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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

CI



FILE: EAC 03 264 53033 Office: VERMONT SERVICE CENTER

Date: AUG 18 2005

IN RE: Petitioner:
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:



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, Vermont 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 its "minister for missionary." 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 visa petition or that the position qualifies as that of a religious worker.

On appeal, the petitioner 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 first 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 September 27, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as a "minister of missionary" throughout the two-year period immediately preceding that date.

In its letter of September 23, 2003, the petitioner stated that the beneficiary had served as its full-time minister of missionary since March 2001, first on a voluntary basis and then pursuant to an H1-B, alien in a specialty occupation or profession, nonimmigrant visa. According to the petitioner, the beneficiary's duties are:

- (a) Carries religious message and educational aid to non-Christian lands and people to obtain converts and establish native church and be designated missionary.
- (b) Conducts religious worship and performs other spiritual functions associated with beliefs and practices of religious faith or denomination as authorized.
- (c) Provides spiritual and moral guidance and assistance to church members in accordance with Biblical principles and the church's beliefs and practices.
- (d) Trains church members, both adults and youths, in preparation of their mission trips and activities, such as bible principles, language, culture, etc., and guides them during their mission trips and activities.
- (e) Leads congregation in worship services and bible or other religious study programs.
- (f) Prepares and delivers sermons and other talks and administers/assists rites and sacraments such as baptisms, conducting communion services.
- (g) Interprets doctrine of religion and instructs people who seek conversion to faith.
- (h) Visits sick and shut-ins and helps the poor and homeless.
- (i) Counsels church members in spiritual needs and comforts bereaved.
- (j) Oversees religious education programs.
- (k) Cooperates and supervises various programs to help the youth group

- (l) Coordinates and supervises various programs to help and introduce the religious messages to the senior citizens
- (m) Assists the pastor and other ministers of the church in planning and administering the church programs and activities.

The petitioner indicated that during this time, the beneficiary was a full-time student at Faith Theological Seminary pursuing a Master of Divinity degree, while working at least 40 hours per week for the petitioner. A letter from the academic dean of Faith Theological Seminary, dated April 16, 2003, confirmed the beneficiary's attendance at the school with an expected graduation date of May 2004. The petitioner submitted a copy of the beneficiary's "regular week work schedule," which reflects a 50-hour workweek. With the petition, the petitioner also submitted copies of canceled checks that it made payable to "Pastor Y. S. Kim" for \$1,600 in March and April of 2003. The petitioner submitted no other corroborative 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)).

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.

On appeal, the petitioner stated that the beneficiary's work schedule with the petitioning church was organized around his class schedule at Faith Theological Seminary. The petitioner also stated that from March 2001 to March 2002, the beneficiary volunteered his services with the petitioner, and that his monthly salary, ranged from \$1,000 in April 2002 to his current salary of approximately \$1,727.

On appeal, the petitioner submitted copies of checks reflecting that it paid "Pastor [REDACTED] or the beneficiary at least \$1,000 per month from April 2002 to October 2004, but show nothing for the remainder of the qualifying period of September 2001 through March 2002. The petitioner asserts that the regulations do not require that the alien's qualifying experience must be paid employment, and that the beneficiary had the requisite experience working for the petitioning organization.

Nonetheless, 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.

The petitioner submitted no documentary evidence to corroborate the beneficiary's work with the petitioning organization from September 2001 through March 2002. *See Matter of Soffici*, 22 I&N Dec. at 165. Further, the record does not establish that the beneficiary was not dependent upon secular employment for his support during this time frame.

The evidence does not establish that the beneficiary was continuously engaged in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition.

The second issue on appeal is whether the position qualifies as that of a religious worker.

According to the regulation at 8 C.F.R. § 204.5(m)(1), the alien must be coming to the United States at the request of the religious organization to work as a religious worker.

The proffered position is that of "minister of missionary," the duties for which were previously discussed. The work schedule provided by the petitioner reflects that, for two hours each morning, the beneficiary was engaged in "early dawn prayer service." However, while other duties listed indicate that the beneficiary was expected to lead certain activities, the evidence does not establish the nature of the beneficiary's role in the "early dawn service," and does not establish that it is more than merely attendance at the service. Additionally, the petitioner does not indicate the percentage of time that the beneficiary was engaged in religious activity during his visits to the elderly for nine hours on Wednesdays.

The petitioner indicated that the beneficiary "preached" to the elderly and led youth group worship service on Sundays. According to the schedule, the beneficiary spent three hours on Saturdays preparing for the Sunday sermon. The record does not reflect, however, that the position is that of a pastor or that the position entails duties traditionally performed by members of the clergy.

The regulation at 8 C.F.R. § 204.5(m)(2) defines minister as:

[A]n 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.

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 record does not indicate that the proffered position existed within the organization prior to 2001. Further, the evidence establishes that the beneficiary worked in a voluntary capacity with the petitioner until April of 2002. The evidence does not establish that the position offers full-time (at least 35 hours per week, as defined by the U.S. Department of Labor's Bureau of Labor Statistics) employment. The petitioner submitted no evidence that the position of minister of missionary is defined and recognized by its governing body, or that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

The record does not establish that the proffered position qualifies as that of a religious worker within the meaning of the statute and regulation.

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.