staff of the church, and that "[w]e set the Pastor's allowance and we pay the allowance like any Church or other organization from the income we receive." The petitioner submitted copies of Forms 941, Employer's Quarterly Federal Tax Returns, for the quarters ending June and September 2002, and March, June and September 2003. The Forms 941 indicate that the Chicago Foursquare Church reported that it paid one employee a total of \$3,000 during each quarter.

The petitioner submitted canceled checks made payable to the beneficiary for several months in 2003 and 2002. The checks indicate they are for the month's "allowance" and reflect payments of \$1,009. The petitioner also submitted copies of Forms W-2, Wage and Tax Statements, that it issued to the beneficiary in 2002 and 2003, reflecting total wages paid of \$12,000. The petitioner submitted no corroborative evidence of work performed by the beneficiary in 2001.

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The evidence is insufficient to establish that the beneficiary worked continuously as a minister for the two years immediately preceding the filing of the visa petition. This deficiency constitutes an additional ground for denial of the petition and dismissal of the appeal.

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.