

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



01

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: FEB 10 2005
SRC 03 245 51878

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:

SELF-REPRESENTED

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 Pluon

R
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas 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 intern. 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 or that the position qualified as that of a religious worker.

On appeal, counsel submits a letter 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)(1) echoes the above statutory language, and 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 10, 2003. Therefore, the petitioner must establish that the beneficiary was continuously working as in the religious vocation or occupation throughout the two-year period immediately preceding that date.

In its letter of August 20, 2003, the petitioner stated that the beneficiary had been working in its pastoral internship program since August 2001. It stated that the beneficiary's duties consisted of working on the staff of the Hispanic Ministry, attending theological training classes, coordinating the discipleship program of the petitioner's Hispanic congregation, teaching local Bible studies in Spanish, visiting members, and preaching to the Hispanic congregation.

In response to the director's request for evidence (RFE) dated September 18, 2003, the petitioner stated that the beneficiary had been "working for the last two years as Pastoral Intern for Hispanic Ministry. He is in the process of becoming an ordained minister of the Presbyterian Church of America, which should take him approximately 6 months more." The petitioner stated that the beneficiary worked 40 hours per week and it submitted additional information regarding the beneficiary's duties. Added responsibilities included helping to organize and implement the activities and programs of the petitioner's Hispanic congregation, counseling, and taking seminary courses to improve his pastoral skills and theological knowledge and prepare for ordination.

In paragraph four of its letter, the petitioner stated that the beneficiary had been employed in the position since August 23, 2003. On appeal, the petitioner states that this date was a typographical error, and that the payroll records and Forms W-2, Wage and Tax Statements, provide evidence that it has employed the beneficiary since August 22, 2001.

The petitioner stated, "Our church pays a salary consistent with those of all other similar religious workers: \$20,000 per year comprehensive medical, dental, life and disability insurance coverage as an employer-paid benefit, for a value of \$215 per month or \$2,580.00 per year." The petitioner submitted copies of Forms W-2, which indicated that it paid the beneficiary \$2,100 in 2001 and \$16,500 in 2002. The petitioner does not explain the difference in the salary it paid the beneficiary as reflected on the Forms W-2 and the competitive salary it states it pays its religious workers. The petitioner also submitted a copy of a 2001 Form W-2 that was issued to the beneficiary by Campus Outreach Ministries reflecting compensation of approximately \$1,506. On appeal, the petitioner states that Campus Outreach Ministries is a one of its ministries, and points out that the employer identification number on the two Forms W-2 are the same. The petitioner provides no evidence or explanation of the work that the beneficiary performed at Campus Outreach Ministries.

The petitioner further submitted copies of pay vouchers, reflecting that the beneficiary received \$1,700 in July and September 2003. The documents do not reflect the name of the employer. On appeal, the petitioner submitted

a copy of the beneficiary's Form W-2, reflecting that it compensated the beneficiary in the amount of \$20,400 in 2003. The petitioner also stated that a church member provided the beneficiary with a basement apartment within his house and charged the beneficiary only for the telephone and utilities. However, the petitioner submitted no evidence of this additional financial support received by the beneficiary. 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).

The petitioner also submitted copies of the beneficiary's monthly calendars for August 2001 through September 2003. However, as these documents are computer generated and reflect a print date of September 30, 2003, they provide no contemporaneous evidence of the details of the beneficiary's employment.

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.

The director determined that, as the beneficiary was in training to become an ordained minister in the [REDACTED] was not engaged in a religious occupation or vocation.

The record reflects that the beneficiary received a bachelor's of theology degree in 1996 from the Superior School of Theology of [REDACTED] in Brazil. There is no evidence that the beneficiary was ever ordained or licensed as a minister with any church or that he had ever served as a minister in any denomination.

In a letter dated August 15, 2003, Reverend [REDACTED] chairman of "Candidates, Licentiates, and Inters Committee of Evangel Presbytery, Presbyterian Church in America, wrote:

[The beneficiary] . . . was received by our Presbytery under its care on August 9th.

This means that [the beneficiary] has committed himself to follow the guidelines set for him by the [REDACTED] in America and Evangel Presbytery for the purpose of becoming an ordained minister in our denomination. [The beneficiary's] progress through seminary, his internship (fulfilling "competency" requirements related to the ministry), and his eventual ordination; will be overseen by our committee.

As a candidate, the beneficiary is also required to serve the just mentioned internship with a PCA church in preparation for his eventual ordination. This involves doing all of those duties which will be required of him once he is ordained, except under the supervision of his mentor and our committee. He will be teaching and preaching, visiting the sick and "shut-ins", helping to perform funerals, assisting in Worship Services, writing papers on pertinent subjects, and assisting his mentor in any way necessary to prepare him for ministry.

Although [REDACTED] does not specify the year in which the beneficiary was received into the presbytery, we accept for this petition that he refers to the year 2001. Regardless, it is clear from his letter that the beneficiary was in training to become a minister within the denomination and all work done by him was part of that training. An individual in training for an occupation or vocation is not working in that occupation or vocation for purposes of this visa preference petition.

On appeal, the petitioner states that use of the term "pastoral intern" caused confusion, and that, in fact, the beneficiary is a missionary within the petitioning organization. The petitioner further states, "The position of Missionary to Hispanics is a new position in the Presbyterian Church of America, and is not presently a defined position in our Book of Church Government."

This new assertion by the petitioner that the beneficiary is not a pastoral intern is contrary to all of the evidence submitted by the petitioner during the initial phases of the petition. Furthermore, a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

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

The director also determined that the petitioner had established that the proffered position is that of a religious worker. Pursuant to 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 in a religious occupation.

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 copies of excerpts from *The Book of Church Order of the Presbyterian Church in America*, which describes the church's policy and criteria for accepting applicants for a ministerial intern with the church, and the subsequent ordination of that intern. The evidence is sufficient to establish that the proffered position is defined and recognized by the petitioner's governing body, and that the position is traditionally a full-time salaried position within the denomination. However, the evidence is insufficient to establish that the position of pastoral intern is a permanent occupation.

According to *The Book of Church Order of the Presbyterian Church in America*, the purpose of the internship is to provide a trial period for those seeking ordination to ascertain their "gifts and concerning their ability to rule as teaching elders." *The Book of Church Order of the Presbyterian Church in America* requires that the period of internship shall last for at least one year and must be closely supervised. Upon the end of the designated time for completion, the internship may be approved or disapproved, and if disapproved, may be extended for an additional "definite period of time." *The Book of Church Order of the Presbyterian Church in America*, therefore, makes it obvious that the position of pastoral intern is a temporary position designed to ensure that an applicant is qualified to be a minister within the Presbyterian Church.

The evidence does not establish that the position is a religious occupation within the meaning of the regulation. Additionally, as noted above, the petitioner's attempt to reclassify the proffered position cannot be accomplished within the scope of this petition. *See Matter of Katigbak*, 14 I&N Dec. at 49.

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.